

Network Testing Division Software License Agreement



Part I – General Terms

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"Licensee" or "you," means the corporate entity licensing the Software under the terms of this SLA.

"Licensor" means the entities in Part 2, Section 1.0

"Materials" means the documentation, modifications, subsequent versions, diagnostic software, prior versions support materials, and manuals provided by Licensor with or for use in conjunction with the Software with which it was delivered.

"Software" means the Program and the Third-Party Software delivered to Licensee, along with each and every one of its components, including but not limited to Materials, Confidential Information, and other materials delivered to Licensee in connection with such Program and Third-Party Software.

"Program" means the proprietary software of Licensor delivered to Licensee.

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"Third-Party Software" means all software (including its accompanying Materials) delivered to Licensee with this SLA, which is not a Program.

"Trial Period" means the trial period for a Trial Version, which shall be agreed in a separate writing or quotation by Licensor. If no other period is agreed, the default Trial Period shall be thirty (30) days.

"Trial Version" means Software indicated by Licensor as a trial version.

2.0 AGREEMENT STRUCTURE

This Agreement includes Part 1 – General Terms, and Part 2 – Country-unique Terms (if any), and is the complete agreement between Licensee and Licensor regarding the use of the Program. It replaces any prior oral or written communications between Licensee and Licensor concerning Licensee's use of the Program. The terms of Part 2 may replace or modify those of Part 1.

3.0 LICENSE

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3.5.2 Licensee agrees to hold the Software, including but not limited to, the Materials, in trust and confidence for Licensor during the term of this SLA and indefinitely thereafter, and consents to the subsequent destruction or return of the material at Licensor's option, after expiration of the license.

3.5.3 Licensee agrees that it maintains or will maintain adequate internal procedures, including appropriate binding agreements with its employees and agents, to protect Licensor's proprietary information in a reasonable manner and in accordance with the requirements of this SLA, but, in all cases, with no less degree of care than Licensee uses to protect its own confidential or proprietary information.

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- (iv) is or becomes part of the public domain through no wrongful act of Licensee or another person or entity.

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4.4 Essential Basis. Both parties acknowledge that the provisions of Sections 4.1, 4.2, 4.3, and this Section 4.4 are an essential part of this SLA, absent which the economic terms and other provisions of this SLA would be substantially different.

5.0 MISCELLANEOUS

5.1 Independent Parties. The parties to this SLA are independent entities. Nothing in this SLA shall be construed as creating a joint venture, partnership, agency, or employment relationship between Licensor and Licensee, its employees, or agents.

5.2 Export Controls. In the event that the provision of the Software, Materials or any part thereof is prohibited by export control laws or regulations, then: (i) Licensor shall have no obligation whatsoever to deliver the Software, Materials or any part thereof to Licensee; (ii) Licensor shall have no liability to Licensee or any third party for its failure to deliver the Software, Materials or any part thereof to Licensee; and (iii) in the event Licensee has paid any amount to Licensor, that amount shall, at Licensor's option, either be refunded or credited against any outstanding amounts due from Licensee. Licensee shall not export the Software, Materials, or any part thereof in violation of any applicable laws, rules, or regulations.

5.3 Severability/Unenforceable Provisions. In the event that any provision of this SLA is found by a court of competent jurisdiction to be unenforceable, invalid, or illegal in any respect, the remaining provisions of this SLA shall be enforceable to the maximum extent possible.

5.4 Headings. The section headings used in this SLA are intended for reference purposes only, and shall not affect the interpretation or construction of any provision of this SLA.

5.5 Consent to Use of Non-Personal Data. The Licensee agrees that the Licensor and its subsidiaries may collect and use technical and related information, including but not limited to information about your hardware, system and software, and peripherals, that is gathered periodically to facilitate the provision of software updates, Software support and other services to Licensee (if any) related to the Software, and to verify compliance with this SLA. Licensor may use this information, as long as it is in a form that does not personally identify you, to improve Software of Licensor or to provide services or technologies to Licensee.

5.6 Force Majeure. Neither party shall be responsible for any delay or failure to perform obligations specified in this SLA due to causes beyond the party's reasonable control, including but not limited to strikes, civil disturbances, embargoes, parts shortages, manufacturing difficulties, riots, wars, fires, acts of God, and acts in compliance with any applicable law, regulation, or order (whether valid or invalid) of any governmental authority.

5.7 Complete Agreement. This SLA, together with any separate ordering document executed between you and Licensor, represents the sole and exclusive agreement between the parties, and supersedes and cancels any previous agreement, whether written or oral, between the parties with respect to the subject matter of this SLA. Neither party shall be bound by any term, provision, condition, definition, guarantee, or representation other than those set forth herein.

5.8 Waiver. The failure of either party to enforce any section or part of this SLA, or any right under this SLA, shall not be construed as a waiver of such provision or right to subsequently enforce that or any other provision of this SLA.

5.9 Assignment. Licensee may not assign either this SLA (in whole or part) or any of the rights or obligations arising from it without the express, written consent of Licensor. Any attempted assignment shall be null and void. Licensor may freely assign this SLA in whole or part, including any specific rights or obligations of Licensor hereunder.

5.10 Geographic Scope and Governing Law.

5.10.1 Governing Law. Both parties agree to the application of the laws of the country in which Licensee obtained the Program and/or Materials license to govern, interpret, and enforce all of Licensee's and Licensor's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

5.10.2 Jurisdiction. All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

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5.14 Data Collection. Licensee acknowledges and accepts that the program includes software provided by Microsoft and that it may collect information about the licensee's use of the software, and send that information to Microsoft to provide services as disclosed in Microsoft's Privacy Statement at <https://aka.ms/privacy>.

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Part 2 – Country-unique Terms

FOR LICENSES GRANTED IN THE LOCATIONS SPECIFIED BELOW, THE FOLLOWING TERMS REPLACE OR MODIFY THE REFERENCED TERMS IN PART 1. ALL TERMS IN PART 1 THAT ARE NOT CHANGED BY THESE AMENDMENTS REMAIN UNCHANGED AND IN EFFECT. THIS PART 2 IS ORGANIZED AS FOLLOWS:

1.0 Supplementary terms to Part 1, Section 1.0 (Definitions).

1.1 Definitions. The definition of "Licensor" in the second paragraph of 1.0 is replaced by the following definition:

"Licensor" means InfoVista S.A.S, 23 Avenue Carnot, 91300 Massy, France, or the InfoVista's Affiliate or controlled entity who has processed the Licensee's purchase order.

2.0 Multiple country amendments to Part 1, Section 5.10.1 (Governing Law).

The phrase "the laws of the country in which Licensee obtained the Program license" in the first paragraph of 5.10.1 Governing Law is replaced by the following phrases in the countries below:

2.1 AMERICAS

2.1.1 In Canada and the United States of America (including its territories): the laws of the Commonwealth of Virginia, United States.

2.1.2 In the rest of the Americas and the Caribbean: the laws of Switzerland.

2.2 EUROPE, MIDDLE EAST, AND AFRICA

2.2.1 In Sweden, Denmark, Norway, Finland, Benelux, UK, Ireland, France, Austria, Germany, Poland, Lebanon, Israel, Greece and the Balkans: the laws of Sweden.

2.2.2 In Spain, Portugal, Italy, Switzerland, Commonwealth of Independent States (formerly the USSR), Middle East and Africa: the laws of Switzerland.

2.3 ASIA PACIFIC

2.3.1 In countries in the Asia Pacific region: the laws of Sweden.

3.0 Multiple country amendments to Part 1, Section 5.10.2 (Jurisdiction).

The following paragraph pertains to jurisdiction and replaces Subsection 5.10.2 (Jurisdiction) as it applies for those countries identified in bold below: "All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license except that in the countries identified below all disputes arising out of or related to this Agreement, including summary proceedings, will be

brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction":

3.1 AMERICAS

3.1.1 In Canada and the United States of America: the US Eastern District Court of Virginia.

4.0 Multiple country amendments to Part 1, Section 5.10. (Geographic Scope and Governing Law).

Arbitration. The following paragraph is added as a new Subsection 5.10.3 (Arbitration) as it applies for those countries identified below. The provisions of this Subsection 5.10.3 prevail over those of Subsection 5.10.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:

4.1 AMERICAS, EUROPE, MIDDLE EAST, AFRICA AND ASIA PACIFIC:

4.1.1 In the rest of the Americas and the Caribbean (excepting the United States of America and Canada), Europe, Middle East, Africa and Asia Pacific: Disputes, differences or questions arising out of or in connection with this Agreement will be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules.

The proceedings shall take place in the capital city of the country of Licensor's legal registered address and be conducted in the English language. The English language version of this Agreement prevails over any other language version. Licensor and Licensee undertake and agree that all arbitral proceedings conducted under this Article 5.10.3 shall be kept strictly confidential, and all information, documentation, materials in whatever form disclosed in the course of such arbitral proceeding shall be used solely for the purpose of those proceedings.

[Please insert "I have read the terms of this SLA" checkbox]

[Please insert "Agree" Button]