

End User License Agreement

(Rev 9_06)

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 - a. “Machine license” means a license is dedicated to the computer hardware and operating system on which the Software is loaded (“Designated System”), and on the Designated System the Software is only used by a single individual user at any one time.
 - b. “Floating license” means a license that permits execution of the Software on any computer on the network. The number of simultaneous/concurrent users may be controlled by a License Manager to access and use the Software.
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 - not to disassemble, reverse compile or reverse engineer the Software or any data files created or used by the Software or take any action in order to derive a source code equivalent of the Software;

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 - not to modify the Software; and
 - not to remove, destroy, deface or alter any legends, notices, statements, or marks indicating QCoherent's ownership or restrictions that are displayed on any screens or printouts.

You agree that violation of the above terms would cause substantial and irreparable harm and damage to QCoherent that may be difficult to measure in money damages. Therefore, You agree that QCoherent may enjoin Your unauthorized use of the Software without notice or bond.

5. **Maintenance and Support.** QCoherent will provide maintenance and support of the Software to You only if You have contracted for those services and paid all maintenance and support fees. QCoherent will provide limited technical assistance only.
6. **Limited Warranty.** QCoherent warrants that the Software will perform in substantial accordance with the accompanying specifications for a period of 90 days from the date of Your receipt. EXCEPT FOR THE FOREGOING WARRANTY, QCOHERENT IS DISTRIBUTING THE LICENSED SOFTWARE "AS IS", WITH NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. QCoherent does not warrant that the Software (a) will run uninterrupted or error free, (b) contains no defects, (c) will meet your requirements, or (d) be compatible or operate in any combination with your data or other software programs that you may use. TO THE MAXIMUM EXTENT PERMITTED BY ALL APPLICABLE LAWS, QCOHERENT AND ITS LICENSORS DISCLAIM ANY OTHER WARRANTIES. If an implied warranty or condition is created by the laws of Your jurisdiction, then this warranty will be extended solely to the minimum amount and for the minimum time required by law. THIS WARRANTY PROVIDES YOU WITH SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER LEGAL RIGHTS WHICH VARY BY JURISDICTION. QCoherent's distribution of any upgrade or updates will not create any additional warranties or rights under this Agreement. This limited warranty is void if the Software's failure to operate to the specifications resulted from accident, abuse, misapplication, abnormal use, or a virus.
7. **Limitation of Liability.** In no event will QCoherent be liable for any indirect, special, incidental, punitive, or consequential damages, including, but not limited to, loss of profits and/or loss of business, arising out of or resulting from use of the Software or its failure to meet the terms of the limited warranty, even if QCoherent has been advised of the possibility of such damages. QCoherent's entire liability and Your exclusive remedy for any breach of the limited warranty or for QCoherent's other breach of this Agreement will be either: (a) the return of the amount You paid (if any) for the Software; or (b) repair or replacement of the Software to make it operate as provided in the limited warranty. QCoherent reserves the right to select one of the two preceding remedies in its sole discretion. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer, and QCoherent will use commercially reasonable efforts to provide a remedy within a commercially reasonable time of Your compliance with QCoherent's warranty remedy procedures. To exercise your remedy, contact QCoherent at the above address. Some jurisdictions do not permit certain limitations of liability and You may have other rights.
8. **Indemnification by QCoherent.** QCoherent represents that, to the best of its knowledge and belief, the Software will not infringe upon or violate any copyright, trademark, trade secret, license, or other proprietary right of any third party. QCoherent will defend or settle, at its own expense, any such claim made by a third party against You provided that: (a) the Software is used within the scope of this Agreement; (b) You have promptly notified QCoherent in writing after receiving notice of any such claim of infringement; (c) You grant to QCoherent sole control of the defense of any action and all negotiations for its settlement; and (d) You provide reasonable assistance to QCoherent in QCoherent's efforts to defend or settle any such claims. QCoherent will not be liable for any legal costs or expenditures incurred by You. If any injunction or order is obtained against You because of Your use of the Software in accordance with this Agreement and by reason of the allegations of infringement, QCoherent will use its best efforts to provide one of the following remedies: (i) procure You an interim right to continue using the allegedly infringing Software; or (ii) modify or replace the Software with a compatible,

functionally equivalent, non-infringing product; or (iii) remove the Software and issue You a credit based upon the fees paid for the Software pro rated over a 36 month period from the original date of use.

9. **Indemnification by You.** If you modify the Software or use the Software in a manner not permitted by this Agreement, and, as a result, the Software comes to violate a copyright, trademark, trade secret, license or other proprietary right of any third party, then You will defend or settle, at Your own expense, any claim made by a third party against QCoherent provided that: (a) QCoherent has promptly notified You in writing after receiving notice of any such claim of infringement; (b) QCoherent grants to You sole control of the defense of any action and all negotiations for its settlement; and (c) QCoherent provides reasonable assistance to You in Your efforts to defend or settle any such claims. You will not be liable for any legal costs or expenditures incurred by QCoherent.

10. Miscellaneous.

a. Severability / Governing Law. Should any provision of this Agreement be deemed by a court of competent jurisdiction to be invalid, void, ineffective, unenforceable, or unlawful, under present or future laws, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired or invalidated. The failure of either party to enforce any provision of this License will not be deemed a waiver of that party's right to later enforce that provision or any other provision. The Agreement is governed by the laws of the State of Colorado without giving effect to any choice of law rules that may require the application of laws of another jurisdiction. You agree that the state and federal courts of El Paso County, Colorado will be the sole jurisdiction and venue for any dispute between You and QCoherent and You agree to submit to the personal jurisdiction of such courts.

b. Third Party Beneficiaries. You acknowledge that third party licensors of all or any part of the Software are intended beneficiaries of this Agreement including those provisions that address the protection of intellectual property rights in the Software. If QCoherent fails to enforce any provisions, such third party licensors may enforce such provisions against You.

c. Assignments and Transfers. Neither this Agreement nor Your right to use the Software under this Agreement may be assigned, sublicensed, loaned, leased, remarketed, distributed, or otherwise transferred, voluntarily or otherwise, without the prior written approval of QCoherent. Any unauthorized transfer in violation of this provision will be void. Within the country in which the Software is licensed, the License may be transferred to another of Your computer systems, or transferred to another location within Your organization. After the transfer, You must completely remove the Software from the former device. All other transfers, including transfers of the Software outside the country in which the Software is licensed, will be permitted only with QCoherent's prior written consent.

d. Termination. Without prejudice to any other rights, QCoherent may terminate this Agreement if You fail to comply with the terms and conditions of this Agreement. In such event, You must destroy all copies of the Software and all of its component parts. The respective obligations of QCoherent and You under Sections 6, 7, 8, 9, and 10 will survive termination of the Agreement.

e. Entire Agreement. You acknowledge reading this Agreement and agree it is the complete and exclusive statement of the agreement between the parties relating to the licensing of the Software and that this Agreement supersedes all prior proposals and understandings, oral and written, relating to its subject matter, provided however, that in the event that QCoherent and You have signed a separate written agreement relating to the licensing of the Software, then that separate written agreement will supersede and take precedence over this Agreement as provided in that separate written agreement.