

## End User License Agreement

between

**ANDTEK GmbH**  
**Am Soeldnermoos 17**  
**D-85399 Hallbergmoos**  
**Deutschland**

- hereinafter referred to as „ANDTEK“ -

and

the company using the software  
- hereinafter referred to as „user“ -

- collectively referred to as „the parties“ -

regarding the licensing of software in object code for the operation of an IP based communication system of the user.

This end user license agreement (EULA) shall at all time be prior to ANDTEK's General Terms and Conditions (AGB) which shall apply in addition. The AGB can be downloaded from <http://www.andtek.com/agb.html>.

### 1. Formation of this Agreement

- 1.1. By clicking the button „Accept (Zustimmen)“ during the download or installation the user agrees to the terms set forth in this agreement and confirms that he has been informed by the distribution or channel partner of ANDTEK or ANDTEK herself before the conclusion of any contract regarding this software, that it is required to conclude this End User License Agreement before the right to use the software can be obtained. The same applies, when the user installs, copies, uses or accesses the software.
- 1.2. If the user does not agree to the terms and conditions in this End User License Agreement, he has no right to use, install, copy or access the software. Where applicable, the user's right to return the software is unaffected.

### 2. Subject of the Contract

- 2.1. ANDTEK grants the user a non-exclusive, non-transferrable, limited right to use the software in reference to operating an IP-based system. The software is protected by copyright according to articles 69a et seq. UrhG (German Copyright Act).
- 2.2. ANDTEK offers the software covered by this agreement as a standard software solution. ANDTEK reserves the right to implement new functions and improvements in future versions of the software. For the creation or customization of non-standard software solutions, an independent agreement between ANDTEK and the user has to be concluded.
- 2.3. The software-packet is in general being distributed through an online download system to the systems of the user. This distribution type is independent from the chosen sale channel (ANDTEK/distribution partner). On demand and in exchange for an administrative fee, ANDTEK also delivers the software on a physical media (CD-ROM/DVD-ROM). ANDTEK offers, on a limited scale and not exhaustive, access to a knowledge database in regard to the software referred herein.
- 2.4. The software-packet consists of the software referred herein and a user manual. The user accepts the delivery of a user manual in English language and in electronic form as an orderly delivery.
- 2.5. Articles 7 and 8 under this agreement („warranty“ and „liabilities“) do not apply in case the user did not acquire the software directly from ANDTEK but from a third person like a vendor or channel partner of ANDTEK. The same shall apply to corresponding provisions in ANDTEK's AGB. In

this case the user is bound to solely assert his claims against the third party vendor.

### 3. Know-How-Level of the User

- 3.1. The software covered by this agreement is being offered and produced as a product for commercial use only. For the proper installation and administration of the software a know-how-level of the user is being presumed which is customary in the business of operating IP based systems in a commercial manner.
- 3.2. In case the user does not fulfill the prerequisites stipulated in 3.1, ANDTEK offers for an additional fee training programs on the user's request.

### 4. Reproduction and Access Protection

- 4.1. The user is allowed to reproduce the delivered software, as long as the reproduction is indispensable for the use of the software. In particular the user is allowed to download, install and copy the software from a temporary media or the genuine data media to the mass storage of the systems intended for the use of the software, as well as to the main memory of these systems.
- 4.2. In addition the user is allowed to make 1 (one) reproduction for data-backup purposes only. The backup-copy has to be labeled as such.
- 4.3. For reasons of data-security or for assuring a fast recovery from total data loss, a necessary number of rotational backups of the whole computer system containing the software can be performed. The backup media containing parts of the software or the whole software have to be labeled as backup media. These backup-reproductions have to be used only for archival purposes.
- 4.4. The user is bound to take adequate measures to prevent the access of any third party to the software, the online-documentation or any other service provided by ANDTEK in relation to this software. If genuine data media or documentation was delivered by ANDTEK, the user has to keep it in safe custody, preventing unauthorized access. Reproductions in temporary media made for the purpose of installation have to be deleted after the installation process. The user has to inform his employees that this software is protected by copyright laws and that the regulations stated in this agreement have to be observed.
- 4.5. Other reproductions than stated above are not permitted. In particular the user is not allowed to print out the software code, as well as the online-documentation on a printer. The user can obtain further copies of the manual from ANDTEK if needed.
- 4.6. ANDTEK is entitled to protect its software products, as well as the online documentation through technical measures against unauthorized duplication or access. In detail ANDTEK is entitled to provide a unique identity mark to the software in part or as a whole by using electronic digital signatures or other electronic identification proceedings.

### 5. Multiple-User and Network-Usage

- 5.1. The user is allowed to use the software on any hardware owned by him or made available to him by third parties. If the user replaces the hardware, he must delete the software from the replaced systems.
- 5.2. Multiple-User and network usage is permitted only in line with an agreed concurrent-user or named-user licensing. If the software has been licensed using the concurrent-user

licensing model, the user is allowed to access the software with the licensed number of users or devices at the same time. If the software has been licensed using the named-user licensing model, the user is allowed to access the software only with the licensed users or devices. Further details about the licensing model of the software can be found on <http://www.andtek.com/licensing> and will also be stated in the relevant offer.

- 5.3. If the software has been licensed using the concurrent-user licensing model, the use of the software in a network or multiple-user environment is prohibited, as long as the opportunity is being provided to access the software with more than the licensed number of concurrent users. If the user would like to access the software with more than the licensed number of concurrent users or devices, he must acquire more licenses from ANDTEK. The number of additional licenses to acquire is assessed by the number of additional concurrent users or devices to access the software. The use of the software in such a multiple user or network environment is only admissible after the user acquired the required number of licenses.
- 5.4. If the software has been licensed using the named-user licensing model, the use of the software in a network or multiple-user environment is prohibited, as long as the opportunity is being provided to access the software with any other than the licensed user or device. If the user would like to access the software with any other than the licensed user or device, he must acquire more licenses from ANDTEK. The number of additional licenses to acquire is assessed by the number of additional users or devices to access the software. The use of the software in such a multiple user or network environment is only admissible after the user acquired the required number of licenses.

### 6. Reverse-Engineering and Program Modification

- 6.1. Any kind of reverse-engineering or decompilation of the licensed program code or any form of program modification is prohibited, as long as no case regulated in article 69e subsection 1 UrhG (German Copyright Act) is existent.
- 6.2. The elimination or bypass of a copyright protection or any similar protection is prohibited.
- 6.3. Copyright notices, serial numbers or any other attribute being used for program identification or for copyright notice must not be removed or modified. This also includes any similar attribute being displayed on the computer screen

### 7. Warranty

- 7.1. The software provided is conceptualized as standard software for operation with specific hardware configurations. ANDTEK recommends for the use of the software specific vendor dependent hardware configurations with specific design parameters concerning architecture type and performance. When using any other than the recommended hardware configurations a faultless operation cannot be guaranteed. The recommended hardware configurations can be obtained through ANDTEK's website, [http://www.andtek.com/certified\\_hardware.html](http://www.andtek.com/certified_hardware.html). With respect to the remainder, it is the user's obligation to choose the appropriate hardware and architecture.
- 7.2. Defects of the delivered software (factual and legal positions) including the program

documentation and all other material provided will be resolved by ANDTEK within a year upon delivery of the software after corresponding notice from the user. ANDTEK has the right to choose between resolving the defects of the software delivered (rectification of defects) and the delivery of faultless software (replacement). As far as it is required to return the software to ANDTEK, the user has to bear the costs of transport.

- 7.3. In case the defect cannot be resolved in reasonable time, or in case the resolving can be considered as failed, the user is entitled at his choice to reduce the license fee (reduction), withdraw from the agreement (withdrawal), claim compensation for damages or compensation of wasted expenses. For the claims of compensation for damages or compensation of wasted expenses article 9 of this agreement shall apply. The withdrawal from the agreement does not exclude the right of compensation.
- 7.4. The rectification or replacement shall only be considered as failed in case ANDTEK was given a reasonable amount of time and opportunity for her attempts of rectification or replacement without achieving the desired results, in cases where the rectification or replacement is impossible, in cases ANDTEK denied or unreasonable delayed the rectification or replacement, and in cases of unacceptability arising out of other reasons.

## 8. Liabilities

- 8.1. For all cases of contractual and non-contractual liabilities, ANDTEK shall be liable solely according to the following limitations:
- 8.1.1. in case of intention of ANDTEK, her legal representatives or vicarious agents, for the full amount, also in the absence of a characteristic, which ANDTEK guaranteed;
- 8.1.2. in case of gross negligence of ANDTEK, her legal representatives or vicarious agents only to the amount of the predictable damage, which should have been prevented through the duty breached;
- 8.1.3. in all other cases: only for the breach of a essential contractual duty which is of special importance for achieving the purpose of the contract and the party of the contract can normally rely on (cardinal obligation) to the extent of the typically predictable damage;
- 8.2. The liability limitations according to sec. 8.1. shall not apply in any case of liability arising out of personal injury, fraudulent intent, and in cases of liability according to the German Product Liability Act.
- 8.3. In all cases according to sec. 8.1.3. the liability of ANDTEK is limited to the extent of the coverage of ANDTEK's business indemnity insurance. On demand the insurance coverage can be raised on the customer's expenses.
- 8.4. ANDTEK reserves the right of defense of contributory fault.
- 8.5. In cases of liability arising out of data loss, ANDTEK's liability is limited to the typical expenses which would occur if data backups according to the existing risks would have been performed on a regular basis.
- 8.6. The aforementioned provision shall also apply in favor of ANDTEK's employees.

## 9. Review and Notification Duty

- 9.1. The user is bound to review the software including the documentation (offline and online) within 10 working days (Monday to Friday) after the granting of the license, in particular regarding the completeness of the media and documentation as well as the op-

erability of essential software-functions. The user has to verifiable notify ANDTEK within another 8 working days regarding defects, which are discovered or could be discovered. The defect notification must include to the user's best efforts a detailed description of the discovered defects.

- 9.2. Defects, which can't be discovered in scope of a correct defect review, must be challenged in compliance to article 10.1 within 8 working days (Monday to Friday) after discovery.
- 9.3. A breach of the review and notification obligations shall be considered as an acceptance of the relevant defect by the user as a proper delivery.

## 10. Duty of Proper Care

- 10.1. The user must store all backup media according to Article 4.2 and 4.3 and – if applicable - all media delivered, in a storage which is especially secured against unauthorized access of third parties. The user must emphatically notify his employees to comply with this agreement and ANDTEK's copyright.

## 11. Term

- 11.1. The duration of the agreement is undetermined.
- 11.2. In case the user is severely violating his obligations out of this contract, in particular provisions on behalf of intellectual property rights or trade mark rights, ANDTEK is entitled to terminate this agreement without prior notice.

## 12. Collision with other Terms and Conditions

- 12.1. ANDTEK only grants the user the rights according to this EULA, provided that the user accepts the priority of this agreement to the user's own terms and conditions.

## 13. Customization of this Agreement

- 13.1. ANDTEK is entitled to customize this agreement also to the disadvantage of the user, in cases of unforeseeable circumstances which have not been caused by ANDTEK and which cannot be influenced by ANDTEK, as long as the customization is reasonable to the user and the circumstances are disturbing the relationship between performance and counter performance in a not inconsiderable way. In addition to this, ANDTEK is entitled to customize unintended omissions incurring out of this agreement which are leading to severe difficulties regarding the execution of this agreement, in case the customization seems mandatory.
- 13.2. If any customizations will become necessary, ANDTEK will notify the user in reasonable time about the intended customization using electronic communication (e.g. e-mail). The user is entitled to object to the customization within a period of one month after receiving the notification. In case the user objects, the original provisions will stay unaffected. ANDTEK shall then be entitled to terminate this agreement with prior notice of one month. If the user is not objecting to the customization within the aforementioned time period, the customized provisions shall become effective.

## 14. Written Form

- 14.1. Any statements of the parties, considering the addition, customization and concretion of this agreement, as well as any

special guarantee or special agreement require the written form for validity. This also applies to any changes on this requirement.

## 15. Affirmation of Notification and Information

- 15.1. The user affirms his knowledge of this End User License Agreement, in particular by downloading and installing the software. The user acknowledges that he has been handed out or electronically received a copy of this agreement before the licensing of the software. The user also had the possibility to take notice of this agreement in a reasonable way by visiting the ANDTEK website.

## 16. Applicable Law

- 16.1. This agreement, as well as any other privity of contract, is to be governed by and construed in accordance with German law under exclusion of the regulations arising out of the Convention on the International Sale of Goods.

## 17. Place of Jurisdiction

- 17.1. As far as the user can be classified as a „Kaufmann“ (business man) according to the German Commercial Code, the parties agree on Munich, Bavaria, Germany as place of jurisdiction for all disputes arising out of this agreement.

## 18. Language Versions of this Agreement

- 18.1. The construction and interpretation of this Agreement shall be determined solely on the basis of its German language version; only the German language version is legal effective. Any other language versions, especially this English version, are purely for the sake of convenience and not authoritative.

## 19. Severability Clause

- 19.1. Should any individual provisions in the above options terms be or become invalid, either in part or in full, or impracticable, this will not affect the validity of the other provisions. The invalid or impracticable provision will be replaced by a ruling that is as close as possible to the intended economic purpose.

Hallbergmoos, June 23, 2009

ANDTEK GmbH