

MKS Technology Inc  
Example code and Software End-User license agreement

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(a) This Agreement is effective on the date the Licensed Materials are delivered to Licensee together with this Agreement and continuing for three (3) years unless sooner terminated in accordance with this Agreement. This Agreement shall thereafter be automatically renewed for successive one-year periods unless either party hereto gives the other party hereto a written notice not to renew this Agreement at least six (6) months prior to the expiration of the then-effective term hereof. Upon termination of this Agreement, Licensee will at MKS's option, return the Licensed Materials to MKS, or certify the destruction of the Licensed Materials by a written statement signed by an officer of the Licensee, and in either case including any modifications or derivatives thereof and all related documentation.

(b) In the event of a material breach of this Agreement by Licensee, MKS may immediately terminate this Agreement. MKS reserves the right to seek all other remedies available to it in law and equity.

(c) Notwithstanding anything in this Agreement to the contrary, MKS may immediately terminate this Agreement without notice or liability and be entitled to immediate possession of the Licensed Materials, without prejudice to any other rights or remedies which MKS may have, upon the occurrence of any of the following events:

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(ii) Licensee becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors;

(iii) Licensee becomes a party to a merger or consolidation, transfers all or substantially all of its business and assets to a third party and in MKS's sole opinion, a material conflict of interest occurs with respect to the retention of Licensed Materials; or

(iv) MKS believes that improper use or disclosure of the Licensed Materials has occurred or is about to occur.

(d) Injunctive Relief. Licensee recognizes and agrees the Licensed Materials constitute commercially valuable and Confidential Information of MKS, and the design and development of such materials reflects the effort of skilled development experts and the investment of considerable time and money. Accordingly, Licensee acknowledges and agrees monetary damages will not be sufficient to compensate MKS in the event of Licensee's material breach or violation of this Agreement, and MKS will be irreparably harmed by such breach or violation, and MKS shall have the right to seek other remedies available to it in law and equity to remedy such breach or violation, including injunctive and equitable relief.

(e) The parties agree that the following sections will survive any expiration or termination of this Agreement: 3 (Use Restrictions), 4 (Intellectual Property Rights; No Reverse Engineering; Grantback License), 6 (Compensation), 10 (Warranty Disclaimer and Indemnity), 11

(Indemnification Disclaimer), 12 (Liability Limitations), 13 (Governing Law), and 14 (General Provisions).

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(g) EACH PARTY ACKNOWLEDGES AND AGREES THAT THE WARRANTY DISCLAIMERS AND INDEMNITIES SET FORTH ABOVE ARE MATERIAL TO THIS AGREEMENT AND REFLECT THE CONSIDERATION GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND EACH PARTY'S DECISION TO ENTER INTO THIS AGREEMENT.

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(b) IN NO EVENT SHALL MKS'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF THE FEES PAID TO MKS BY LICENSEE UNDER THIS AGREEMENT OR FIVE US DOLLARS (\$5). THIS LIMITATION APPLIES REGARDLESS OF

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(c) LICENSEE ACKNOWLEDGES AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS, THE MATERIAL AND ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

**13. Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Illinois, without reference to conflict of laws principles. The parties agree that jurisdiction for any dispute arising out of or relating to this Agreement lies within courts located in the State of Illinois.

**14. General Provisions.**

(a) Relationship of the Parties. The parties hereto are independent contractors. Neither party has any express or implied right or authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party. Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship.

(b) Entire Agreement. The terms and conditions of this Agreement, including its exhibits, contains the entire agreement between the parties and merges and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions concerning the subject matter hereof. Neither party shall be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No oral explanation or oral information by either party hereto shall alter the meaning or interpretation of this Agreement. No amendments or modifications to this Agreement shall be effective unless in writing signed by an authorized representative of both parties. These terms and conditions will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear in any purchase order, acknowledgement or other writing not expressly incorporated into this Agreement.

(c) Assignment. Neither party may directly or indirectly sell, assign, transfer, delegate, convey, pledge, encumber or otherwise dispose of this Agreement, or any of the licenses, rights, duties or obligations under this Agreement, without the prior written consent of the other party. Any attempted assignment in violation of this section will be null and void.

(d) Waiver. Failure of either party to enforce any term of this Agreement shall not be deemed or considered a waiver of future enforcement of that or any other term in this Agreement. The parties agree that no term of this Agreement may be considered waived and no breach excused by either party unless made in writing by the other party. No consent, waiver, or excuse by either party, express or implied, constitutes a subsequent consent, waiver or excuse.

(e) Severability. If any provision of this Agreement is determined by a court to be unenforceable, the parties agree that the provision will be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed

and deleted from this Agreement, and the remainder of the Agreement will continue in effect.

(f) Export Restrictions: Licensee recognizes and agrees to fulfill all export and re-export limits and policies of the Department of Commerce or other United States agency or authority.

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Appendix A:

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