
Important: Before using the Software, please thoroughly read the Software License Agreement (“Agreement”) and fully comprehend each provision in order to acquire the License for the Software. The Customer will be deemed to have consented to this Agreement by opening the package, removing the seal, or downloading the Software, or if this Agreement is displayed, cited or attached and the Customer selects “I agree” or “Yes” (including, but not limited to, electronic means). An agreement regarding the use of the Software based on this Agreement is formed between the Customer and WingArc by the Customer consenting to this Agreement.

Furthermore, if the person indicating the intent to consent to this Agreement is the Customer’s agent or employee, such person shall represent and warrant that the person has been granted the agency right to attribute the results to the Customer, and in addition, any act of the person representing the Customer is exercised for the Customer on the Customer’s behalf, and the result thereof shall be attributable to the Customer.

1. Definitions

1.1 “WingArc” shall mean WingArc Inc. of Japan.

1.2 “Software” shall mean the computer program (including the Updated Version) in the form of object codes for which a license is granted from WingArc and is composed of materials other than programs such as manuals provided in relation to the use of such program.

1.3 “Customer” shall mean a legal person (or an organization equivalent thereto) acquiring a license for the Software under this Agreement.

1.4 “Agreement” shall mean the agreement relating to the use of the Software formed based on the Customer consenting (including instances where the Customer is deemed to have consented) to the provisions listed in the Software License Agreement.

1.5 Excluding instances where WingArc separately gives notice in writing (including, but not limited to, electronic form; the same shall apply hereafter), “Territory” shall mean Japan.

1.6 “Related Materials” shall mean manuals and other documents (including, but not limited to, electronic media) provided in relation to the Software.

1.7 “Open Source Software” shall mean software, etc. for which the source code is publicized and that can be used, altered or distributed (redistributed) by anyone.

1.8 “Maintenance Service” shall mean technical support that can be provided by WingArc in relation to the Software.

1.9 “Maintenance Service Agreement” is an agreement relating to the Maintenance Service and shall mean an agreement that is entered into on the terms of an agreement prescribed by WingArc, such as the Terms and Conditions of the Maintenance Service.

1.10 “Updated Version” shall mean collectively the updated versions (regardless of whether major or minor), renewed modules, service packs and patches and other related software relating to the Software.

1.11 “Activation” shall mean the procedure to authenticate the due obtainment of a license by the Customer, by connecting a Customer’s computer to a server such as of WingArc through a network, etc. at the time and after the Customer starts using the Software in order to confirm that the Customer’s license in the Software was appropriately obtained.

2. Grant of License

2.1 WingArc grants to the Customer a non-exclusive and non-transferrable license in the Territory with respect to the Software that shall be deemed to have been used on a computer when it has been loaded onto a temporary memory storage such as RAM, on such computer or has been installed on the hard drive, etc. of such computer under this Agreement for the purpose of the Customer’s internal business; provided, however, that if WingArc sets additional terms or terms that are different from this Agreement due to license classifications, use and intended use, scope of use or use environment of the Software and notifies or publicizes the same in writing, on the website (including, but not limited to, http://www.wingarc.com/license/eu_license.html) or by another method designated by WingArc, other than by way of this Agreement, such terms shall be applied in priority thereto.

2.2 WingArc shall permit the Customer to reproduce only one copy of the Software for the cold standby (Cold standby means switching to a separate secondary machine (backup system) by hand without conducting a preliminary setup of third party software and hardware when a failure arises to the main operating machine (main system) to which the Software is introduced.) for the purpose of backup or the purpose of recovery, and shall not be reproduced unless otherwise set forth in this Agreement.

2.3 Under this Agreement, details of the Software such as its name, serial number, version and edition, shall be set forth in writing separately issued by WingArc (including, but not limited to, the “Confirmation Letter of Agreement”). If the Customer alters the Software by using an Updated Version or any successive software thereof, the license in the Software before such alteration shall lapse; provided, however, that, unless approved by WingArc in writing, if WingArc has otherwise set forth a transition period or parallel operation period, the license in the Software before the alteration shall lapse upon expiration of such term. If there is a limit to the usage period of the Software under the license therein, the usage period of the Software before the alteration shall be applied successively to the Software after the alteration.

3. Prohibited Actions

3.1 The Customer shall not use the Software in methods other than as stated in the Related Materials of the Software (including, but not limited to, means to avoid technical restrictions included in the Software).

3.2 The Customer shall maintain the same indication as the copyright (includes instances of reproductions made under the following clause) and other indications of the Software, and shall not change them without obtaining WingArc’s prior written approval.

3.3 The Customer may not reproduce (unless otherwise permitted by WingArc under this Agreement), alter, modify, transplant or translate all or part of the Software and may not transfer, sell, lease, rent, sublicense or dispose of in any other way to a third party nor use it in a service such as commercial time sharing, hosting services for businesses, ASP (Application Service Provider) and SaaS (Software as a Service), for any reason whatsoever without WingArc’s prior consent. The Customer may not, for the purposes of transmission, deployment, sharing or storing, distribute all or part of the Software in public spaces provided by cloud services, etc. through which the Software can be browsed or acquired by the general public, even if such acts are not intended for certain third parties.

3.4 The Customer may not engage in the adaptation and reverse engineering of the Software by reverse compilation, reverse assembly and other methods and may not engage in decoding the source code of the Software.

3.5 The Customer may not dispose in any way, such as by donating, transferring or providing as security, to a third party the rights and obligations under this Agreement and the rights relating to the Software.

4. Copyright

4.1 WingArc or its licensor owns the rights to the Software, and the Software is a product distributed by WingArc and is protected by the copyright laws and other laws relating to intellectual property rights of Japan and other countries and the provisions of international treaties.

4.2 The Customer has only been granted the right to use the Software and has not been granted, whether expressly or implicitly, any rights related to the Software besides as provided in this Agreement. Any authority or rights, including intellectual property rights related to the Software, shall be maintained by WingArc or the original right holder thereof at any time.

5. Limited Warranty

5.1 When WingArc provides the Software to the Customer in a recording medium (this means, but is not limited to, optical disks), in the event a material physical defect is discovered in such medium due to a reason attributable to WingArc, WingArc shall make an exchange free of charge on the condition that the Customer makes a claim of such defect in writing within 30 days from the delivery date of the Software to the Customer and sends such medium at the same time, and this will be WingArc's sole responsibility with respect to the recording medium. Furthermore, the warranty period that applied to the medium before the exchange shall be applied to the exchanged medium.

5.2 If an error in the Software due to a reason attributable to WingArc is discovered, and the fact thereof is notified in writing by the Customer within six (6) months from the earlier date of either the delivery date of the Software to the Customer or the date the Customer starts using the Software, WingArc shall make modifications that WingArc deems to be appropriate; provided, however, that the Customer is forewarned that there may be instances where such error will not be completely fixed by such modification or the malfunction cannot be avoided. Furthermore, this clause will be all of WingArc's warranty with respect to the Software.

5.3 Apart from the preceding two clauses, WingArc does not give any express or implied warranty to the Customer with respect to the Software as to there being no error, the lack of infringement of a third party's rights, and the merchantability or fitness for a particular purpose, and shall not bear any responsibility for the results of the Customer using the Software.

5.4 In any event whatsoever, WingArc shall not bear any responsibility for the Customer's lost profits, damages arising from special circumstances (whether or not the damages are foreseeable by WingArc), loss or damage of data, indirect damages and consequential damages, along with damages based on damage claims from third parties. In addition, if WingArc is liable for the compensation of damages to the Customer, the scope thereof will be limited to the normal and actual damages directly arising to the Customer for reasons attributable to WingArc regardless of the basis of liability, and the upper limit of such compensation amount will be the amount equivalent to the license fee for the Software received by WingArc (Further, if the license term is limited, it shall be an amount equivalent to 12 months worth of the license fee.). Furthermore, WingArc shall bear no liability for the Customer's data or operating environment in any instance whatsoever.

6. Updated Version

6.1 Except as provided in the preceding Article, the Updated Version shall be provided to a person if the person has separately entered into a Maintenance Service Agreement with WingArc and if the Updated Version is provided during the term of such agreement; provided, however, that the user of such Updated Version shall be the same as that of the Software before the update. If such Updated Version is provided to the Customer under the Maintenance Service Agreement (including via the party to the Maintenance Service Agreement) and there is no separate provision by WingArc, the terms of this Agreement shall be applied to the terms of use of such Updated Version.

6.2 If the party to the Maintenance Service Agreement makes an application to WingArc for the Updated Version of the Software under the Maintenance Service Agreement concerning the Software, the Customer shall agree to such party's application for such Updated Version and shall agree that the license in the Software before the update shall lapse in accordance with Article 2.3 of this Agreement. In such case, the Customer shall delete the Software for which the license has lapsed from the computer in such a manner that it cannot be restored and shall return the software to WingArc or submit a written form designated thereby that proves the Software has been disposed of or deleted.

7. Term

7.1 This Agreement shall become effective when this Software License Agreement is agreed to (including when deemed to have agreed to) by the opening of the package, removal of the seal, download, selection such as of "I agree" or "Yes," and other means (including, but not limited to, electronic means) as to the Software.

7.2 Except where it is separately designated by WingArc (including, but not limited to, licenses with limits on the usage period) or where this Agreement terminates due to a breach of contract or other reasons, the term of this Agreement shall be from the day this Agreement becomes effective according to the preceding clause and continue to be effective until the Customer terminates the use of the Software.

7.3 If the Customer breaches any one of the provisions of this Agreement, WingArc may terminate the Customer's right under this Agreement at any time without prior notice. In this instance, the payment WingArc received from the Customer for the Software will not be refunded.

7.4 Each provision of "5. Limited Warranty" and "8. Confidentiality" through "19. Miscellaneous" will continue to remain effective after the termination of this Agreement; provided, however, that provisions of "8. Confidentiality" shall remain effective for three years after such termination.

8. Confidentiality

8.1 The Customer shall keep in confidence technical information relating to the Software provided by WingArc (including, but not limited to, the Software, activation keys, serial numbers, and printed and electronic documentation) and Specific Information (defined in Article 11.2) (collectively, "Confidential

Information”), shall not disclose the Confidential Information to third parties without WingArc’s prior written approval, and shall not use the Confidential Information for purposes other than the purpose of using the Software. Furthermore, without WingArc’s prior approval, the Customer shall not file any application for patents or other intellectual property rights in any countries and regions in order to acquire any intellectual property rights in relation to technologies that constitute all or part of the Confidential Information. The Customer shall immediately return to WingArc, or destroy with its own responsibility, the Confidential Information upon the termination of this Agreement.

8.2 Notwithstanding the preceding clause, information falling under the following items are excluded from the Confidential Information: (1) information that the Customer independently develops without the Confidential Information; (2) information that becomes public knowledge without the Customer breaching the provisions of this Agreement; or (3) information the Customer was already in possession of at the time it was provided by WingArc.

9. Personal Information

The Customer or WingArc shall handle Personal Information (“Personal Information” shall have the meaning provided in the Act on the Protection of Personal Information (Act No. 57 of 2003; the “APPI”); the same shall apply hereafter.) obtained in relation to this Agreement under the appropriate safety management measures based on the APPI, and shall not disclose nor divulge any of such information to third parties for purposes other than to perform this Agreement. Furthermore, Personal Information may not be reproduced or altered without the prior written consent of the other party.

10. Activation

Unless otherwise permitted by WingArc, if the Customer moves to an environment that is different from the computer that was once authenticated by the Activation (this includes instances of technologically different environments even if it is the same computer, such as logical partitioning and virtual environments) and uses the Software, it will be necessary to perform the Activation again upon canceling the authentication of the Activation.

Furthermore, the Customer shall assume responsibility for the use and management of the Activation Key.

11. Gathering of Information

11.1 At times, WingArc designs the Software in a form wherein the following information (“Specific Information”) may be acquired from the Software for the purpose of activation, functional upgrade, quality improvement and/or ascertainment of usage status thereof. The Customer shall agree that the Software sends such Specific Information to WingArc. The Specific Information does not include any Personal Information:

- (1) Information on the activation key provided by WingArc;
- (2) Information on the hardware and OS environment, etc. onto which the Customer installs the Software;
- (3) Information on the edition and version of the Software used by the Customer;
- (4) Information on the communications required for the gathering of information (including the Customer’s internet protocol address); and
- (5) Information on the trends of use of the Software’s functions.

11.2 WingArc may not disclose the Specific Information acquired in accordance with this Article to third parties without the express permission of the Customer; provided, however, that if WingArc is required to disclose the Specific Information due to an order, request or demand issued under laws and regulations or by a court or government agency, WingArc may disclose the same only within the scope necessary.

12. Audit

12.1 WingArc may perform an audit of the usage terms of the Software by the Customer by giving a 30-day written notice. The Customer will cooperate with the audit by WingArc, and provide information and assist to a reasonable extent; provided, however, that WingArc shall perform such audit without interrupting the Customer’s business activities and during the Customer’s normal business hours. The Customer agrees that WingArc shall not be liable for any costs and expenses incurred to the Customer arising from the cooperation of the audit.

12.2 As a result of the audit in the preceding clause, if the Software was being used beyond the scope licensed to the Customer, the Customer agrees to pay a consideration for the excess part within 30 days after the notice from WingArc. If the consideration for such excess part is not paid by the Customer, WingArc may terminate this Agreement. In such instance, the license to the Customer for the Software is terminated.

13. Complete Agreement

The Customer agrees that, unless otherwise set forth in this Agreement, this Agreement is the entire agreement between the parties regarding the Software, and that this Agreement replaces any and all agreements and communications (including notices, presentations and representations) regarding the Software made in the past or around the same time, regardless of whether they were made in writing or orally, and that it will be applied in priority to provisions conflicting with the provisions of this Agreement due to estimates, offers and consents between the parties. This Agreement may not be amended or altered in any method other than there is an agreement in writing signed or sealed by persons of both parties with due authorization to sign or seal the agreement.

14. Export

The Customer shall not, either directly or indirectly, export, re-export, resell, ship or divert the Software from the Territory for any reason whatsoever without WingArc’s written approval and, if necessary, permissions of the governments and other agencies (“Government Agency”). Furthermore, the Customer agrees that even if the approval by WingArc is obtained and the permission from the Governmental Agency is obtained, the Customer shall comply with the export and import laws of the applicable country (“Export and Import Laws”) in the use of the Software (including technical data), and if permission of the Government Agency is to be obtained, it shall be acquired at the expense and responsibility of the Customer. The Customer also agrees that it shall cause the Software and products that are directly related thereto to be neither exported, either directly or indirectly, in violation of the Export and Import Laws, nor be used for purposes that violate the Export and Import Laws (including, but not limited, to proliferation of nuclear weapons, chemical weapons and biological weapons and development of missile technologies).

15. Severability

The respective provisions of this Agreement are severable and, if a provision of this Agreement is found to be invalid, or declared to be in violation of a law or regulation that is validly existing at the time or by an act of a government or government agency (including a court) that has jurisdiction at the time (the provision of this Agreement that is found to be invalid, or declared to be in violation of a law or regulation, will be hereinafter referred as the “Invalid Provision”), this Agreement will be construed as if the Invalid Provision had not existed and the Invalid Provision will not affect the validity of the other provisions of this Agreement. Furthermore, if the Invalid Provision is found invalid or declared to be in violation of a law or regulation, the parties shall promptly consult with each other for purposes of amending this Agreement to set forth lawful and valid provisions that replace the Invalid Provision (“Replacement Provision”) and resolving any and all issues arising out of the Invalid Provision. The general rule of the consultation for the Replacement Provision shall be to make revisions that are necessary and minimal to remove the invalidity of, or the violation of a law or regulation by, the Invalid Provision.

16. Force Majeure

Neither party will be liable for any non-performance, or delay in performance, of an obligation due to the following events (“Force Majeure Event”) and shall make reasonable efforts to mitigate the effects due to the Force Majeure Event: (1) war, insurgency, interference; (2) natural disaster; (3) electrical, internet or electric communication outage not attributable to the obligor; (4) government regulation (including the denial and cancelation of an export/import license or other license); and (5) other circumstance beyond the reasonable control of the obligor. Furthermore, this clause does not exempt the obligations of each party to take appropriate measures according to normal disaster recovery procedures or the payment obligations of the Customer for the delivered Software.

17. Governing Law

The governing law of this Agreement shall be the laws of Japan. Furthermore, the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) shall not apply to this Agreement.

18. Dispute Resolution

Disputes arising in relation to this Agreement shall be resolved in the Tokyo District Court as the court of exclusive jurisdiction of the first instance.

19. Miscellaneous

19.1 The Software may be changed for improvements without advance notice.

19.2 All or part of this Agreement may be amended at WingArc’s discretion; provided, however, that in this instance, WingArc shall give notice to the Customer of the contents of this amended Agreement on WingArc’s website or by other means, and if the Customer uses the Software without objection after such notice, the Customer will be deemed to have consented to such amended Agreement.

19.3 If the Customer uses programs (including, but not limited to, Open Source Software), created by the Customer (including, but not limited to, the Contractor, as defined in Article 19.7. Hereinafter the same shall apply in this Article) or third parties (collectively, “Created Program”), together with the Software, the Customer shall use Created Program in compliance with all applicable terms (including, but not limited to, terms regarding the Open Source Software’s usage and distribution, etc.) at the Customer’s own risk, and the Customer assures to WingArc that such use of Created Program does not give rise to any obligations to WingArc regarding the Software and that it does not grant to third parties the rights or special rights as to WingArc’s intellectual property rights or proprietary rights regarding the Software. In case any dispute arises between the Customer and a third party regarding the use of Created Program, the Customer shall resolve such dispute at its own cost and responsibility, and shall indemnify WingArc against any damages caused by such dispute.

19.4 Even if the Software is provided to the Customer as the subject object of the agreement between the Customer and a third party (such as sales agreements and lease agreements), the provisions of this Agreement will apply to any claims or disputes between the Customer and WingArc in relation to the Software or the use thereof, and WingArc shall not bear any responsibility other than as prescribed in this Agreement, and the Customer agrees that the agreement between the Customer and such third party does not affect WingArc.

19.5 There may be instances where programs and other intellectual property of third parties other than WingArc or WingArc’s affiliated companies, such as Open Source Software, are included in the Software. In that instance, if such third party is providing such third party program with software usage terms, licensing terms, etc., the Customer shall comply with those terms. In addition, except for the compliance regarding the licensing of Open Source Software in the event that any Open Source Software is included, such third party and WingArc shall not make any warranty nor bear any responsibility as to such third party programs, etc.

19.6 If the Customer uses with the Software other software to which a third party holds rights, the Customer shall comply with the usage terms applicable to such software, and even if the use of the Software is restricted by compliance thereto, WingArc does not make any warranty and shall not assume responsibility.

19.7 The Customer may allow an agent or a third party to which the Customer outsources all or a part of the internal business of the Customer (collectively, “Contractor”) to use the Software within the scope of the rights and obligations granted to or assumed by the Customer. In that instance, the Customer shall impose provisions similar to the provisions of this Agreement on the Contractor, and shall assume all responsibility to WingArc for such third party’s use of the Software and compliance with provisions similar to this Agreement.

19.8 If an Updated Version for the Software is provided by WingArc with usage terms that differ from this Agreement, such terms shall be applied in priority to this Agreement, and if there are no such usage terms, the Customer shall agree to the use in accordance with this Agreement.

19.9 The Japanese version of this Agreement shall be the original thereof, and any translation to English, Chinese or any other language shall be for reference purposes only. If any conflict arises between the Japanese version and any translation into another language, the Japanese version shall prevail.

End

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