

Software License Agreement

In order to use any software (including ancillary goods and ancillary documents related to software such as media, manuals etc. as well as online digital documents etc., hereinafter referred to as "the Software") that this Software License Agreement (hereinafter referred to as "this Agreement") is bundling or displayed among software incorporated into OPTEX CO., LTD. (hereinafter referred to as "OPTEX")'s products (hereinafter referred to as "OPTEX PRODUCTS") as well as software bundled with OPTEX PRODUCTS as ancillary goods, software downloaded from the web site in order to make use of OPTEX PRODUCTS or any service provided by OPTEX (hereinafter referred to as "OPTEX SERVICES"), web application software which needs access in order to make use of OPTEX SERVICES, OPTEX software purchased by you, and software provided by other methods to you by OPTEX, you are required to agree to this Agreement. Prior to opening the Software packaging, downloading, installing and commencing the use of the Software, please be sure to read this Agreement. By opening the Software packaging, downloading, installing and commencing the use of the Software, you will, regardless of the circumstances, be deemed to have agreed to this Agreement.

Article 1 Ownership of Rights

- 1.1 The various rights related to the Software such as copyrights, patent rights, trademarks and other intellectual property rights and know-how (hereinafter referred to as "Rights") belong to OPTEX or to the third parties from whom OPTEX has received licenses to make use of such rights (hereinafter referred to as "OPTEX Licensors"), and the Software and Rights are protected by copyright law, patent law and other applicable laws, regulations, rules and international treaties related thereto.
- 1.2 This Agreement does not (i) constitute any assignment of Rights in whole or in part to you (hereinafter referred to as "Licensee"), or (ii) grant Licensee any rights to make use of Rights in whole or in part in excess of the scope of use expressly permitted under this Agreement.

Article 2 Grant of License

OPTEX hereby grants Licensee a non-exclusive, non-transferable, limited right to use, without right of sublicensing, the Software in accordance with the provisions set forth in this Agreement. The scope of right of use licensed by OPTEX to Licensee shall be limited to the act that is necessary to use the Software appropriately for purpose of use of the Software that OPTEX expresses or suggests separately among the following acts.

- (1) in the case that the Software is related to the use of OPTEX PRODUCTS
 - (a) to use the Software incorporated into OPTEX PRODUCTS for the purpose of Licensee's own use of said products; and
 - (b) to install and use the software bundled with OPTEX PRODUCTS as ancillary goods, software downloaded from the web site specified by OPTEX, software purchased by Licensee or software provided by other methods by OPTEX on the hard disk drive or memory devices of one electronic device (including without limitation personal computer, smartphone and tablet) owned by Licensee for Licensee's own use of OPTEX PRODUCTS.
- (2) in the case that the Software is related to the use of OPTEX SERVICES
 - (a) to install and use the software bundled with OPTEX PRODUCTS as ancillary goods, software downloaded from the web site specified by OPTEX, software purchased by Licensee or software provided by other methods by OPTEX on the hard disk drive or memory devices of one electronic device (including without limitation personal computer, smartphone and tablet) owned by Licensee for Licensee's own use of OPTEX SERVICES; and
 - (b) to access web application software which is necessary in order to make use of OPTEX SERVICES, as well as to operate such software and browse or obtain information which authority is given to Licensee in such software.

Article 3 Restricted Matters

Licensee shall not perform any of the following acts with respect to the Software in whole or in part, without OPTEX's prior written consent:

- (a) to use beyond the scope permitted by this Agreement;
- (b) to copy without OPTEX's prior written consent;
- (c) to reverse engineer, decompile, disassemble or analyze by any other method;
- (d) to change, alter, modify or adapt the Software, or to create derivative or secondary work etc. based on the Software;
- (e) to sublicense, distribute, loan, lease, rent, sell, assign, pledge or mortgage to third parties, or otherwise dispose;
- (f) to remove or change trademarks, logos, symbol marks, notices of copyrights, labels etc., or to make unauthorized use of the same; or
- (g) to instruct or suggest, directly or indirectly, any third party to perform any of clauses (a) through (e) of this Article.

Article 4 Warranty Liability and Disclaimer

- 4.1 OPTEX represents and warrants that (i) it has the right to grant the licenses of the Software to Licensee under this Agreement, (ii) in the event that the Software provided with media, the media on which the Software is recorded will be free from physical defects, and (iii) the Software can be installed on general electronic device; provided, however, that in the case that the electronic device in which to install is designated by OPTEX, warranty scope of this Paragraph (iii) is such electronic device only.
- 4.2 In the event that physical defects in the Software media or troubles related to the installation of the Software are discovered, during only the ninety (90) day period following the delivery of the Software to Licensee, OPTEX shall exchange said media with non-defective media without charge.
- 4.3 THE ABOVE WARRANTY IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY OPTEX. THE SOFTWARE IS DELIVERED TO LICENSEE IN "AS IS" CONDITION, AND WITH THE EXCEPTION OF THE WARRANTY SET FORTH IN THE PARAGRAPH 4.1, NEITHER OPTEX NOR ANY OF OPTEX' LICENSORS MAKES WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EITHER EXPRESS, IMPLIED OR STATUTORY, CONCERNING THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF DEFECTS, FUNCTION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

- 4.4 Licensee shall be solely responsible for its selection, adoption, installation, downloading and use of the Software as well as all results of the implementation of these acts or the use of such Software. OPTEX SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES AMD/OR LOSSES, INCLUDING WITHOUT LIMITATION ANY DIRECT DAMAGES, INDIRECT DAMAGES, ACTUAL DAMAGES, LOSS OF PROFITS AND ANY OTHER DERIVATIVE, INCIDENTAL, CONSEQUENTIAL OR CONTINGENT DAMAGES, SUFFERED BY LICENSEE OR ANY THIRD PARTY ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THE SELECTION, ADOPTION, INSTALLATION, DOWNLOADING OR USE OF THE SOFTWARE, OR RESULTING FROM THE IMPLEMENTATION OF THESE ACTS OR THE USE, NON-USE OF OR THE INABILITY TO USE THE SOFTWARE, EVEN IF SUCH DAMAGES AND/OR LOSSES ARE FORESEEABLE.

Article 5 Confidentiality Obligations

Licensee hereby acknowledges and agrees that the Software is comprised of confidential information owned by OPTEX or OPTEX' Licensors. Licensee shall not leak or otherwise disclose the Software to third parties without having obtained prior written approval from OPTEX. Licensee shall, not only during the effective term of this Agreement but also thereafter, maintain any information related to the Software as confidential information, in strict secrecy, using the same degree of care it uses for the purpose of maintaining the confidentiality of its own confidential information, but in no event less than reasonable care, and shall establish appropriate measures to prevent improper use and improper disclosure of, and improper access to, said confidential information.

Article 6 Termination

- 6.1 OPTEX may, at its election and without prejudice to any other legal right or remedy that it might otherwise have, terminate this Agreement by written notice to the Licensee upon the happening of any one of the following events:
 - (a) any failure by the Licensee to perform one or more of its obligations hereunder or any other breach hereof which shall not have been cured within ten (10) days after receipt of written notice specifying the nature of such failure and/or breach;
 - (b) the Licensee (i) files a petition in bankruptcy, or a petition in bankruptcy is filed against the Licensee, (ii) becomes insolvent or bankrupt, (iii) transfers all, substantially all or an important part of a its business or assets for the benefit of creditors, or (iv) goes into liquidation or receivership.
- 6.2 In the event of termination of this Agreement, all rights to the Software licensed to Licensee shall automatically extinguish and Licensee shall immediately cease all use of the Software. Further, Licensee shall destroy or completely delete the Software in an unrecoverable condition. Termination shall not excuse the Licensee from any obligations incurred hereunder prior to the date of termination.

Article 7 Compensation of Damages

- 7.1 In the event that OPTEX suffers damages and/or losses arising from Licensee's breach of any of the provisions of this Agreement, OPTEX shall, without waiving its other rights and remedies, be entitled to demand compensation from Licensee for all such damages and/or losses, and Licensee shall make full indemnification for the same. Additionally, Licensee shall indemnify, defend and hold harmless OPTEX and OPTEX' Licensors against any such damages and/or loss.
- 7.2 Licensee hereby acknowledges and agrees that OPTEX shall be entitled to obtain all appropriate relief, including injunctive and equitable relief, to enforce the provisions of this Agreement.

Article 8 Effective Term

- 8.1 This Agreement shall come into effect when Licensee opens the Software packaging, or installs, downloads and commences use of the Software, and shall remain in full force until it is terminated based on Article 6 or the agreement of both parties.
- 8.2 Notwithstanding the preceding paragraph to the contrary, the provisions of Article 3, Paragraph 4.2, Paragraph 4.3, Article 5, Paragraph 6.2, Article 7, as well as Articles 9 through 11 shall survive termination of this Agreement.

Article 9 Notice

All notices, requests, demands or other communications to be given by one party to the other party based on this Agreement shall be sent to the address above signature space or to such other address notice of which was sent by the other party in accordance with the provisions of this paragraph, through transmission of necessary information by facsimile, e-mail or other electronic means of communications agreed between the parties, or in writing by prepaid registered airmail. In the event sent by facsimile, email or other electronic means of communications, notice shall be effective at the time of the confirmation of receipt, and in the event sent by registered airmail, effective seven (7) business days following dispatch. In the event of notice received by registered airmail, the receiving party shall, if possible, notify the other party of such receipt, confirming by telephone, email, facsimile or other method.

Article 10 Governing Law and Settlement of Dispute

- 10.1 The formation, validity, interpretation, enforceability and performance of this Agreement as well as the performance of all transactions

based on this Agreement, and any other matters related to this Agreement, shall in all respects be governed by and construed in accordance with the laws of Japan.

- 10.2 All disputes, controversies and differences of opinion between the parties arising from or in connection with this Agreement or the breach hereof, which cannot be satisfactorily settled by the parties, shall be finally settled by arbitration in the Japan Commercial Arbitration Association in Osaka, Japan in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association. The arbitration proceedings shall be conducted in Japanese. The award of the arbitrator(s) shall be final and binding upon the parties hereto. Judgment upon the award may be entered in any court having jurisdiction thereof.

Article 11 General Provisions

- 11.1 OPTEX shall be entitled to change or update/upgrade the content of the Software without prior notice of any kind. Further, the decision whether or not to provide Licensee with modified software and software for the purpose of modification (hereinafter collectively referred to as "Modified Software") as well as information concerning modification, the period of providing, the method of providing and so forth shall be determined by OPTEX at its free discretion. Modified Software provided to Licensee shall be deemed the Software.
- 11.2 The Software (including technical data included in the Software) may be subject to the application of the export control laws and regulations of Japan. Further, it may be subject to the application of the export and import control rules and regulations of other countries such as the US export control laws and regulations. Licensee hereby agrees to comply with all such export control laws and regulations, and shall refrain from directly or indirectly exporting, transferring or transmitting the Software to any restricted country under such export control laws and regulations without following lawful procedures.
- 11.3 Licensee shall not assign, transfer or otherwise dispose of this Agreement in whole or in part, or any of its rights or obligations under this Agreement, without the prior written consent of OPTEX. Any assignment, transfer or disposition without such consent shall be void.
- 11.4 In the event that any provision of this Agreement is subsequently held to be illegal, unenforceable or invalid by any court or other agency having competent jurisdiction or authority, such illegality, unenforceability or invalidity shall not affect the legality, enforceability or validity of the remaining provisions of this Agreement. OPTEX shall substitute for the affected provision a valid, legal and enforceable provision which approximates the original intent of the affected provision as closely as possible, and Licensee shall consent to such substituted provision.
- 11.5 Failure or delay by either party in requiring performance by the other party of any provision under this Agreement shall not in any way adversely affect such provision thereafter. The waiver by either party of a breach by the other party of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same provision.
- 11.6 The headings of articles and paragraphs used in this Agreement are inserted for convenience of reference only, and shall not have any impact upon the interpretation of the respective provisions of this Agreement.
- 11.7 This Agreement constitutes the entire understanding and agreement between Licensee and OPTEX concerning the licensed rights to use the Software, and supersedes and replaces all prior negotiation, understanding, statement of intent and memorandum of understanding, in each case, whether written, oral or otherwise. The supplement, amendment or modification of this Agreement shall become effective upon confirmation by the parties hereto; provided, however, that Licensee shall not, without obtaining OPTEX's prior written consent, have the right to supplement, amend or modify this Agreement.

End