

# **END-USER LICENSE AGREEMENT**

*Effective starting: May 14, 2020*

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“**Embedded Software**” means any third party software which may contain Accessible Code, Protected Code or Media licensed by CMC from a third party and embedded in the Software.

“**Fees**” mean all fees and expenses payable by the Licensee to CMC in acquiring the Software and the Maintenance and as applicable any Maintenance or User Licenses in accordance with the plan the Licensee ordered.

“**Maintenance**” means the provision by CMC to the Licensee, of Software updates and/or enhancements made generally available to customers from time

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**“Media”** means all images, icons, text files, pdfs or other static non-code assets contained within the Software.

**“OEM Distribution”** means distribution of the Software and/or the Maintenance as either a bundled add-on to, or embedded component of, another application with such application being made available to its users as, but not limited to, an on-premises application, a hosted application, a Software-as-a-Service offering or a subscription.

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**“User License”** means a license granted under this EULA to the Licensee to permit an Authorized User to use the Software and receive the Maintenance.

## **2. GRANT OF LICENSE**

Upon Licensee’s acceptance of this EULA, CMC grants the Licensee the non-exclusive right to use the Software and receive the Maintenance in accordance with the plan the Licensee ordered subject to the following:

### **FULL LICENSE**

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The licenses granted are subject to the condition that the Licensee shall ensure the maximum number of Authorized Users accessing and using the Software concurrently is equal to or less than the number of User Licenses for which the necessary Fees have been paid to the Reseller or CMC. The Licensee may purchase additional User Licenses at any time on payment of the appropriate Fees to the Reseller or CMC.

## EVALUATION LICENSE

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## GENERAL LICENSE TERMS

### 2.3 Scope

Unless otherwise specified in this EULA or agreed by CMC in writing, each license granted by CMC under this EULA is worldwide, non-exclusive and non-transferable.

### 2.4 Duration

Subject to the terms of this EULA and in the manner directed at the time of Purchase of the Software and the Maintenance, unless terminated earlier in accordance with this EULA, the term granted hereunder shall be in accordance with the plan the Licensee ordered:

- (a) perpetual for a fully paid/non-paid User License;
- (b) the Evaluation Period only for an Evaluation License;
- (c) one calendar year (365 days) from the date of Purchase for an annual subscription of the Software and/or the Maintenance which will automatically renew for successive terms of the same period unless either the Licensee or CMC notifies the other of non-renewal at least 5 business days prior to the upcoming expiration date or CMC ceases to make a particular hosted service available; or
- (d) one month for a monthly subscription of the Software and/or the Maintenance which will automatically renew for successive terms of the same period unless either the Licensee or CMC notifies the other of non-renewal at least 5 business days prior to the upcoming expiration date or CMC ceases to make a particular hosted service available.

## 2.5 Permitted Computers

Except as otherwise agreed in writing by CMC, the Licensee shall only install the Software and make the Software available for use on hardware systems owned, leased or controlled by the Licensee.

## 2.6 Responsibility for Non-controlled systems

If CMC permits the Licensee to install the Software or make the Software available for use on hardware systems not owned, leased or controlled by the Licensee (the “**Uncontrolled Systems**”), the Licensee will ensure the terms of this EULA are complied with by users of such Uncontrolled Systems and the Licensee indemnifies CMC for all costs, damages and loss which CMC suffers arising from such installation or use of the Software on the Uncontrolled Systems.

## 2.7 INTERNET CONNECTIVITY AND THIRD PARTY SERVICES

The Licensee understand, acknowledge and agree that access to certain Software features, including but not limited to registration of the Software, requires an Internet connection for which The Licensee is solely responsible. The Licensee is solely responsible for payment of any third party fees associated with its Internet connection, including but not limited to Internet service provider or airtime charges. Operation of the Software may be limited or restricted depending on the capabilities, bandwidth or technical limitations of the Licensee’s Internet connection and service. The Licensee understand, acknowledge and agree that Internet connectivity in relation to the Software is provided by third parties over which CMC has no control, and is governed by the respective terms of such third parties. The provision, quality, availability and security of such Internet connectivity, software and services are the sole responsibility of such third party.

## 3. FEES

The Licensee shall pay all Fees for the Software and the Maintenance by their due date notified to the Licensee and in the manner directed at the time of Purchase of the Software and the Maintenance. Failure to pay Fees by the due date will result in the immediate termination of the User License granted under this EULA.

## 4. EMBEDDED SOFTWARE

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The Licensee acknowledges the Software contains Embedded Software and that in addition to the obligations of this EULA, additional obligations may apply in relation to any use of Embedded Software by the Licensee which is not in accordance with the use of the Software as permitted under the terms of this EULA. In such circumstances, the Licensee shall consult the relevant third party to acquire any necessary licenses and consents in relation to its use of any Embedded Software.

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While the Licensee is permitted to conduct performance and comparison “benchmarking” in relation to the Software as a whole against other software, the Licensee shall not conduct any “benchmarking” in relation to the Software or any part thereof.

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## 6.2 Support and Upgrades

Licensee may request to CMC the Maintenance in accordance with the plan the Licensee ordered and such Maintenance may be subject to the payment of additional Fees.

## 7. LICENSEE OBLIGATIONS

### 7.1 Positive Obligations

The Licensee shall at all times:

- (a) ensure that only an Authorized User uses the Software and only in accordance with the terms and conditions of this EULA; and
- (b) ensure that the Software is not used for rental, timesharing, subscription service, hosting or outsourcing.

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The Licensee shall not, without the prior written consent of CMC (which may be withheld at CMC's discretion and include certain conditions):

- (a) decompile, reverse engineer, disassemble, modify, adapt, create derivative works from, or otherwise attempt to derive, any part or whole of the Software;
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- (e) except as otherwise permitted in this EULA, publish, promote, broadcast, circulate or refer publicly to the CMC name, trade name, trademark, service mark or logo;
- (f) commit any act or omission the likely result of which is that CMC's or any of its third party suppliers' reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on CMC's interests;

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## **8. NOTIFICATION**

### **8.1 General**

If the Licensee discovers that it has breached any of its obligations under this EULA and in particular but not limited to the obligations in clause 7, the Licensee shall immediately report such breach to CMC, in writing.

### **8.2 Breach of Additional Licenses**

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days of being required, it will be considered that a breach of this EULA has occurred allowing CMC to terminate the licenses granted under this EULA.

## **10. TERMINATION**

10.1 Without prejudice to any other rights and in addition to any other termination rights in this EULA, CMC may terminate with immediate effect, this EULA if:

- (a) the Licensee fails to comply with the terms and conditions of this EULA;
- (b) the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts;
- (c) the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Licensee (being a company);
- (f) the holder of a qualifying floating charge over the assets of the Licensee (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the Licensee or a receiver is appointed over the assets of the Licensee;
- (h) a creditor or encumbrancer of the Licensee attaches or the Licensee takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Licensee's assets and such attachment or process is not discharged within 14 days; or
- (i) the Licensee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

10.2 Immediately upon termination of a license granted under this EULA, the Licensee shall at its own cost:

- (a) cease permitting access to and procure that all Authorized Users

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(b) remove all copies of the Software from its computer systems or any Uncontrolled Systems;  
(c) provide CMC with written certification that it has destroyed all copies of the Software including but not limited to all Accessible Code in its possession, custody or control.

## **11. INFRINGEMENT INDEMNIFICATION**

### **11.1 Indemnification**

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## **13. LIMITATION OF LIABILITY**

### **13.1 Non-excludable Warranties**

The Licensee may have remedies against CMC imposed by law or statute which cannot be excluded by CMC and its third party suppliers. To the extent that the Licensee has such legal remedies against CMC or its third party

suppliers, then to the fullest extent permitted by law, CMC and its third party suppliers' liability is limited:

(a) at CMC's option, to: (i) in the case of the Software: 1) repairing or replacing the Software; or 2) the cost of such repair or replacement; and (ii) in the case of Maintenance services; 1) re supply of the Maintenance services; or 2) the cost of having the Maintenance services supplied again; or

(b) if the limitation set out in 13.1 (a) is not applicable then to an amount of the liability up to a maximum of the sum of the amount actually paid by the Licensee for the Software during the last 12 months.

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#### **14. PUBLICITY RIGHTS**

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#### **15. AMENDMENT**

This EULA may not be amended except with the written agreement of CMC whose consent may be withheld in CMC's complete discretion without any requirement to provide reasons.

## **16. ASSIGNMENT**

The Licensee may assign this EULA to:

- (i) succeeding parties in the case of a merger, acquisition or change of control; or
- (ii) if the Licensee is a supplier to a government agency; provided, however, that in each case, (a) CMC is notified in writing within ninety (90) days of such assignment, (b) the assignee agrees to be bound by the terms and conditions contained in this EULA and (c) upon such assignment the assignee makes no further use of the Software licensed under this EULA.

CMC may assign its rights and obligation under this EULA without consent of the Licensee. Any permitted assignee shall be bound by the terms and conditions of this EULA.

## **17. RESTRICTIONS**

The export of the Software from the country of original Purchase may be subject to control or restriction by applicable local law. The Licensee is solely responsible for determining the existence and application of any such law to any proposed export and for obtaining any needed authorization. The Licensee agrees not to export the Software from any country in violation of applicable legal restrictions on such export.

## **18. GOVERNING LAW AND EXCLUSIONS**

### **18.1 Applicable Law**

This EULA and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Japan and the Parties submit to the exclusive jurisdiction of the Nagoya District Court as the court of first instance with respect to any and all controversies in connection with this EULA.

### **18.2 Exception**

Notwithstanding the foregoing, the parties hereto reserve the right to seek and obtain injunctive relief, whether in the form of a temporary restraining order, preliminary injunction, injunction to enforce an arbitration award, or other order of similar import, including obtaining full payment of all fees and costs under this EULA from any court of competent jurisdiction (e.g. local courts at the Licensee place of residence) prior to, during, or after commencement or prosecution of

arbitration proceedings or the final decision and award of the arbitrators.

### **18.3 Exclusion of CISG**

The terms of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this EULA.

## **19. ENTIRE AGREEMENT**

This EULA (and any addendum or amendment to this EULA which is included with the Software) is the entire agreement between the Licensee and CMC relating to the Software and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA.

## **20. NOTICES**

All notices given to CMC shall be given to CMC Corporation, 1-1-19 Heiwa, Naka-ku, Nagoya, Aichi 460-0021, JAPAN and to the Licensee at the address provided by it upon Purchase of the Software. Notice will be deemed received and properly served 24 hours after an electronic communication (including email) is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an electronic communication, that such email was sent to the specified email address of the addressee.

## **21. WAIVER**

**21.1** If CMC fails, at any time during the term of this EULA, to insist upon strict performance of any of the Licensee's obligations under this EULA, or if CMC fails to exercise any of the rights or remedies to which it is entitled under this EULA, this shall not constitute a waiver of such rights or remedies and shall not relieve the Licensee from compliance with such obligations.

**21.2** A waiver by CMC of any default shall not constitute a waiver of any subsequent default.

**21.3** No waiver by CMC of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to the Licensee in writing.

## **22. SEVERABILITY**

**22.1** If any provision of the EULA (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

**22.2** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and to give effect to the commercial intention of the parties.

## **23. NO PARTNERSHIP ETC.**

Nothing in the EULA is intended to, or shall be deemed to, establish any agency, partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of any other party.

## **24. FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform its obligations under this EULA if such delay or failure is caused by a force beyond its reasonable control, including, without limitation, war (whether a declaration thereof is made or not), terrorism, sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of a public enemy, act of any government or any agency or subdivision thereof, judicial action, lockouts, general strikes, fire, accident, explosion, epidemic, pandemic, quarantine, restrictions, storm, flood, earthquake, adverse weather conditions, other natural disasters, Acts of God, delays by third parties and any other cause beyond the reasonable control of the parties. Inability or failure to pay will not be considered an event of force majeure.

## **25. SURVIVAL**

Clauses 1, 4, 5, 7, 9, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24 and 25 shall survive any termination of this EULA.