

## **END USER LICENSE AGREEMENT**

MAN-ES-FL-2024.04.EULA (DE/DK)

### **End user license agreement**

This end user license agreement ("EULA") constitutes an agreement between You and MAN Energy Solutions SE, Stadtbachstraße 1, 86153 Augsburg, Germany, company registration number HRB22056 or MAN Energy Solutions, branch of MAN Energy Solutions SE, Germany, company registration number 31 61 17 92, Tegllholmegade 41, 2450 Copenhagen SV, Denmark as the case may be ("MAN").

"Engine" shall for the purpose of this EULA mean an engine and/or any auxiliary equipment hereto (whether as such or installed on a vessel or plant) manufactured by, or under license from, MAN or one of its group companies, which includes incorporated and/or standalone software.

"You" or "Your" shall for the purpose of this EULA mean the person or legal entity that (i) has acquired a license to manufacture an Engine ("Manufacturer") or (ii) has acquired an Engine ("Engine Owner").

IF YOU DO NOT ACCEPT THE TERMS OF THIS EULA, DO NOT USE THE ENGINE. BY INSTALLING, USING OR ACCESSING THE ENGINE, YOU HEREBY ACCEPT THE TERMS OF THIS EULA.

### **1 Scope**

- 1.1 Unless You have been expressly informed otherwise by MAN or one of its distributors in writing, this EULA regulates Your rights to use (1) the software supplied by MAN incorporated in the Engine (the "Firmware") and (2) any separate software supplied by MAN for use with the Engine ("Applications"). To the extent that your order includes any Applications, this will appear from the order acknowledgement.
- 1.2 The EULA also regulates Your rights to use any additional Firmware and Applications, including but not limited to updates, upgrades, and features, which may be supplied by MAN to You for use in or with the Engine from time to time, unless You are expressly informed otherwise by MAN or its distributors in writing. This applies, whether such additional Firmware or Applications have been purchased by You or supplied to You free of charge. From the time such additional Firmware or Applications are delivered to You, they shall for the purpose of this EULA be considered part of the Firmware or Applications.
- 1.3 The Firmware and Applications (collectively the "Software") may consist of:
  - a) Software developed by or for MAN ("Proprietary Software")
  - b) Third party software, which is not open source software, licensed to MAN with the right to sublicense ("Licensed Software"); and
  - c) Software which is licensed by MAN under an open source license ("Open Source Software").

### **2 Intellectual property rights**

- 2.1 MAN is either the owner or the licensor of all Intellectual Property Rights, as well as all developments hereof, including such developments as may happen through Your access to and use of the Software.
- 2.2 For the purpose of this EULA, "Intellectual Property Rights" shall mean all recognized protectable intellectual property, such as copyrights, patents, utility models, trademarks, industrial design rights, database rights, and applications for any of the foregoing, as well as any trade names, trade secrets, know-how and any and all other intangible protectable proprietary information.
- 2.3 MAN warrants that the Software to the best of its knowledge do not infringe upon any third party's rights.

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### **3 Proprietary Software and Licensed Software license**

- 3.1 MAN grants You a non-exclusive limited license to use the Proprietary Software and the Licensed Software in connection with the Engine on the terms and conditions set out in this EULA (the "License").
- 3.2 The License gives You right to use the Firmware, as incorporated in the Engine, in connection with use of the Engine.
- 3.3 For each Application that is supplied to You, the License gives You right to install the Application on Your computers connected to the Engine, and only for the purpose of using the Application in connection with the Engine.
- 3.4 The Software may contain Licensed Software which is subject to third party license terms in addition to this EULA. In this case, MAN or the distributor will inform you hereof and provide you with a copy of such license terms. You are obligated to review and comply with such third party license terms for Licensed Software in the Software, and MAN does not have any liability for Your failure to do so. You shall indemnify and hold MAN harmless from any and all claims from third parties relating to Your failure to comply with the license terms for Licensed Software.
- 3.5 To the extent that any additional Firmware that You may acquire from MAN requires that You download such Firmware to a computer before installation on the Engine, the License shall also grant You right to make such downloads, provided that You delete any and all such downloaded files from the computer following completion of the installation on the Engine.
- 3.6 You are NOT permitted to
  - a) decompile, decipher, disassemble, reverse engineer or otherwise attempt to access software code, whether source code or machine code, of the Proprietary Software or the Licensed Software, except as expressly permitted by applicable law notwithstanding this limitation;
  - b) circumvent any technical limitations in the Proprietary Software or the Licensed Software that limit or restrict access to or use of the Proprietary Software or the Licensed Software, except as expressly permitted by applicable law notwithstanding this limitation;
  - c) distribute, publish, rent, lease, lend or otherwise provide the Proprietary Software or the Licensed Software to any third party except as expressly permitted by applicable law notwithstanding this limitation;
  - d) modify or create derivative works of the Proprietary Software or the Licensed Software, in whole or in part;
  - e) remove any proprietary notices or labels on the Proprietary Software or the Licensed Software, or any copy thereof; or
  - f) make any use of Proprietary Software or the Licensed Software in any manner not expressly permitted by this EULA.
- 3.7 You are permitted to make and use a reasonable number of copies of the accompanying manual(s) and other documentation provided with the Software, whether in writing or electronically; provided that You reproduce all copyright and other proprietary notices that are on the original copies.
- 3.8 The License does not include any right to receive additional Firmware or Applications, cf. Section 1.2. If and to the extent MAN develops any additional Firmware or Applications, for examples updates or new versions of the Software, such Firmware or Applications will be made available to You against written agreement and separate payment.

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**4 Open source licenses**

- 4.1 The Software contains different open source elements, subject to different third party open source license terms. For a specific piece of Software, You can find a list of the open source elements and the open source licenses that they are subject to in the documentation that is delivered to You together with the Software.
- 4.2 You are the direct licensee with respect to the open source elements. By installing, using or accessing the Software, You accept the open source license terms for using the different open source elements in the Software. You are obligated to review and comply with the license terms for the open source elements in the Software, and MAN does not have any liability for Your failure to do so. You shall indemnify and hold MAN harmless from any and all claims from third parties relating to Your failure to comply with the license terms for Licensed Software.

**5 Technical requirements**

- 5.1 In order for the Software to work properly, Your system shall at least comply with the minimum system requirements outlined in the documentation provided with the Software.  
  
Any use of the Software (1) on a system that does not at least comply with the minimum system requirements outlined in the documentation provided with the Software or (2) in combination with other products, materials, equipment, parts or apparatus not approved by MAN or (3) without regular internet access (i.e. at least every 10 (ten) days) may entail that the Software will not function properly.
- 5.2 The Software may only be installed in systems with configurations fulfilling the requirements set out in the documentation provided with the Software.
- 5.3 Upon Your request MAN will provide technical support for installation and training in use of the Software against separate agreement and payment.

**6 Defects**

- 6.1 MAN does not provide any warranty with respect to the functionality or performance of the Software, and does not have any liability for errors or defects in the Software, except as set out in Section 6.2, below.
- 6.2 The Software is provided "as is", and You acknowledge that complex software is never wholly free from errors, defects or bugs. MAN shall have no liability with respect to such errors, defects or bugs in the Software or any obligation to correct them, unless such error, defect or bug materially affect the performance of the Software, in which case Your sole remedy shall be to require MAN to correct the error, defect or bug in the Software.
- 6.3 Known defects and deficiencies stated in the documentation that you receive together with the Software shall in no event be considered defects that MAN has any liability for or obligation to correct pursuant to Section 6.2.

**7 Compliance**

- 7.1 Notwithstanding the rights that You are granted in this EULA, it is Your responsibility and obligation to ensure that Your use of the Software at all time is in compliance with all applicable laws, rules and regulations. For the sake of clarity, Your responsibility and obligation pursuant to this Section 7.1 does not entail an obligation to ensure that Your use of the Software in accordance with this EULA does not infringe any third party's Intellectual Property Rights, cf. the definition hereof in Section 2.2. The parties' obligations and responsibilities with respect to infringements of third parties' Intellectual Property Rights are regulated below in Section 10.

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- 7.2 You are obligated to indemnify MAN against any and all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by MAN arising out of or in connection with a breach of Section 7.1.

### **8 Term and termination**

- 8.1 This EULA enters into force in respect of Your use of the Software upon Your receipt of the Software and shall remain in full force and effect until terminated in accordance with this Section 8.
- 8.2 In case of Your material breach of Your obligations, and provided that You do not remedy such breach within thirty (30) days after having been notified of the breach by MAN in writing, MAN is entitled to terminate this EULA immediately by written notice with respect to any Applications that are installed outside of the vessel in which the Engine is installed.

### **9 No warranties**

- 9.1 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS EULA, MAN DOES NOT MAKE ANY REPRESENTATION AND EXTENDS NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. ESPECIALLY MAN DOES NOT PROVIDE ANY EXPRESSED OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE'S FITNESS FOR A PARTICULAR PURPOSE.

### **10 Third party rights**

- 10.1 Should You receive notice of any claims in respect of the Software alleging infringement of Intellectual Property Rights or other proprietary rights, You shall promptly notify MAN in writing following receipt of such notice and provide MAN with all information in Your possession relevant to such claim.
- 10.2 MAN has the right, but not an obligation, to take over the handling of a claim as set out in Section 10.1. If MAN decides to take of the handling of the claim, MAN shall have sole control over the defence of the claim and any negotiation for its settlement.
- 10.3 MAN's liability for any loss that You may suffer as a consequence of a third party claim as set out in Section 10.1, shall be determined pursuant to Danish law and in all events be subject to Section 12 (Liability). Notwithstanding anything to the contrary, MAN shall in no event be liable if (1) You have not notified MAN in accordance with Section 10.1, (2) if You have entered into a settlement in respect of a claim, without MAN's prior written consent or (3) otherwise have taken action that has impaired the defence of the claim.
- 10.4 If Your use of the Software is enjoined by reason of a third party claim, MAN has the right at its expense to attempt to remedy the consequences of such claim, including without limitation, at its own election, by
- a) substituting an allegedly infringing item or process with a non-infringing item or process of at least the same functionality;
  - b) modifying the allegedly infringing item or process so that it no longer infringes but remains at least functionally equivalent; or
  - c) obtaining for You the right to continue using such allegedly infringing item or process.

Nothing herein constitutes a guarantee that such efforts by MAN shall succeed in avoiding infringement or replacing the infringing item or process with an item or process of comparable functionality or effectiveness.

If MAN reasonably believes that an injunction may be granted against use of the Software, or parts

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hereof, MAN may at its option and expense take any of the foregoing actions.

- 10.5 MAN assumes no liability with respect to claims for infringement of Intellectual Property Rights or improper use of other proprietary rights to the extent that such claims arise, in whole or in part, from (1) modifications of the Software or parts hereof made without MAN's written consent, (2) the combination of the Software, or any part hereof, with other products, materials, equipment, parts or apparatus not approved by MAN, (3) any modifications to the Software, or any part hereof, made by MAN to accommodate any requirements of You, (4) Your use of the Software, or any part hereof, in other ways than permitted pursuant to this EULA, or (5) Your failure to promptly install or use an update or replacement required by MAN. This shall not prevent MAN from claiming damages from You for losses suffered as a consequence hereof.

### **11 Changes to the EULA**

- 11.1 MAN reserves the right to amend or update this EULA from time to time. MAN will do its utmost to notify You in writing of any material amendments to the EULA at least thirty (30) days before such amendments enter into force. The current version of the EULA in force can always be found on MAN's website <https://man-es.com/eula>. On this basis, we encourage You to visit MAN's website on a regular basis to monitor for any amendments to the EULA.

### **12 Limitation of liability**

- 12.1 Except as set out in Section 12.3, MAN's aggregated liability towards You with respect to Your use of the Software is limited to an aggregated amount of Euro 50,000.
- 12.2 Except as set out in Section 12.3, MAN shall in no event be liable for any indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services; loss of use, data, or profits; or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort, arising in any way out of the use of the Software, even if advised of the possibility of such damage.
- 12.3 Nothing in this EULA shall exclude or limit MAN's liability: (a) for death or personal injury caused by its negligence; (b) for fraudulent acts or omissions, gross negligence or wilful misconduct; or (c) to the extent applicable law precludes or prohibits any exclusion or limitation of liability.

### **13 Data**

- 13.1 Except if technically not feasible, MAN shall have the right to access, collect, transfer, store, process and use data generated and systematically arranged by the Software through logs in the data logger, use of the Software or otherwise ("Raw Data"). Such Raw Data and any processed or enriched outputs thereof (together, the "Data") shall be synchronised to MAN's central database remotely or by LAN or otherwise each time the vessel or plant has internet access ("Data Synchronisation"). The Software encrypts Data for security purposes and may aggregate Raw Data for practical purposes. MAN retains all rights to Data. MAN and its subsidiaries use Data for purposes which shall include but not be limited to: service, commissioning, benchmarking, technical optimisation and improvements of existing products, development of new products, statistical purposes, marketing, and making cloud-based backups. MAN may utilize the Data Synchronisation to retrieve from time to time, and without prior notice, all available Data from the data logger and You shall procure that MAN may transmit this Data and effectively carry out the Data Synchronisation. For the avoidance of doubt, this Data Synchronisation does not imply any obligation for MAN to provide any monitoring of or any maintenance of the Engine.
- 13.2 Engine Owner is hereby granted a non-exclusive limited license to (i) access and monitor Raw Data at all times and without prior notice to MAN through the Software onboard the vessel or plant in the ordinary course of Engine Owner's business for Engine Owner's own business purposes, including to monitor the running of the Engine and to make local or cloud-based backups of the Raw Data, (ii) distribute Raw Data and PMI-values to the alarm monitoring system of the vessel or plant ("AMS") and (iii) distribute Raw Data and PMI-values to any other systems onboard the vessel or plant as set out in

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the order acknowledgement. If an interface between the Software and the AMS is established, You are responsible for ensuring the right for the Software and MAN to access, collect, transfer, store, process and use data generated and processed by the AMS ("AMS Data"), and collate Raw Data with AMS Data.

- 13.3 Upon Engine Owner's request, MAN will provide remote access for Engine Owner to and Engine Owner shall have the right to obtain Raw Data (collated with AMS Data, if applicable) and other acquired data packages ("Subscribed Data") through API or through MAN's central database, all against separate payment and license agreement. Descriptions of the content of all data packages can be obtained from MAN PrimeServ by contacting [smdd@man-es.com](mailto:smdd@man-es.com). Engine Owner expressly acknowledges that Manufacturer is hereby granted a non-exclusive limited license to access Data remotely through an API or through MAN's central database for Engine Owner's purposes until 12 months from first commercial startup of the Engine after delivery of the vessel or plant from the yard. MAN will provide API subscription upon Your request, and against payment of a connection fee. Such license is subject to MAN's terms for the use of the web platform where You and Your employees and representatives have to register the first time to create an account to get access to the API or the MAN CEON Platform (the "NEXUS Platform") made available at <https://manceon.io/legal/terms-of-use-for-this-website> and as amended from time to time (the "NEXUS Terms of Use") as well as MAN's terms for the use of the MAN CEON Platform made available at <https://man-ceon.io/legal/terms-of-use-for-this-website>, as applicable.
- 13.4 Upon Engine Owner's request and against separate payment, third parties (including, for the avoidance of doubt, the Manufacturer after the end of the 12-month period set out in Section 13.3) may access Engine Owner's Subscribed Data for Engine Owner's purposes through an API. For a third party to obtain such access to Subscribed Data, Engine Owner must provide their consent hereto by sending a completed and signed version of the form attached to this EULA as Annex 1 to MAN by e-mail to [smdd@man-es.com](mailto:smdd@man-es.com). Engine Owner is responsible for ensuring that any third parties which are thus granted access to Subscribed Data comply with the terms and conditions of this EULA and the NEXUS Terms of Use, and Engine Owner shall indemnify MAN from any claim arising from any such third parties' non-compliance with this EULA. If Engine Owner wishes to withdraw their consent, MAN will assist in blocking relevant third parties' access upon notification by Engine Owner submitted to MAN by e-mail to [smdd@man-es.com](mailto:smdd@man-es.com). In case of Engine Owner's transfer of the Engine to a third party, MAN is entitled to terminate access for all data recipients who have been granted access by the previous Engine Owner upon receipt of notice of transfer, cf. Section 15.3.
- 13.5 If the Data Synchronisation is not already agreed at this time, You hereby expressly consent to said Data Synchronisation for Data which has already been generated or that will be generated in the future.
- 13.6 For clarity and for the avoidance of doubt, MAN's obligation (if any) to perform services/repair work under any contracts with the owner/operator of the concerned Engine shall cease in case Data Synchronisation is stopped or rejected by the owner/operator, for reasons for which the owner/operator is responsible and such Data Synchronisation is needed to fulfil such obligation as agreed and/or in sufficient time. In such cases, MAN shall be temporarily relieved from its obligations under such contracts until Data Synchronisation has been reactivated.
- 13.7 If any data processed under this Agreement also constitutes personal data, You undertake to ensure that the data subjects are informed about the processing of such personal data by MAN in a capacity of data controller and to the extent needed obtain their consent thereto. In case of processing of personal data the following information about the processing of personal data at MAN shall be provided to the data subjects by You: <https://www.man-es.com/data-protection-notice>. All personal data will be processed by MAN in accordance with applicable data protection laws, including for example by entering into data transfer agreements on the basis of the European Commission's Model Clauses.
- 13.8 To ensure that You and/or Your vessel cannot be identified, MAN will anonymize all Data before disclosing it to any third parties. Any Data not anonymized may only be used by (i) MAN or by MAN's

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subcontractors under an obligation towards MAN to keep the Data confidential and to observe all applicable data protection provisions, or (ii) by third parties appointed by You under an obligation towards MAN and You to keep the Data confidential and to observe all applicable data protection provisions. To the extent that MAN has completely anonymized the Data, including so it will not be possible to identify which specific Engine's Software the Data is coming from, MAN shall in all aspects be free to use and disclose such Data to third parties for any purpose.

### **14 Mandatory updates**

- 14.1 To ensure the proper functionality of the Software and to mitigate the risk of abuse hereof, You undertake to accept, install and use any mandatory updates to the Software required by MAN. For the avoidance of doubt, such updates are included in your License, and must be accepted by You within the prescribed acceptance period. Regular internet access is necessary for the Software to check for such mandatory updates as required by MAN. Section 5.1 applies.

### **15 Assignment**

- 15.1 MAN is permitted to assign, in whole or in part, its rights and/or obligations under this EULA to any third party. MAN will notify You in writing in case of any such assignment.
- 15.2 Except as expressly permitted in Sections 15.3 and 15.4 or by applicable law notwithstanding this limitation, You are not permitted without MAN's written consent to assign in whole or in part, including by sublicensing, Your rights and/or obligations under this EULA to any third party.
- 15.3 If the Engine is transferred to a third party, You are permitted to assign the License to this third party, provided that the third party agrees to the terms of this EULA and provided that You do not retain any copies of the Software. You must inform MAN of any transfer of the Engine to a third party.
- 15.4 You are permitted to authorize a third party operator of the vessel to use the License in connection with the operation of the vessel, provided that such third party operator agrees to the terms of this EULA, and that You remain fully liable for the operator's use of License.

### **16 Severability**

- 16.1 In case any provision in this EULA should be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

### **17 Law and venue**

- 17.1 This EULA shall be construed in accordance with and governed in all aspects by the laws of Switzerland, however, excluding the rules of conflicts of law and excluding the Convention of the United Nations of 11.4.1980 on Contracts for International Sale of Goods.
- 17.2 If a difference of opinion cannot be settled amicably, all disputes arising out of or in connection with this EULA shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The Expedited Procedure Provisions and the Emergency Arbitrator Provisions shall not apply. The arbitration tribunal shall have its seat in and the arbitration proceedings shall take place in Zürich, Switzerland in the English language. However, MAN shall not be prevented from choosing, at MAN's own discretion, to bring an action against You in any ordinary court of law having jurisdiction over such action. Both You and MAN will keep confidential the existence of the arbitration or any information or document relating thereto or disclosed therein.