

GMC End User License Agreement (EULA)

This Agreement (the “Agreement”) is made between **GMC Software AG**, Hirschengasse 12, 9050 Appenzell, Switzerland, the owner and developer of the GMC Software programs (“GMC” or “Licensor”) and You, (the “Customer” or “Licensee”). The terms and conditions of this Agreement are intended by the parties as a final expression of their agreement regarding the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such is signed by both parties. In the absence of such an agreement, this Agreement shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding which may involve the Agreement. This Agreement may not be modified except by a written addendum executed by both parties hereto.

1. Definitions

The following terms shall have a defined meaning as used in this Agreement:

- **“End User”** means a Licensee of the GMC Software Product who acquires the software for use and not for distribution or resale;
- **“End User License Agreement” (EULA)** means the GMC End User License Agreement for the GMC software program(s) and Products;
- **“Fees”** or **“fees”** means the fees and expenses specified in this Agreement and the applicable Schedules thereto payable by

Licensee to GMC in respect of the License, and the Maintenance Services; all fees and expenses are stated without any applicable taxes (i.e. VAT);

- **“GA Release”** means the Generally Released Version of GMC Software (excluding Beta and earlier Versions, Custom Versions, Trial Version, Test Version, Test Version and Code Samples);
- **GMC License-Manager”** means the GMC license management software, measuring Licensee’s Use of the GMC Software Programs in order to ensure its compliance with the mutually agreed extent of Usage.
- **“Incident”** shall mean, a fault or error in the Software or its Use;
- **“Instance”** means one loaded code of the Software to run one thread at a time, no matter whether running on a single or multiprocessor Computer;
- **“Intellectual Property Rights”** means all rights in inventions, patents, copyrights, design rights, trademarks and trade names, service marks, trade secrets, know-how and any other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;
- **“License”** means the License in respect of the Software granted by GMC to the Licensee;
- **“Maintenance Hours”** means the hours specified in the applicable Maintenance Schedule;
- **“Maintenance Services”** means the maintenance services to be provided by GMC or its suppliers or resellers or distributors in respect of the Software and described in the

applicable Maintenance Services Level Agreement (“Maintenance Schedule”);

“**Named User**” means a specific individual authorized to use the Software through the assignment of a single user ID, regardless of whether or not the individual is using the Software at any given time. A non-human operated device shall also be counted as a Named User in addition to all individuals authorized to use the Software, if such device can access the Software;

▪ “**Open Source License Terms**” means the license terms applicable to Open Source Software included in the GMC software program and listed at: <http://www.gmc.net/index.php?id=102>;

▪ “**Open Source Software**” means Third Party Software available without charge for use, modification or distribution and generally licensed under the GNU Lesser General Public License, Apache or other open source software licence;

▪ “**Remote Access**” means an installation of the GMC Software Program(s) where a user accesses the said Software from a remote device. The host device allows one or more users to use the Software at one time through the remote connection. Each remote access user, network user, or local connection to the remote access host computer who uses the Software is cumulatively counted as one user for license counting purposes.

▪ “**Response Times**” means the times specified in the applicable Maintenance Service Level Agreement (“Maintenance Schedule”) within which GMC shall have commenced analysis of an incident respectively corrective maintenance after notification from the Licensee of an incident either by hotline support and advise, a remote diagnostics or if necessary by dispatching a suitably qualified support analyst to the Licensee;

▪ “**Seat**” means a workstation or terminal that can be operated by one User at a time;

▪ “**Site**” shall mean one enterprise location (such can be a contiguous number of buildings, a single building or a production site). Remote buildings thereto within a distance of not more than 5 km / shall be accepted as being only one production site provided that Licensee’s management and live control is maintained through one licensing server at the central site through live communication. Remote sites (such as local agencies, home offices) with up to two Users shall be considered to be part of one site provided that they do not run any production at the remote site and provided that control is maintained through one licensing server at the central site through live communication;

▪ “**Software**” means only the GMC Software Program(s) and therein integrated third party software program(s), in each case, supplied by GMC or its suppliers or resellers herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation;

▪ “**Third Party Software Programs**” means in the GMC Software integrated third party software such as Adobe PDF Library technology, Datalogics Software etc. and related documentation, and any upgrades, modified versions, updates, additions, and copies thereof;

▪ “**Trial Version**” means a version of the GMC Software, so identified, to be Used only to review and evaluate the Software for a specific time period as determined by GMC;

▪ “**Updates and Upgrades**” means any updates or Upgrades or new releases of the Software made available by GMC Software AG, GMC or its resellers or distributors to the Licensee as part of Maintenance Services under the terms of this Agreement and the applicable Maintenance Service Level Agreement (“Maintenance Schedule”) thereto;

▪ “**Use**” means to access, install, download, copy or otherwise benefit from the functionality of the Software in accordance

with the documentation and as set forth in this Agreement;

▪ **“User”** means any person, program, process, product, or hardware which uses any functionality of the Software;

▪ **“Virtual Machine”** means a computer operating system (guest) running in emulated hardware within a host operating system. A virtual machine is capable of executing the functions supported by its installed operating system. For license counting, a virtual machine is considered to be the equivalent of a physical machine;

▪ **“Warranty Period”** means the period set forth in clause 7 of this Agreement.

2. License Grants

The **GMC Software** is **licensed, not sold**. This agreement only gives you some rights to use the **software**; whereas all other rights are reserved by **GMC**.

All Licenses granted are subject to the terms and conditions set forth in this End User License Agreement and the applicable Third Party Software Programs license terms. As long as Licensee is compliant with any and all of the terms and conditions of this Agreement GMC grants to Licensee a non-exclusive and non-transferable license to the Use of the Software for the purposes described in the documentation.

GMC Software and Products are granted with one or a combination of the following licensing scheme as defined in the applicable License Schedule and are depending upon which GMC products that Licensee has acquired:

- Per User Concurrent License
- Per Instance License
- Per Site License
- Volume Based Production License

- or a
- Concurrent Online User License

2.1 License Key

GMC will provide Licensee with a license mechanism and a related key. This mechanism and key pair shall control the modules, functions and features as licensed in accordance and as defined in the applicable License Schedule or customer contract. If Licensee will subsequently purchase further modules and functions, GMC shall provide Licensee with additional license key in order to update the mechanism and license pair. In case Licensee shall sign a click-charge subscription for production engines, the mechanism and key pair shall take control of such click-charge counter. Licensee agrees not to acquire or use any license key or similar computer code for the GMC Software provided by another supplier than a GMC subsidiary or one of its authorised partners/resellers or distributors.

Any and all Use of the GMC Software licensed hereunder on a Virtual Machine shall only be allowed, if Licensee covenants and agrees to implement the GMC License Manager in a non-virtual environment (on a physical machine). In case of Licensee being under a volume restricted or click charge license type, Licensee must furthermore agree to provide GMC within no later than 5 working days after the end of each quarter with the respective usage report produced by the GMC License Manager installed by the Licensee.

2.2 “Per User” Concurrent (floating)

License

Licensee shall be authorised to make available, to eligible Users (employees or contractors) the defined GMC Software (as

set forth in the applicable License Schedule with GMC), by either:

- installing it directly onto the computer, including a local license control through a GMC authorised license mechanism

or

- via a shared file server that employs licensing metering through the GMC Licensing Server, controlled through a GMC authorised license mechanism.

License controls meters usage and will not allow launch or usage of any software if such usage would exceed the license user count set forth in the applicable License Schedule. Licensee agrees to maintain the above-mentioned server's settings in such a way that the number of licenses in concurrent use does not exceed the licensed user number (i.e. the number set for the server will always be equal to or less than the number of licensed users).

Licensee may only use the Software for which he has paid the respective license or subscription fee. In case of a Trial Version or Test Version (non GA Version), licensee shall use the specified Software only and within the timeframe he has been explicitly authorised to evaluate, use or test such Software.

2.3 "Per Instance" / "Per Seat" Concurrent License

Licensee shall be authorised to make available to run on the computer(s) the defined GMC Software (as set forth in the applicable License Schedule), by either:

- installing it directly onto the computer, including a local license control through a GMC authorised license mechanism

or

- via a shared file server that employs licensing metering through the GMC Licensing Server, controlled through a GMC authorised license mechanism.

License controls meters Software usage. User is not permitted to launch or use any Software if such usage would exceed the license instance count set forth in the applicable License Schedule. Licensee agrees to maintain the above-mentioned server's settings in such a way that the number of licenses in concurrent use does not exceed the licensed instance number (i.e. the number set for the server will always be equal to or less than the number of instances licensed).

2.4 "Per Site" License

Software licensed on a "per site" basis can only be acquired in addition to either an existing valid "per user" license or a "per instance" license.

Licensee shall be authorised to make available to run on all computer(s) running an authorised "per user" or "per instance" license the defined GMC Software (as set forth in the applicable License Schedule), by either:

- installing it directly onto the computer, including a local license control through a GMC authorised license mechanism

or

- via a shared file server that employs licensing metering through the GMC Licensing Server, controlled through a GMC authorised license mechanism.

License controls meters usage and will not allow launch or usage of any software without a valid license for this function and without a valid "per user" or "per instance" license on that same computer.

2.5 Volume Based Production License

In case that Licensee is eligible for the Volume Based Production licensing model he shall be entitled to use the licensed software within the mutually agreed volume band counted during a twelve month period as agreed in the respective license order. As soon as Licensee will exceed the volume band for which he had paid the usage fee, additional fees will be payable to Licensor as set forth in the applicable License Schedule. Any applicable fees for Volume Based Production Licenses will have to be paid in advance before Licensee starts using the Software.

Output production volume counting is based on production of viewable communication pieces such as a DIN A4, US Letter/Legal image and per rendered e-communication such as e-mail/website or message block processed for any type of channel, including paper, electronic output archive etc. Any Licensee choosing the Volume Based Production License model must commit and agree to provide written monthly production volume reports to Licensor. The respective tracking tools are implemented in the GMC Software products.

2.6 Concurrent Online User License

Licensee shall be authorised to make available, to a mutually agreed number of concurrent online users (employees, contractors or consultants) the defined GMC Software (as set forth in the applicable License Schedule with GMC) that employs licensing metering through the GMC Licensing Server, controlled through a GMC authorised license mechanism. The respective tracking tools are implemented in the GMC Software products.

Licensee acknowledges that the respective GMC software controls and meters usage and will require the Licensee to submit monthly report(s) about the daily peak number of concurrent online-users consumed by Licensee. In case that Licensee exceeds the number of paid concurrent online-users, additional fees will be payable to Licensor as set forth in the applicable License Schedule.

2.7 Backup/Archival Copy

Licensee may make one (1) backup/archival copy of the Software provided this copy is not installed or used on any Computer; all copyright, confidentiality, and proprietary notices that appear on the original must also be affixed to the backup/archival copy. Licensee may not sell, assign or transfer any copy of the Software, except where explicitly set forth in the applicable license terms (such as in the applicable Open Source Software terms).

3. Professional Services

Agreed upon professional services shall be described in the applicable Professional Services Schedule.

4. Maintenance

During the maintenance term, as specified in, and subject to the terms of, the applicable Maintenance Service Level Agreement ("Maintenance Schedule"), GMC or its authorised distributor shall provide the Licensee with the following Maintenance Services in respect of the Software in accordance with specifications in the applicable Schedule:

(a) Corrective Maintenance

(i) On receipt of notification from the Licensee of a fault or error in the Software GMC shall ensure that correction of the fault or error is commenced as soon as possible and in any event within the Response Times and that the correction is completed promptly.

(ii) Corrective maintenance shall not extend to maintenance of the Software outside the Maintenance Hours or faults or errors in the Software resulting from modifications to the Software made by any person other than GMC or without the written consent of GMC or to faults or errors that cannot be reproduced in test conditions.

(iii) Licensee shall provide GMC or its authorised resellers or distributors with any assistance they may reasonably request (such as for example an exact and complete description of the problem, answering to further enquiries, providing logs and traces etc.) to resolve the difficulties and queries reported.

(b) Updates

(i) GMC shall promptly supply the Licensee under a valid Maintenance Service Level Agreement with all Updates of the Software issued generally by GMC as set forth in the applicable Schedule.

(c) Support Service

(i) In accordance with the applicable Maintenance Service Level Agreement, GMC or its authorised distributor shall during the Maintenance Hours provide the Licensee with any technical advice and assistance by telephone and/or e-mail as Licensee may from time to time reasonably request, to resolve Licensee's difficulties and queries in using the Software. Moreover, GMC will provide installation support and access to training courses, as may be mutually agreed by the parties. Services and training will be provided at GMC's then-current rates, plus expenses.

All corrective Maintenance, Updates and the Support Services will be provided through the GMC Support Centre or its authorised resellers or distributors defined in the applicable Schedule.

During any Maintenance Period and for the applicable fees, GMC or its authorised distributor shall provide the agreed Maintenance Services as listed in the applicable Maintenance Service Level Agreement. "Maintenance Period" shall be defined as the one (1) year period beginning on the first day of the calendar month following the delivery of the Software or from the date of the conclusion of any previous Maintenance Period, provided Licensee is current on all fees due. Maintenance fee shall be subject to an annual billing cycle. Either party may elect not to renew Maintenance Services by terminating in writing by giving notice at least three months prior to the end of such term. After termination of an applicable Maintenance Service Level Agreement, GMC shall no longer be responsible for providing maintenance.

During the first year beginning on the first day of the calendar month following the delivery of the Software, the conclusion of a Maintenance Service Level Agreement shall be mandatory for the Licensee.

5. Intellectual Property Rights

The GMC Software, as well as know-how and the relevant documentation are owned by GMC Software AG, Switzerland and its structure, organization and code are the valuable trade secrets of GMC Software AG. Any and all intellectual property rights of the GMC Software and integrated third party software (i.e. Adobe PDF Library technology) remain in the ownership of the respective

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6. License Restrictions

Licensee is only allowed to use the programs contained in the Software for which he has paid the license fee and for which he has

received the authorisation to use the Software.

Licensee shall maintain accurate records as necessary to verify compliance with this Agreement. GMC may conduct one or more audits to verify such compliance. All audits shall be conducted at GMC's expense, unless the result establish the Licensee has underpaid GMC by more than 5% of the amount actually due, in which case Licensee shall pay all amounts due and bear the expense of the audit.

6.1 General Restrictions

Any rights not expressly granted to Licensee are reserved by GMC Software AG which retain title and full ownership right under the copyright laws of the Switzerland, the United States or any other jurisdiction or foreign laws. Neither GMC Software AG, its subsidiaries, resellers or distributors are obligated to provide, nor is Licensee acquiring any right of any kind with respect to, the source code for the Software. Licensee acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with GMC Software AG's ownership of or rights with respect to the Software. Furthermore, Licensee agrees not to limit or interfere in any manner with the ownership and intellectual property rights related to integrated third party software program(s). Licensee also covenants not to use the Viewing Function (meaning a function allowing the copying of a PDF document into memory for display) contained in the Adobe PDF library technology in order to violate or bypass PDF file security measures which prevent copying or editing PDF documents.

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- modify or create any derivative works of any Software, Product or documentation
- decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for any Software or Product (except to the extent applicable laws specifically prohibit such restrictions)
- redistribute, encumber, sell, rent, lease, sublicense the Software or Product.

6.2 Assignment

Licensee may not assign or transfer its rights and obligations under this Agreement without prior written approval by GMC and any purported assignment or transfer without GMC's consent shall be null and void.

6.3 Export Rules

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7. Limited Warranty and Disclaimer

a) Provided that Licensee has paid the applicable license fee, GMC warrants that for a period of 90 days from the date of delivery from GMC the Software substantially conforms to its published specifications and the media on which the Software is furnished will be free of defects in materials and workmanship under normal use.

b) GMC AND ITS SUPPLIERS PROVIDE NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED FOR ANY SAMPLE APPLICATION CODE, ALPHA CODE OR TRIAL VERSION OF THE SOFTWARE. ANY TRIAL VERSION OR TEST VERSION (NON GA VERSION) OR SAMPLE APPLICATION CODE OF THE SOFTWARE ARE PROVIDED "AS IS".

c) EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY WITH RESPECT TO SOFTWARE OTHER THAN ANY SAMPLE APPLICATION CODE OR TRIAL VERSION GMC, ITS SUPPLIERS AND RESELLERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO THERE IS NO WARRANTY OF NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS AND TITLE OR QUIET ENJOYMENT. GMC DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

d) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO (90) DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE OR PRODUCT.

e) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY GMC, ITS SUPPLIERS AND RESELLERS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

f) GMC'S SOFTWARE PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS EXTERNAL TO GMC AND INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. NOTWITHSTANDING THE FOREGOING, GMC SHALL USE REASONABLE AND INDUSTRY BEST PRACTICES STANDARD TECHNICAL MEANS TO REDUCE AND LIMIT THE IMPACTS OF SUCH PROBLEMS. GMC IS NOT RESPONSIBLE FOR DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

8. Sole and exclusive Remedy

Licensee's exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund elected by GMC LICENSEE SHALL NOT BE ENTITLED TO ANY DAMAGES INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES if the Software does not meet this Limited Warranty, and to the maximum extent allowed by applicable law, even if any remedy fails of its essential purpose. Provided that any non-compliance with the above warranty is reported in writing to GMC no more than 60 days following delivery to Licensee, at its option GMC will supply Licensee with a copy of the Software that substantially conforms to the published documentation, provide a replacement for the defective media, or refund the purchase price of the Software to Licensee.

GMC shall have no responsibility if failure of the Software has resulted from mis-configuration, accident, abuse, mis-application, abnormal use, a virus or if the failure arises out of use of the Software with other than a recommended hardware configuration. Any such misuse of the Software will void the aforesaid warranty.

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9. Limitation of Liability

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WHERE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES; HOWEVER, THE EXCLUSION OF GMC SOFTWARE AG'S WARRANTY IN THIS LIMITED WARRANTY SECTION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

10. Term and Termination

This Agreement shall be effective for the term of the license grant unless terminated earlier, either through mutual agreement by the parties or in case of a material breach of its obligations by the Licensee, provided however Licensee shall have ten (10) days from written notice to cure any such breach, if curable. Upon termination Licensee must immediately destroy the Software and all accompanying written materials and all copies thereof (including copies stored in computer memory) and shall so certify to GMC in writing.

11. General

In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Licensee agrees to allow GMC and its subsidiaries to store contact information, including names, phone numbers, and e-mail addresses anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors and business partners of GMC for uses consistent with their collective business activities, including communicating with Licensee (for

example, for processing orders, for promotion and for marketing research).

12. Governing Law

This Agreement will be construed under the Laws of Switzerland, excluding provisions on conflict of laws and also expressly excluding the U.N. Convention of Contracts for the Sale of International Goods. In the event there is a dispute concerning the subject matter of this Agreement, shall be subject to the exclusive jurisdiction of the **Commercial Court of Zurich, Switzerland**. Each party hereby waives opposition to jurisdiction in such court. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein.

13. Signatures

GMC Software AG

(Place and Date)

(Name and Title)

(Signature)

(Name and Title)

(Signature)

LICENSEE

(Place and Date)

(Name and Title)

(Signature)

(Name and Title)

(Signature)