

End-User License Agreement (EULA)

cellasys GmbH

as per January 13th 2018

cellasys license agreement

This is a legal agreement ("AGREEMENT") between the end-user customer ("you"), and the providing **cellasys** entity (the applicable providing entity is hereinafter referred to as "**cellasys**"). Your location of receipt of **cellasys** software product (hereinafter "PRODUCT") and software maintenance (hereinafter "MAINTENANCE") determines the providing entity hereunder. **cellasys** GmbH, a German corporation, licenses the PRODUCT and provides MAINTENANCE in many countries all over the world. **cellasys** GmbH, licenses the PRODUCT and provides MAINTENANCE in Europe, the Middle East, Africa, North-America, and the APAC region. BY INSTALLING AND/OR USING THE PRODUCT, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL AND/OR USE THE PRODUCT. Beside **cellasys**'s terms and conditions nothing contained in any purchase order or any other document submitted by you shall in any way modify or add to the terms and conditions contained in this AGREEMENT.

1. Product licenses

1.1. End user

If the PRODUCT is labeled "End user" notwithstanding any term to the contrary in this AGREEMENT, your license permits use only if you are an end-user customer and then only for your internal purposes, and not for any other purpose. Your license to the PRODUCT will be activated by license keys (or will be preinstalled on hardware) that allow use of the PRODUCT in increments defined by the license model purchased ("License keys"). License Keys for other **cellasys** products or other editions of the same PRODUCT may not be used to increase the allowable use for your edition of the PRODUCT.

1.2. Partner demo

If the PRODUCT is labeled "Partner Demo," notwithstanding any term to the contrary in this AGREEMENT, your license permits use only if you are a current **cellasys** authorized distributor or reseller, and then only for demonstration, test, or evaluation purposes in support of your end-user customers, and not for any other purpose, including without limitation customer training or production purposes. Note that a Partner Demo PRODUCT may disable itself upon the expiration of the License Key. In no event may a Partner Demo PRODUCT be used beyond expiration.

1.3. Evaluation

If the PRODUCT is labeled "Evaluation," notwithstanding any term to the contrary in this AGREEMENT, your license permits use only if you are an end-user customer and then only for your internal demonstration, test, or evaluation purposes, and not for any other purpose, including without limitation production purposes. Your license is for ninety (90) days with NO RIGHT TO MAINTENANCE, ANY WARRANTY OR INFRINGEMENT INDEMNIFICATION. Note that an Evaluation PRODUCT may disable itself upon the expiration of the License Key. In no event may an Evaluation PRODUCT be used beyond expiration.

1.4. Archive copy

You may make one (1) copy of the PRODUCT in machine-readable form solely for back-up and/or disaster recovery purposes, provided that you reproduce all proprietary notices on the copy.

2. Maintenance

MAINTENANCE may be required and may need to be purchased separately. MAINTENANCE may include access to software-as-a-service (SaaS). MAINTENANCE begins on the date the PRODUCT is made available to you. Your MAINTENANCE shall continue for a one (1) year term and may be extended by your purchase of available annual renewals (the "MAINTENANCE Term"). During the initial or a renewal MAINTENANCE Term, **cellasys** will make any Updates for the PRODUCT covered by the MAINTENANCE available to you. An "Update" shall mean a generally available release of the same edition of the same PRODUCT which **cellasys** makes available from time to time. Updates shall be considered to be a part of the PRODUCT and subject to the terms of this AGREEMENT, except that Updates are not covered by the Limited Warranty applicable to the PRODUCT, to the extent permitted by applicable law. You acknowledge that **cellasys** may develop and market new or different computer programs or editions of the PRODUCT that use portions of the PRODUCT and that perform all or part of the functions performed by the PRODUCT. Nothing contained in this AGREEMENT shall give you any rights with respect to such new or different computer programs or editions. The plan may be purchased for the PRODUCT until it is no longer offered in accordance with the applicable **cellasys** PRODUCT support lifecycle policy. You also acknowledge that **cellasys** is not obligated to make any Updates available. Any deliveries of Updates shall be electronic. The offering you purchase determines your entitlement. In addition to your MAINTENANCE, you may also purchase **cellasys's** consulting services. **Cellasys's** provision of technical support or consulting services is predicated upon the following responsibilities being fulfilled by you: (i) you will designate a Customer Support Manager ("CSM") who will be the primary administrative contact; (ii) you agree to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by **cellasys**; (iii) you are responsible for implementing procedures necessary to safeguard the integrity and security of software and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (iv) you are responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at your site and providing **cellasys** with access to your facilities as required to operate the PRODUCT and permitting **cellasys** to perform the service; and (v) you are required to implement all currently available and applicable hotfixes, hotfix rollup packs, and service packs or their equivalent to the PRODUCT in a timely manner. **cellasys** is not required to provide any technical support for problems arising out of: (i) your or any third party's alterations or additions to the PRODUCT, operating system or environment; (ii) **cellasys** provided alterations or additions to the PRODUCT that do not address Errors or Defects; (ii) any functionality not defined in the user documentation published by **cellasys** and included with the PRODUCT (hereinafter "Documentation"); (iii) use of the PRODUCT on a processor or peripherals other than the processor and peripherals defined in the Documentation; (iv) any PRODUCT that has reached End-of-Life; and (v) any consulting deliverables from **cellasys**, you or any third party. An "Error" is defined as a failure in the PRODUCT to materially conform to the functionality defined in the documentation. A "Defect" is defined as a failure in the PRODUCT to conform to the specifications in the documentation. In situations where **cellasys** cannot provide a satisfactory resolution to your critical problem through normal technical support methods, **cellasys** may engage its product development team to create a private fix. Private fixes are designed to address your specific situation and may not be distributed by you outside your organization without written consent from **cellasys**. **cellasys** retains all right, title, and interest in and to all private fixes. Any hotfixes or private fixes are not provided as

the PRODUCT under the terms of this AGREEMENT and they are not covered by the Limited Warranty or Infringement Indemnification applicable to the PRODUCT, to the extent permitted by applicable law. With respect to **cellasys's** consulting services, all intellectual property rights in all deliverables, pre-existing works and derivative works of such pre-existing works, as well as developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the assessment are and shall remain the sole and absolute property of **cellasys**, subject to a worldwide, non-exclusive license to you for internal use.

3. Description of other rights, limitations, and obligations

You may not transfer, rent, timeshare, grant rights in, or lease the PRODUCT except to the extent such foregoing restriction is prohibited by applicable mandatory law. If you purchased or otherwise received replacement License Keys as part of a PRODUCT upgrade or otherwise and such replacement is a condition of the transaction, you agree to destroy the original License Keys and retain no copies after installation of the new License Keys and PRODUCT. You shall provide the serial numbers of the original License Keys and corresponding replacement License Keys to the reseller and, upon request, directly to **cellasys** for tracking purposes. In the event you make a transfer of the PRODUCT in the EU or EER, to the extent permitted by law notwithstanding the terms of this AGREEMENT, you must uninstall the PRODUCT and License Keys, transfer them to the transferee and retain no copies. The transferee must accept the terms of this AGREEMENT. You must provide evidence that the conditions for a lawful transfer of the PRODUCT are met. All warranty, MAINTENANCE and infringement indemnification rights will terminate upon such transfer and will not be available to the transferee. You must comply with applicable export laws with respect to such a transfer. You may not modify, translate, reverse engineer, decompile, disassemble, create derivative works based on or copy the PRODUCT, except as expressly licensed in this AGREEMENT, or to the extent such foregoing restriction is expressly prohibited by applicable mandatory law. You may not remove any proprietary notices, labels, or marks on the PRODUCT. To the extent permitted by applicable law, you agree to allow **cellasys** to audit your compliance with the terms of this AGREEMENT upon prior written notice and during normal business hours. Notwithstanding the foregoing, this AGREEMENT shall not prevent or restrict you from exercising additional or different rights to any portions of the PRODUCT that are Open Source Software.

4. Infringement indemnification

In the event of any claim, suit, or proceeding brought against you based on an allegation that a PRODUCT or consulting deliverable hereunder (excluding Open Source Software) infringes upon any patent, copyright or trade secret of any third party ("Infringement Claim"), **cellasys** shall defend, or at its option, settle such Infringement Claim, and shall pay all costs (including attorney's fees) associated with the defense of such Infringement Claim, and all damages finally awarded or settlements undertaken by **cellasys** in resolution of such Infringement Claim, provided you: promptly notify **cellasys** in writing of your notification or discovery of an Infringement Claim such that **cellasys** is not prejudiced by any delay in such notification; give **cellasys** sole control over the defense or settlement of the Infringement Claim; and provide reasonable assistance in the defense of the same. Following notice of an Infringement Claim, or if **cellasys** believes such a claim is likely, **cellasys** may at its sole expense and option: (i) procure for you the right to continue to use the alleged infringing PRODUCT or consulting deliverable; (ii) replace or modify the PRODUCT or consulting deliverable to make it non-infringing; or (iii) accept return of the PRODUCT or consulting deliverable and, for the

PRODUCT, provide you with a prorated refund using a three (3) year straight line depreciation basis, or, for the consulting deliverable, refund payments made for the deliverable. **cellasys** assumes no liability for any Infringement Claims or allegations of infringement based on: (i) your use of any PRODUCT or consulting deliverable after notice that you should cease use of such PRODUCT or consulting deliverable due to an Infringement Claim; (ii) any modification of the PRODUCT or consulting deliverable by you or at your direction; (iii) your combination of the PRODUCT or consulting deliverable with non-**cellasys** hardware, software, services, data or other content or materials if such Infringement Claim would have been avoided by the use of the PRODUCT or consulting deliverable alone. THE FOREGOING STATES YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM.

5. Limited warranty and disclaimer

cellasys warrants that for a period of ninety (90) days from the date of delivery of the License Keys to you, the PRODUCT will perform substantially in accordance with the PRODUCT's documentation published by **cellasys** and included with the PRODUCT. **cellasys** and its licensors' and suppliers' ("SUPPLIERS'") entire liability and your exclusive remedy under this warranty (which is subject to your return of the PRODUCT to **cellasys** or an authorized reseller) will be, at the sole option of **cellasys** and subject to applicable law, to replace the PRODUCT or to refund the purchase price and terminate your license to the PRODUCT. This limited warranty does not cover any modification of the PRODUCT by you. **cellasys** will provide MAINTENANCE technical support and consulting services in a professional and workmanlike manner, but **cellasys** cannot guarantee that every question or problem raised by you will be resolved or resolved in a certain amount of time. **cellasys** does not warrant in any form the results or achievements of the PRODUCT, technical support, consulting services or related deliverables. With respect to technical support, **cellasys's** and its SUPPLIER's entire liability and your exclusive remedy under this warranty is re-performance of the services. With respect to consulting services, **cellasys's** and its SUPPLIER's entire liability and your exclusive remedy under this warranty is re-performance of the services or, if re-performance is not possible or conforming, refund of amounts paid for the non-conforming services. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY, **cellasys** AND ITS SUPPLIERS MAKE AND YOU RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE; AND **cellasys** AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO THE PRODUCT, MAINTENANCE AND ANY OTHER SOFTWARE OR SERVICE DELIVERED HEREUNDER, ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. YOU ASSUME THE RESPONSIBILITY FOR THE SELECTION OF THE PRODUCT AND HARDWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE PRODUCT AND HARDWARE.

6. Export restriction

You agree that you will not export, re-export, or import the PRODUCT, MAINTENANCE or any other software or service delivered hereunder in any form

without the appropriate government licenses. You understand that under no circumstances may the PRODUCT, MAINTENANCE or any other software or service delivered hereunder be exported to any country subject to U.S. embargo or to U.S.-designated denied persons or prohibited entities or U.S. specially designated nationals.

7. Limitation of liability

EXCEPT FOR **cellasys's** INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN SECTION 4, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT NEITHER **cellasys** NOR ITS AFFILIATES, SUPPLIERS, OR AUTHORIZED DISTRIBUTORS SHALL BE LIABLE FOR ANY LOSS OF DATA OR PRIVACY, LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, COST OF RECOVERY, LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING FROM YOUR USE OF THE PRODUCT, MAINTENANCE OR ANY OTHER SOFTWARE OR SERVICE DELIVERED HEREUNDER, OR DAMAGE ARISING FROM YOUR USE OF THIRD PARTY PRODUCTS OR HARDWARE OR ANY OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; OR THE USE OF THE PRODUCT OR MAINTENANCE; OR YOUR EXPORTATION, REEXPORTATION, OR IMPORTATION OF THE PRODUCT, HARDWARE OR MAINTENANCE,. THIS LIMITATION WILL APPLY EVEN IF **cellasys**, ITS AFFILIATES, SUPPLIERS, OR AUTHORIZED DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR **cellasys's** INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN SECTION 4, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF **cellasys**, ITS AFFILIATES, SUPPLIERS, OR AUTHORIZED DISTRIBUTORS EXCEED THE AMOUNT PAID FOR THE PRODUCT AND/OR MAINTENANCE TERM AT ISSUE. YOU ACKNOWLEDGE THAT THE PRODUCT AND MAINTENANCE FEES REFLECT THESE ALLOCATIONS OF RISK. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. For purposes of this Section, the term "AFFILIATE" shall mean any legal entity fifty percent (50%) or more of the voting interests in which are owned directly or indirectly by **cellasys**. AFFILIATES, SUPPLIERS, and authorized distributors are intended to be third party beneficiaries of this AGREEMENT.

8. Termination

This AGREEMENT is effective until terminated. You may terminate this AGREEMENT at any time by removing the PRODUCT from your computers and destroying all copies and providing written notice to **cellasys** with the serial numbers of the terminated License Keys. **cellasys** may terminate this AGREEMENT at any time for your breach of this AGREEMENT. Unauthorized copying of the PRODUCT or the accompanying documentation or otherwise failing to comply with the license grant of this AGREEMENT will result in automatic termination of this AGREEMENT and will make available to **cellasys** all other legal remedies. You agree and acknowledge that your material breach of this AGREEMENT shall cause **cellasys** irreparable harm for which monetary damages alone would be inadequate and that, to the extent permitted by applicable law, **cellasys** shall be entitled to injunctive or

equitable relief without the need for posting a bond. Upon termination of this AGREEMENT, the PRODUCT licenses granted hereunder will terminate and you must immediately destroy the PRODUCT and accompanying documentation, and all backup copies thereof. Any termination of consulting services is subject to the applicable scope definition, and you shall pay for services provided prior to the termination. All purchases are final with no right of refund, other than under the warranty or infringement indemnification terms of this AGREEMENT.

9. U.S. government end-users

If you are a U.S. Government agency, in accordance with Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)), you hereby acknowledge that the PRODUCT constitutes "Commercial Computer Software" and that the use, duplication, and disclosure of the PRODUCT by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this standard commercial license AGREEMENT. In the event that, for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, you hereby acknowledge that the Government's right to use, duplicate, or disclose the PRODUCT are "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. Manufacturer is **cellasys** GmbH, Illerstrasse 14, 87758 Kronburg / Germany.

10. Authorized distributors and resellers

cellasys authorized distributors and resellers do not have the right to make modifications to this AGREEMENT or to make any additional representations, commitments, or warranties binding on **cellasys**.

13. Concluding Terms And Provisions

German law shall apply exclusively. The Convention of the United Nations for the International Sale of Goods (CISG) shall not apply. The place of performance for all claims deriving from the business relation with the Customer shall be Munich, Germany. However, the place of performance for supply commitments of **cellasys** shall be the place of the work or warehouse from where the goods are delivered according to the determination of **cellasys**. Place of venue for all disputes arising between the Customer and **cellasys** in connection with their contractual relation shall be Munich/Germany (Landgericht München I), provided that the Customer is a legal entity under public law or a *Kaufmann* (merchant) according to Sec. 1 – 3 of the German Commercial Code or has a comparable status according to the law at the place of his business. Each party is free to take legal action at the general place of venue of the other party.

cellasys GmbH

Headquarters:

**Illerstrasse 14
D-87758 Kronburg**

Email: info@cellasys.com

Web: www.cellasys.com

R&D:

**Ohmstrasse 8
D-80802 Munich**

Telefon: +49 89 2000 110-74

Telefax: +49 89 2000 110-76

Managing Director:

Dr.-Ing. Joachim Wiest

Commercial Register:

HRB 13209, AG Memmingen

USt-IdNr.: DE257360061