

# FORCESPRO

## Technology Development License Agreement

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### IMPORTANT NOTICE:

READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE OR ITS DOCUMENTATION.

THIS LICENSE AGREEMENT REPRESENTS THE AGREEMENT BETWEEN YOU (THE "LICENSEE") AND EMBOTECH AG (HEREINAFTER "EMBOTECH") CONCERNING THE SOFTWARE AND ITS DOCUMENTATION.

BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE OR DOCUMENTATION, YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT. IF YOU ARE NOT WILLING TO DO SO, DO NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE OR DOCUMENTATION.

## 1. DEFINITIONS

- I. "**AGREEMENT**" means this license agreement including any and all annexes thereto.
- II. "**SOFTWARE**" (FORCESPRO) is a software system owned by EMBOTECH. It consists of two main parts:
  - a. "**DEVELOPMENT SOFTWARE**", which runs on desktop computing platforms to configure EMBEDDABLE SOFTWARE.
  - b. "**EMBEDDABLE SOFTWARE**" refers to the part of SOFTWARE that, after initial configuration by DEVELOPMENT SOFTWARE, implements the functionality i.e. it implements EMBOTECH algorithms and performs the numerical calculations to control or to operate a physical system, possibly on an embedded computing platform.

Note: DEVELOPMENT SOFTWARE is not required for the operation of EMBEDDABLE SOFTWARE once it has been configured.

### III. NODES:

- a. "**ENGINEERING NODE**" is a single physical hardware system controlled by LICENSEE and accessed by a single user (engineer) to run DEVELOPMENT SOFTWARE and configure EMBEDDABLE SOFTWARE.
- b. "**SOFTWARE TESTING NODE**" is a single PC, workstation, server virtual machine or container controlled by LICENSEE that runs software tests with EMBEDDABLE SOFTWARE (possibly in a cloud-hosted application).
- c. "**HARDWARE TESTING NODE**" is a single physical hardware system controlled by LICENSEE that runs EMBEDDABLE SOFTWARE in an automated fashion and interacts with a physical system (e.g., a wind turbine), or a simulation thereof in real-time (i.e. hardware-in-the-loop testing, HiL).

Any reference to a "**NODE**" herein shall be either to an ENGINEERING NODE, SOFTWARE TESTING NODE, or a HARDWARE TESTING NODE.

- IV. "**CONFIGURATION**" refers to the specific inputs into DEVELOPMENT SOFTWARE needed to configure EMBEDDABLE CODE for the LICENSEE's particular application.
- V. "**LICENSE DURATION**" is by default one (1) calendar year, unless stated otherwise on a quotation or invoice related to the purchase of SOFTWARE. In that case, the quotation or invoice shall have precedence and define the length of LICENSE DURATION.

## 2. PROTOTYPING LICENSE

EMBOTECH hereby grants to the LICENSEE a single, non-exclusive, world-wide, non-perpetual and non-commercial license to use DEVELOPMENT SOFTWARE and EMBEDDABLE SOFTWARE subject to all the terms and conditions of this AGREEMENT. The license to the SOFTWARE is granted to the LICENSEE for the duration of this AGREEMENT and such license shall terminate with the termination of this AGREEMENT.

In particular, LICENSEE is allowed to:

- install and use the DEVELOPMENT SOFTWARE on a maximum number of ENGINEERING NODEs, controlled by the LICENSEE, in accordance with the LICENSE OPTIONS acquired;
- install and use the EMBEDDABLE SOFTWARE on a maximum number of HARDWARE TESTING NODEs, controlled by the LICENSEE, in accordance with the LICENSE OPTIONS acquired;
- access and print all available documentation for the SOFTWARE; and
- make back-ups for the SOFTWARE;

The exact number of NODEs is stated on the quote and invoice.

EMBEDDABLE SOFTWARE may be deployed only on the specific platform(s) as specified in LICENSE OPTIONS when purchasing a license.

Licenses are validated by means of a fingerprinting system or a network floating license server. Any attempt to circumvent the effectiveness of EMBOTECH's licensing system immediately terminates this AGREEMENT upon written notice by EMBOTECH.

### **3. LICENSE RESTRICTIONS AND OBLIGATIONS**

The license granted to the LICENSEE covers a non-commercial use of the SOFTWARE solely on behalf of the LICENSEE by himself and by his employees. The license is subject to the restrictions set forth below. LICENSEE shall not without explicit and written consent of EMBOTECH:

- use of EMBEDDABLE SOFTWARE in production (i.e. for commercial purposes);
- distribute, sublicense or resell the EMBEDDABLE SOFTWARE;
- modify or create any derivative of the SOFTWARE;
- re-sale, rent, lease, or loan the SOFTWARE, or provide service bureau or similar service use;
- disassemble, decompile, reverse engineer the SOFTWARE or otherwise attempt to gain access to its method of operation or source code;
- publish data about the performance of the EMBEDDABLE SOFTWARE without written consent from EMBOTECH;
- create a server for use of the SOFTWARE by multiple users.

### **4. NON-COMPETITION**

LICENSEE agrees not to use the SOFTWARE or EMBEDDABLE SOFTWARE to make or distribute its own or a third party's application, a principal purpose of which, as reasonably determined by EMBOTECH, is to perform the same or similar functions as SOFTWARE licensed by EMBOTECH or which replaces any component of the SOFTWARE.

## **5. INTELLECTUAL PROPERTY AND OTHER RIGHTS**

Ownership, intellectual property rights and all other rights in and to the SOFTWARE as well as related bug fixes, extensions, interfaces, new features (derivative works) developed by EMBOTECH shall solely remain with EMBOTECH.

## **6. MAINTENANCE, SUPPORT, UPGRADES AND NEW RELEASES**

During the term of this AGREEMENT, EMBOTECH shall provide a maintenance service for the SOFTWARE which consists of: delivering subsequent releases of the SOFTWARE, if any, and exerting reasonable efforts to both (a) provide, within a reasonable time, workarounds for any material programming errors in the current release of the SOFTWARE that are directly attributable to EMBOTECH, and (b) correct such errors in the next available release, provided LICENSEE provides EMBOTECH with sufficient information to identify the errors.

During the term of this AGREEMENT, LICENSEE shall also be entitled to receive technical support for the current release. Technical support means assistance by electronic mail with the installation and/or use of the SOFTWARE, including its interaction with supported hardware and operating systems – up to a maximum of 3 hour per license NODE and up to a maximum of 9 hours per LICENSE GROUP.

Additional technical support or custom modifications, extensions and interfaces are not part of technical support, but may be provided by EMBOTECH to LICENSEE upon request against payment.

## **7. LICENSE DURATION AND TERMINATION**

LICENSEE understands and agrees that the license will expire automatically immediately after its corresponding LICENSE DURATION from the date where the SOFTWARE has been delivered, unless renewed by both parties.

EMBOTECH shall have the right to terminate this AGREEMENT with thirty (30) days written notice should LICENSEE breach any of its material obligations, including failure to pay any license fees due, and have failed to cure such breach within thirty (30) days after written notification given by EMBOTECH.

LICENSEE may terminate this AGREEMENT at any time, for any reason. LICENSEE shall not be entitled to any refund if this AGREEMENT is terminated. Upon termination, LICENSEE shall promptly return all copies of the SOFTWARE in LICENSEE's possession or control, or promptly provide written certification of their destruction.

## **8. CONFIDENTIALITY**

LICENSEE herewith agrees that any confidential information concerning the

SOFTWARE, which is received hereunder, shall be kept in strict confidence and shall not be disclosed to any third party nor be used other than in connection with this AGREEMENT during the term of this AGREEMENT, and for 3 (three) years beyond expiration or termination of this AGREEMENT.

## **9. WARRANTIES**

EMBOTECH warrants that EMBOTECH, on its own behalf or through its licensors, has the right to grant the license rights hereunder.

EMBOTECH warrants to LICENSEE that to the best of EMBOTECH's knowledge the SOFTWARE does not infringe or violate any patent, trademark, trade secret or other property right of any third party.

Except as specified in this Article, EMBOTECH MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SOFTWARE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EMBOTECH DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET THE REQUIREMENTS OF THE LICENSEE, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR THAT THE SOFTWARE WILL BE FREE OF DEFECTS OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, EMBOTECH DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULT OF THE USE OF THE SOFTWARE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

## **10. LIABILITY AND INDEMNITY**

LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE USE OF THE SOFTWARE IS AT LICENSEE'S SOLE RISK.

NEITHER PARTY SHALL MAKE A CLAIM AGAINST, NOR BE LIABLE TO THE OTHER PARTY OR TO ANY AFFILIATE OF THE OTHER PARTY FOR ANY DAMAGE OCCURRING IN CONNECTION WITH THIS AGREEMENT AND/OR THE USE OF OR INABILITY TO USE THE SOFTWARE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST PROFITS, BUSINESS OPPORTUNITY, OR INJURY TO BUSINESS REPUTATION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TERMINATION THEREOF, UNDER ANY LAW, IN CONTRACT OR IN TORT, EXCEPT FOR DAMAGES CAUSED DUE TO INTENT OR GROSS NEGLIGENCE.

THE AGGREGATE AND CUMULATIVE LIABILITY OF EMBOTECH TOWARDS LICENSEE FOR ANY AND ALL COSTS, DAMAGES, CLAIMS, OR LOSSES FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY UNDER THIS AGREEMENT AND/OR THE USE OF OR INABILITY TO USE THE SOFTWARE WILL BE LIMITED TO, AND NOT EXCEED, THE AMOUNT ACTUALLY RECEIVED BY EMBOTECH FROM LICENSEE UNDER THIS AGREEMENT.

## **11. SURVIVAL OF ARTICLES**

Articles 8 (Confidentiality), 9 (Warranties) and 10 (Liability & Indemnity), shall survive the termination or expiration of this AGREEMENT for any reason in addition to those articles surviving by operation of law.

## **12. AMENDMENTS TO AGREEMENT**

The terms stipulated in this AGREEMENT may not be modified in any way without the mutual consent of the parties in writing.

## **13. INDEPENDENT CONTRACTOR**

For the purpose of this AGREEMENT and all services to be provided hereunder, both parties shall be, and shall be deemed to be, independent contractors. Nothing in this AGREEMENT shall be construed to create a partnership, joint venture, employment or agency relationship between EMBOTECH and LICENSEE. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action, that will be binding on the other party.

## **14. NO TRANSFER OF RIGHTS AND DUTIES**

Rights and duties derived from this AGREEMENT shall not be transferred or assigned to third parties without the written acceptance of EMBOTECH. In particular, the SOFTWARE cannot be sold, licensed, rented out or otherwise made available to third parties by the LICENSEE other than in accordance with this AGREEMENT.

## **15. NO IMPLIED GRANT OF RIGHTS**

The parties shall not infer from this AGREEMENT any other rights, including licenses, than those that are explicitly stated herein.

## **16. SEVERABILITY**

If any provisions of this AGREEMENT will become invalid or unenforceable, such invalidity or enforceability shall not affect the other provisions of AGREEMENT. These shall remain in full force and effect, provided that the basic intent of the parties is preserved. The parties will in good faith negotiate substitute provisions to replace invalid or unenforceable provisions which reflect the original intentions of the parties as closely as possible and maintain the economic balance between the parties.

## **17. DISPUTE RESOLUTION**

The parties shall make every reasonable effort to resolve all issues fairly by negotiation. All disputes which arise between the parties in connection with this agreement shall be discussed initially between the project managers.

## **18. APPLICABLE LAW**

This AGREEMENT as well as any and all matters arising out of it shall exclusively be governed by and interpreted in accordance with the laws of Switzerland, excluding its principles of conflict of laws.

## **19. JURISDICTION**

In case of any dispute, controversy or difference between the parties hereto in connection with or out of this AGREEMENT, the parties hereto shall first attempt to settle it amicably. Should settlement not be achieved, the Courts of Zurich-City, Switzerland, shall have exclusive jurisdiction.