

## **IXXAT Software Solutions**

### **End User License Agreement for IXXAT Software Products Provided Free-of-Charge**

**As per July 25, 2016**

## End User License Agreement for IXXAT Software Products Provided Free-of-Charge

This software license agreement (following named "**Agreement**") is a legal agreement between you and your company ("**Client**") and HMS Technology Center Ravensburg GmbH ("**HMS**"). By using the software program(s) and/or components included in the zip file or other type of software-package ("**Software**"), Client agrees to be bound by the terms of this Agreement. If Client does not agree to the terms of this Agreement, Software and the accompanying items (including any printed materials, binders or other containers) shall be promptly un-installed and deleted or destroyed.

### 1. Scope of Delivery of Software

- 1.1. Software is provided as it is. HMS does not guarantee that Software embodies all necessary legal provisions and all standards related to the Software.
- 1.2. Software is delivered by HMS in a machine-readable format (object code or source-code), together with installation instructions and user documentation (if provided). Installation instructions and user documentation may be provided in electronic format such as PDF only.

### 2. Right to Use Software

- 2.1. HMS grants to Client the right to use Software to the extent agreed in this agreement. Client may use Software for its own purposes and for the purposes of Client's group of companies.
- 2.2. Software is provided free-of-charge to Client as free supplement to other IXXAT software and hardware products offered by HMS.
- 2.3. Client may distribute the Software to any 3<sup>rd</sup> party only if these terms and conditions are included and if this distribution is done at no cost for the 3<sup>rd</sup> party. Any 3<sup>rd</sup> party receiving this Software also shall fully comply with these terms and conditions.
- 2.4. Customer is not entitled to distribute nor provide the Software to any 3<sup>rd</sup> party at cost if not explicitly permitted by HMS in writing.
- 2.5. The Client agrees to use Software only on configurations that HMS has declared to be compatible with Software.
- 2.6. HMS grants Client the right to use Software only in combination with standard HMS hardware products or with OEM hardware products available from HMS. The usage of Software in combination with 3<sup>rd</sup> party hardware is prohibited unless explicitly permitted by HMS in writing.
- 2.7. Client may use Software as for his application or product – this includes the development of software-products that exchange data with Software provided by HMS. Client shall not be entitled to derive a product from Software that is competing with HMS products, solutions or services.

### 3. Performance

- 3.1. Client shall be responsible for the installation of Software on its IT-system.
- 3.2. Client shall be responsible for the implementation of Software; Client is also responsible to test Software under the conditions it shall be used before using it productively.

### 4. Client's Responsibilities for Software Protection

- 4.1. Client acknowledges that Software and the related documentation – including future versions – are copyrighted, and represent confidential information and trade secrets proprietary to HMS or to HMS's supplier.

- 4.2. Client must neither remove nor modify any copyright information of Software – especially if provided by HMS in source-code – or of the documentation provided with Software. Client is obliged to have the HMS copyright and this Agreement directly accessible for users of the Software or Client's product.
- 4.3. Client shall not be entitled to translate, distribute, modify or develop any works based on provided user documentation. If documentation is provided not in an electronic format, Client may make copies of the documentation only if admissible and only for internal purposes.
- 4.4. HMS may revoke Client's right of use, if Client substantially violates its obligations referring to software protection.

## **5. Warranty and Maintenance**

- 5.1. Software is provided for free without maintenance and warranty. Client may report deficiencies to HMS.
- 5.2. HMS may fix deficiencies or develop, update and upgrade Software at its sole discretion and without prior announcement. This includes implementation of new features and the adaptation to system software.

## **6. Support**

- 6.1. HMS shall not be obliged to provide support for Software.

## **7. HMS's Liability**

- 7.1. HMS, ITS AFFILIATES AND/OR ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DIRECT OR INDIRECT DAMAGES FOR PERSONAL INJURY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION DAMAGES FOR LOSS OF DATA, OR SOFTWARE RESTORATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF HMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.2. IN ANY CASE, THE ENTIRE LIABILITY OF HMS, ITS AFFILIATES AND ITS SUPPLIERS', UNDER ANY PROVISION OF THIS AGREEMENT, SHALL BE LIMITED TO THE AMOUNT OF THE PAYMENTS MADE BY CLIENT TO HMS FOR THIS SOFTWARE. YOU MAY CLAIM FOR HIGHER LIABILITY OF HMS, BUT MUST THEN PAY A THIRD CHARGE FOR THE AGGRAVATED RISK.

## **8. General Matters**

- 8.1. This Agreement shall constitute the entire agreement between the parties and shall not be altered, amended or cancelled, except in writing and with the consent and signature of all parties concerned.
- 8.2. The parties, if they are merchants by registration, hereby submit to the jurisdiction of HMS's main place of business.
- 8.3. This Agreement shall conform with and be governed by the laws of Germany. The United Nations Convention on Contracts for the International Sale of Goods (which has been incorporated into German law) shall not apply to foreign Clients.