

# SPARK Core End User License Agreement

Please read this EULA carefully, as it sets out the basis upon which we (= Licensor) license the Software (see the definition of the term "Software" below under 1.1.) for use.

Before you (= User) download the Software from our (= Licensor's) website, we will ask you to give your express agreement to the provisions of this EULA. By agreeing to be bound by this EULA, you further agree that any person you authorise to use the Software will comply with the provision of this EULA.

## 1. Definitions

1.1. Except to the extent expressly provided otherwise, in this EULA:

**"Documentation"** means the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the User;

**"Effective Date"** means the date upon which the User gives the User's express consent to this EULA, for example, by checking the box on our website that the User agrees with the terms and conditions of the EULA, following the issue of this EULA by the Licensor;

**"EULA"** means this end user licence agreement between you as the User and the Licensor containing binding terms and conditions for the User's use of the Software in whatever way or form, including any amendments to this end user licence agreement from time to time;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include, for example, copyrights and related rights, database rights, software rights, rights to the Source Code, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"License File"** an encrypted license file that contains an expiry date.

**"Licensor"** means Nextron Systems GmbH of Bruchstraße 8, 63128 Dietzenbach, Germany, sometimes in this EULA also referred to as "us", "our" or similar;

**"Maintenance Services"** means the supply to the User of Updates and Upgrades;

The term "party" or "parties" refers to the Licensor and the User;

**"Software"** means the Licensor's software SPARK Core;

**"Software Specification"** means the specification for the Software set out in the Documentation;

**"Source Code"** means the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software or decompiled from the Software, but excluding interpreted code comprised in the Software;

**"Support Services"** means support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software or otherwise;

**"Term"** means the term of this EULA, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2; and

**"User"** means the person to whom the Licensor grants a right to use the Software under this EULA, sometimes in this EULA also referred to as "you", "your" or similar.

## 2. Term

- 2.1. This EULA shall come into force upon the Effective Date.
- 2.2. This EULA shall continue in force until the expiry date defined in the License File, upon which this EULA shall terminate automatically.

## 3. Licence

- 3.1. The Licensor hereby grants to the User from the date of supply of the Software to the User until the end of the Term a limited, non-exclusive licence to:
  - (a) install the Software; and
  - (b) use the Software,subject to the limitations and prohibitions set out and referred to in this Clause 3.
- 3.2. The User may not sub-license and must not purport to sub-license any rights granted under Clause 3.1 without the prior written consent of the Licensor.
- 3.3. Save to the extent expressly permitted by this EULA or required by applicable law on a non-excludable basis, any licence granted under this Clause 3 shall be subject to the following prohibitions:
  - (a) the User must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;
  - (b) the User must not alter, edit or adapt the Software; and
  - (c) the User must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.
- 3.4. The User shall be responsible for the security of copies of the Software supplied to the User under this EULA (or created from such copies) and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this EULA.

## **4. Source Code**

- 4.1. Nothing in this EULA shall give to the User or any other person any right to access, copy, adapt, change or use the Source Code or constitute any licence of the Source Code.

## **5. Maintenance Services**

- 5.1. The Licensor does not provide Maintenance Services to the User during the Term.

## **6. Support Services**

- 6.1. The Licensor does not provide the Support Services to the User during the Term.

## **7. No assignment of Intellectual Property Rights**

- 7.1. Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the User, or from the User to the Licensor.

## **8. Warranties**

- 8.1. The Licensor warrants to the User that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.
- 8.2. The User warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA. The User also explicitly warrants and represents that the User will not infringe upon the Licensor's Intellectual Property Rights.
- 8.3. All of the parties' warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

## **9. Acknowledgements and warranty limitations**

- 9.1. The User acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.
- 9.2. The User acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be entirely secure.

- 9.3. The User acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software.
- 9.4. The User acknowledges that the Licensor will not provide any legal, financial, accountancy or taxation advice under this EULA or in relation to the Software; and, except to the extent expressly provided otherwise in this EULA, the Licensor does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

## **10. Disclaimers and Limitations on Liability**

- 10.1. THE SOFTWARE IS PROVIDED FREE OF CHARGE ON AN "AS IS" BASIS, AND NO WARRANTY, EITHER EXPRESS OR IMPLIED, IS GIVEN, UNLESS OTHERWISE STATED IN CLAUSE 10.6. OF THIS EULA. PLEASE BE AWARE THAT YOUR USE OF THE SOFTWARE IS AT YOUR SOLE RISK.
- 10.2. The Licensor does not warrant that
- (a) the Software will meet your specific requirements;
  - (b) the Software is fully compatible with any particular platform;
  - (c) your use of the Software will be uninterrupted, timely, secure, or error-free;
  - (d) the results that may be obtained from the use of the Software will be accurate or reliable;
  - (e) the quality of any products, services, information, or other material purchased or obtained by you through the Software will meet your expectations; or
  - (f) any errors in the Software will be corrected.
- 10.3. YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE LICENSOR SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) RELATED TO THE SOFTWARE, including, for example:
- (a) the use or the inability to use the Software;
  - (b) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the Software;
  - (c) unauthorized access to or alteration of your transmissions or data;
  - (d) statements or conduct of any third-party on the Software;
  - (e) or any other matter relating to the Software.
- 10.4. The Licensor reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Software (or any part thereof) with or without notice. The Licensor shall not be liable to you or to any third-party for any modification, price change, suspension or discontinuance of the Software.
- 10.5. The Licensor disclaims all warranties about the Software to the fullest extent permitted by law.
- 10.6. Nothing in this EULA will:
- (a) limit or exclude any liability for death or personal injury resulting from negligence;

- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law,

and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this EULA, except to the extent permitted by law.

10.7. The limitations and exclusions of liability set out in this Clause 10 and elsewhere in this EULA:

- (a) are subject to Clause 10.6; and
- (b) govern all liabilities arising under this EULA or relating to the subject matter of this EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this EULA.

## 11. Termination

11.1. The Licensor may terminate this EULA at any time by giving to the User not less than 30 days' notice of termination, either in writing or by any other means, e.g. e-mail, SMS, telephone.

11.2. Either party may terminate this EULA immediately by giving notice of termination, either in writing or by any other means, e.g. e-mail, SMS, telephone, to the other party if:

- (a) the other party commits any breach of this EULA, and the breach is not remediable;
- (b) the other party commits a breach of this EULA, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches this EULA (irrespective of whether such breaches collectively constitute a material breach).

## 12. Effects of termination

12.1. Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 10, 12, 13 and 14.

12.2. Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party.

12.3. For the avoidance of doubt, the licenses of the Software in this EULA shall terminate upon the termination of this EULA; and, accordingly, the User must immediately cease to use the Software in any way or form upon the termination of this EULA.

12.4. With the termination of this EULA, the User must:

- (a) return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and
- (b) irrevocably delete from all computer systems in its possession or control all copies of the Software.

## 13. Third-Party Software

- 13.1. The Software contains software provided by third parties, and such third-parties' software is provided "As Is" without any warranty of any kind to the extent that this is legally possible. Subject to the license terms attached to such third-party software, the provisions of this Agreement shall apply to all such third-party software providers and third-party software as if they were the Licensor (Nexttron Systems GmbH) and the Software respectively.
- 13.2. In addition, this Software contains open source components. Such open source components are protected under copyright law and are licensed to Licensee under specific license terms. Please see the „docs“ folder for the applicable license terms of the open source components.

## 14. General

- 14.1. No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.
- 14.2. If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 14.3. This EULA may not be varied except by a written document signed by or on behalf of each of the parties.
- 14.4. The User hereby agrees that the Licensor may assign the Licensor's contractual rights and obligations under this EULA to any successor to all or a substantial part of the business of the Licensor from time to time. The User must not without the prior written consent of the Licensor assign, transfer or otherwise deal with any of the User's contractual rights or obligations under this EULA.
- 14.5. This EULA is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.
- 14.6. Subject to Clause 10.6, this EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 14.7. This EULA shall be governed by and construed in accordance with German law.
- 14.8. The courts of Germany shall have exclusive international jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

- 14.9. Within Germany, the courts in Frankfurt am Main shall have exclusive jurisdiction to the extent that this is legally possible according to the law to adjudicate any dispute arising under or in connection with this EULA; otherwise, the court(s) according to German law shall have jurisdiction within Germany.

## **15. Interpretation**

- 15.1. In this EULA, a reference to a statute or statutory provision includes a reference to:
- that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - any subordinate legislation made under that statute or statutory provision.
- 15.2. The Clause headings do not affect the interpretation of this EULA.
- 15.3. References in this EULA to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 15.4. In this EULA, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.