X2C Licence Terms and Conditions

Version dated 23 October 2019

This Agreement is concluded by and between Linz Center of Mechatronics GmbH, Altenberger Straße 69, 4040 Linz, Austria, registered at the Linz Regional Court – serving as Commercial Court – under commercial register no. 207547 t (hereinafter also referred to as LCM) and the respective user (hereinafter referred to as User) and governs the terms and conditions of use of the software specified herein.

By concluding the respective licence agreement, the User agrees to the below Licence Terms and Conditions. Installation of the software is subject to express agreement with these Licence Terms and Conditions.

1. Definitions

1.1 Site Licence

The Site Licence enables use of the software by any number of users within a company site. The persons entitled to use the software must work for or be employed by the User and predominantly work at the respective company site, but may use the software without geographical restrictions (e.g. including service technicians working internationally).

1.2 Company/Companies

In these Licence Terms and Conditions, private and public companies, research institutions and other organisations are referred to collectively as *companies*.

1.3 Source Code

The Source Code refers to the code in a human-readable programming language that forms the basis for X2C and all its libraries and program parts.

1.4 Generated Code

Generated Code refers to the code that can be generated using the X2C code generation function. The Generated Code may be in human-readable or compiled form.

2. Subject of the Agreement

The subject of the Agreement is the X2C software developed by LCM in the scope acquired by the User. A list is provided below of the various editions of the X2C software, to which different licence terms and conditions and terms and conditions of use apply.

2.1 *X2C Free*, software scope:

- X2C Core for Scilab/Xcos
- X2C Communicator
- X2C Scope
- X2C BlockGenerator
- X2C libraries for Scilab/Xcos:
    - o X2C standard libraries (Basic, General, Math and Control)

2.2 *X2C Plus*, software scope:

- X2C Core for Scilab/Xcos
- X2C Communicator
- X2C Scope
- X2C BlockGenerator
- X2C script control for Scilab
- X2C libraries for Scilab/Xcos:
    - o X2C standard libraries (Basic, General, Math and Control)
    - o X2C StateControl library
    - o X2C MotorControl library

2.3   *X2C Professional*, software scope:
- X2C Core for Matlab/Simulink and Scilab/Xcos
- X2C Communicator
- X2C Scope
- X2C BlockGenerator
- X2C script control for Matlab, Python and Scilab
- X2C libraries for Matlab/Simulink and Scilab/Xcos:
  - o   X2C standard libraries (Basic, General, Math and Control)
  - o   X2C StateControl library
  - o   X2C MotorControl library

2.4   *X2C Educational*, software scope:
- X2C Core for Matlab/Simulink and Scilab/Xcos
- X2C Communicator
- X2C Scope
- X2C BlockGenerator
- X2C script control for Matlab, Python and Scilab
- X2C libraries for Matlab/Simulink and Scilab/Xcos:
  - o   X2C standard libraries (Basic, General, Math and Control)
  - o   X2C StateControl library (as a pre-compiled library, not as Source Code)
  - o   X2C MotorControl library (as a pre-compiled library, not as Source Code)

3.   Copyright, intellectual property rights and rights of use

3.1   LCM is the author of all editions of the X2C software listed in Section 2. In addition, third parties may also own copyright or intellectual property rights to parts of the X2C software. The rights of LCM and of any third parties are unaffected and unrestricted by the below rights of use being granted, and the User acknowledges said pre-existing rights to the software.

3.2   Specific terms and conditions of use for the respective edition according to the licence models below:

Following payment of the agreed fee, LCM shall grant the User the non-exclusive, non-transferrable, non-sublicensable and perpetual right to use the respective edition of the X2C software in the scope specified below.

3.2.1   X2C Free

3.2.1.1   Both private and commercial use is permitted. The *X2C Free* edition is provided free of charge.

3.2.2   X2C Plus

3.2.2.1   Use of this edition is only permissible if a duly signed licence agreement has been concluded for *X2C Plus*. The User acquires a Site Licence as defined in Section 1.1 for the company site specified in the licence agreement and thereby acquires the right to use the software for the purposes of its company under these Licence Terms and Conditions; by acquiring the licence, the User also acquires the right to integrate the software generated using *X2C Plus* into the User's products.

3.2.2.2   The User is only permitted to use the software's Source Code as defined in Section 1.3 for its own projects; disclosure of the Source Code is not permitted. The Generated Code as defined in Section 1.4 in compiled form is not subject to the ban on disclosure.

3.2.3   X2C Professional

3.2.3.1   Use of this edition is only permissible if a duly signed licence agreement has been concluded for *X2C Professional.* The User acquires a Site Licence as defined in Section 1.1 for the company site specified in the licence agreement and thereby acquires the right to use the software for the purposes of its company under

these Licence Terms and Conditions; by acquiring the licence, the User also obtains the right to integrate the software generated using *X2C Professional* into the User's products.

3.2.3.2   The User is only permitted to use the software's Source Code as defined in Section 1.3 for its own projects; disclosure of the Source Code is not permitted. The Generated Code as defined in Section 1.4 in compiled form is not subject to the ban on disclosure.

3.2.4   X2C Educational

3.2.4.1   Use of this edition, for training purposes, is only permissible if a duly signed licence agreement has been concluded for *X2C Educational*. The User acquires a Site Licence as defined in Section 1.1 for the company site specified in the licence agreement and thereby acquires the right to use the software for training purposes under these Licence Terms and Conditions.

3.2.4.2   The software's Source Code as defined in Section 1.3 is not permitted to be made public. The software, however, may be provided to participants in the training on physical data media or on servers that are not publicly accessible. In that case, participants in the training must be informed that the software is for private use only and must not be published. The Generated Code as defined in Section 1.4 in compiled form is not subject to the ban on disclosure.

3.2.4.3   This software is permitted to be used privately by the participants in the training and by the training staff.

3.2.4.4   No commercial use of any kind is permitted.

3.3   General terms and conditions of use for all editions

3.3.1   Publication of the software or of parts of the software, such as libraries, is not permitted.

3.3.2   Proprietary notices or markings, logos, licence model designations, serial numbers, labels and/or copy protection mechanisms are not permitted to be removed, modified, disguised or suppressed.

3.3.3   The User is not entitled to transfer the rights specified herein to third parties or to grant third parties corresponding rights of use. The leasing, loaning, selling, sub-licensing, assignment or transfer or rights to the X2C software and its respective edition or its libraries is therefore not permitted.

3.3.4   LCM owns and retains all rights to, ownership of and all claims to the software, including all copyright, patents, operating secrets, trade secrets, trademarks and other intellectual property rights.

3.3.5   LCM does not transfer any ownership of the software to the User. The User only obtains rights of use to the software in the scope of these Licence Terms and Conditions.

3.3.6   Any software parts that are also provided as open source under a BSD licence (X2C standard libraries – Basic, General, Math and Control) are permitted to be used in the scope of the BSD open source licence.

3.3.7   LCM is entitled to terminate the licence agreement with immediate effect, without observation of termination rights or notice periods, and thereby to withdraw the rights of use of the User, if the User violates any terms of this Agreement, in particular the intellectual property rights of LCM and/or of third parties.

4.   Modifications and updates to the software

4.1   LCM is entitled, but not obliged, to modify and update the software at its discretion. Whether a separate fee is payable by the User for said modifications/updates depends on the respective licence agreement.

4.2   LCM is not obliged to notify the User of any modifications or updates to the software.

4.3   The provisions set out in this Section of the Agreement apply to any modifications or updates to the software.

5.   Guarantee

5.1   The User is aware of the type, scope and functionality of the software; accordingly, at the time of handover LCM solely provides a guarantee that the software governed by this Agreement is owned by LCM, that LCM therefore has power of disposition over it, and that to LCM's knowledge the software is not subject to intellectual property rights of third parties that limit or exclude contractual use of the software.

5.2 The guarantee period is 6 months dating from handover of the software. Any claims must be asserted in writing within that deadline. Furthermore, LCM is only subject to a guarantee obligation if the User notifies LCM of the defect in writing without delay following occurrence of the fault and if:

(i) the User provides all documents and information necessary for correcting the fault,

(ii) the User or any third parties instructed by the User or for which the User is liable have not interfered with or made any changes to the software, and

(iii) the User has verifiably used the software correctly in accordance with LCM's specifications.

5.3 The presumption of defects at the time of handover is excluded.

5.4 Any right of recourse against LCM is excluded.

5.5 LCM assumes no guarantee for attainment of the intended project goals in connection with use of the software that is governed by the Agreement, for the project outcome itself and/or for the project matter or its actual (commercial) exploitability/usability.

5.6 Furthermore, LCM assumes no guarantee and accepts no liability for faults, disruptions or damage or losses that are due to an inadequate configuration for which LCM is not responsible (e.g. configuration of master data and parameters) or due to incorrect operation. Any defects due to modified operating system components, interfaces and parameters, data losses, use of unsuitable or faulty hardware, data media etc. are also excluded from the guarantee. There is also no guarantee whatsoever for programs that are subsequently modified by the User and/or by third parties. Furthermore, LCM assumes no guarantee for disruptions, faults or defects that arise due to the User's lack of the relevant legal, tax-related and/or commercial conditions and permissions. If an order encompasses the modification or extension of existing programs, that will not result in reactivation of the guarantee for the original program.

5.7 LCM is only obliged to provide the User with updates, patches and bug fixes within 6 months of the order date. LCM shall strive to correct any faults in X2C indicated by the User within a reasonable time period where possible, providing that the fault is reproducible and that the User provides LCM with adequate information to identify the indicated fault. If a fault is due to a specific system setup of the User, rather than to X2C, LCM reserves the right to decide itself whether to modify X2C.

5.8 Beyond the provisions of Section 5.7, LCM is not required to maintain the software, provide training or otherwise provide user support.

6. Liability, damages and disclaimers

6.1 The rules, restrictions and disclaimers set out in Section 5 above with reference to the guarantee provided by LCM apply equally if the claims of the User are (or could be) based on the legal title of damages or other contractual liability. Beyond that, however, LCM does not assume any liability for damages, including, but not limited to, direct or indirect (consequential) damages or lost profits, guarantees, warranties, product liability or other liability provisions. If LCM is liable under statutory provisions for any damage or losses, LCM's liability is limited to cases of malicious intent or gross negligence and shall strictly not exceed the respective licence fee. The burden of proof in the above cases lies with the User. Since *X2C Free* and *X2C Educational* are provided free of charge, LCM does not assume any guarantee and, in the case of fault, is only liable for gross negligence and malicious intent. For such licences that are provided free of charge, said liability is limited to half the *X2C Plus* licence fee. Unless otherwise agreed herein, any further liability is excluded. Any rights of recourse against LCM are excluded, irrespective of their legal basis. LCM is expressly not liable for any claims asserted by the User's customers or by other third parties. It is expressly noted that this licence provision does not set out any duties of care towards third parties.

6.2 Any liability claims against LCM will be time-barred by no later than 6 months following knowledge of the damage or loss.

6.3 The mandatory statutory liability for defective products irrespective of fault is excluded from the limitation set out in paragraph 6.1 if a person is injured, killed or suffers injury to health as a result of said products. Rights of recourse are excluded if the damage or loss occurs within the business chain, unless the party entitled to seek recourse provides evidence that the fault was caused in the sphere of responsibility of LCM and was due to gross negligence at minimum.

6.4 Claims for compensation for lost profit and claims for compensation of expenses for interruption to operations, recalls, production downtime or indirect damage or losses due to the supply of goods or services that do not conform to the terms of the Agreement are excluded.

6.5 In particular, LCM does not assume any liability for faults that may occur in the course of installing or operating X2C or installing updates. That includes, for example, any loss of data, disruptions or interference with other software, and damage to either the hardware required to run X2C or the hardware for which a control was designed using X2C. Furthermore, LCM does not assume any liability whatsoever for any failure or reduced performance of any data centre commissioned by the User (cloud providers etc.) or any damage or losses caused by server overload.

6.6 The User is itself responsible for its own ongoing and appropriate data protection.

6.7 The User is responsible for implementing its own hardware safety measures to protect the hardware used and to ensure its safe operation.

6.8 If any claims of infringement of intellectual property rights are asserted against LCM, LCM shall notify the User without delay. The User shall indemnify and hold LCM harmless in the event of an infringement of third-party intellectual property rights due to any behaviour on the part of the User that goes beyond the scope of this Agreement, or due to any changes and/or additions to the software made by the User on its own responsibility – even in connection with third-party deliverables.

6.9 The User is liable in the full scope of the relevant statutory provisions for any damage or losses whatsoever incurred by LCM due to a violation by the User of these Licence Terms and Conditions, in particular against the copyright of LCM or any rights (in particular intellectual property rights) of third parties.

7. Supplementary terms and conditions for "nightly build" versions

7.1 "Nightly build" versions refer to software whose development has not yet been completed and whose functionality has not yet been tested.

7.2 The User expressly acknowledges that each nightly build version of the software is a test product and may contain bugs, faults and other problems that may result in malfunctioning and other disruptions to the system, including, but not limited to, system crashes, system interruptions and data loss. Damage to hardware cannot be ruled out either. The User is alerted to the need to take care and not to rely whatsoever on the performance or functioning of the nightly build version of the software. Nightly build versions are solely provided at the risk of the customer. With the exception of cases of gross negligence and malicious intent, LCM does not assume any liability, guarantee or warranty whatsoever for the functionality, safety/security, marketability or other properties of such nightly build versions.
Nightly build versions of the software and their documentation are provided to the User in an as-is condition.

8. Confidentiality

8.1 Any program parts, files, libraries and documentation marked as confidential elements constitute confidential information. The User shall not disclose said information (irrespective of whether it relates to the software or not) to third parties and shall not make said information accessible to third parties without the prior written agreement of LCM. The User agrees to treat the software with the same care and confidentiality as its own business secrets and operating secrets and with at minimum due professional care.

8.2 The confidentiality requirement expressly does not apply to information
   a) that was already publicly known and available at the time that the information was made available or that has subsequently become publicly known and available through no fault of the User,
   b) that was or is lawfully obtained and disclosed by a third party without violating a confidentiality requirement,
   c) that was verifiably known to the User in a lawful manner and on a non-confidential basis before it was made available,
   d) that the User is obliged by mandatory law to disclose in judicial proceedings, authority proceedings or other proceedings.
   The Party that cites an exemption from the confidentiality requirement bears the burden of proof that this confidentiality requirement does not apply to said information.

8.3   The confidentiality requirement expressly does not apply to the *X2C Free* edition.

9.   Severability

9.1   If any provisions of these Licence Terms and Conditions are or become wholly or partially ineffective or unenforceable or if there is a gap in the Agreement, the effectiveness of the other provisions will be unaffected. In that event, the ineffective provision or gap shall be replaced by a provision that comes as close as possible to the commercial purpose and commercial intent of the Parties.

10.   Written form

10.1   No oral side agreements have been made. Any amendments or additions to this Agreement must be made in written form. That rule also applies to any waiver of the requirement for written form.

10.2   The general terms and conditions, purchasing terms and conditions, forms and other provisions of Users do not apply.

10.3   The German-language version of these Licence Terms and Conditions shall take precedence if there are any differences of interpretation between the German-language and foreign-language versions hereof.

11.   Applicable law, place of jurisdiction and place of performance

11.1   This Agreement is solely governed by Austrian law, with exclusion of international conflict-of-law rules. The United Nations Convention on Contracts for the International Sale of Goods expressly does not apply.

11.2   The sole jurisdiction of the relevant court in Linz, Austria, is agreed by the Parties for any disputes that may arise from or in connection with this Agreement. The place of performance is Linz, Austria.