



発行日:2023/4/1

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ソフトウェア利用許諾契約書

1 総則

1.1 このソフトウェア利用許諾契約（以下「本契約」と称します）は、お客様と株式会社三井E&S社（以下「弊社」と称します）の間で締結される契約となります。

1.2 本契約において「お客様」とは、e-GICS Advanceを購入（Purchase）・運用（Operate）・利用（Utilize）する個人又は法人を意味します。

2. 適用範囲

2.1 本契約は、弊社が提供する次の製品の使用に関するお客様の権利を規定します。

(1) e-GICS Advance

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(1) 弊社により又は弊社用に開発されたソフトウェア（以下「プロプライエタリソフトウェア」と称します）

(2) オープンソースではないサードパーティ製ソフトウェアで、サブライセンスを与える権利が弊社に付与されたもの（以下「ライセンスソフトウェア」と称します）

(3) オープンソースライセンスの下で弊社によってライセンスされているソフトウェア（以下「オープンソースソフトウェア」と称します）

2.3 本契約の合意の下に、お客様はエンジンに関連するサービス（以下「本サービス」と総称します）を使用できます。お客様が本契約に合意しない場合、セクション2.4に記載された拒否理由に該当する状況を除き、本サービスを利用する権利を有しません。

2.4 該当する拒否理由は次のとおりです。

(1) 本契約がお客様の国の法律で明確に禁止されている場合

(2) 弊社がエンジンのデータを故意に第三者に開示したことにより、お客様が損失や損害を被った場合

(3) 管轄権を有する裁判所により本契約が違法であると判示された場合

2.5 本契約には、MAN Energy Solutions 社が開発するソフトウェアを含みません。お客様は、本契約とは別にMAN Energy Solutions 社が提供するエンドユーザ使用許諾契約（EULA; End-User License Agreement）に定められた規定を遵守するものとします。

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- (3) プロプライエタリソフトウェア又はライセンスソフトウェアを、第三者に頒布、公開、賃貸、リース、貸与、又はその他の方法で提供すること
- (4) 本ソフトウェアの全部又は一部を改変又は二次創作すること
- (5) 本ソフトウェアの所有権表示やラベル、又はその写しを削除すること
- (6) 本契約に明示的に許可されている方法以外で、本ソフトウェアを使用すること
- (7) 弊社のサーバ又はネットワークの機能を破壊したり妨害したりすること
- (8) 弊社によるエンジンに関連するあらゆるサービスの提供を妨害すること
- (9) 他のユーザに関する個人情報等を取得したり保存したりすること
- (10) 他のユーザに成りすますこと
- (11) 法令又は公序良俗に反する行為を行うこと

(12) 犯罪行為又は同様な行為を行うこと

(13) 本サービスの利用者を通じて、反社会的勢力に対して直接、間接問わず、利益を供与すること

(14) その他弊社が不適切と判断する行為を行うこと

5 技術的要件

5.1 本ソフトウェアが正常に機能するためには、お客様のシステムは少なくとも、本ソフトウェアの取扱説明書に記載されている最小システム要件を満たしている必要があります。

5.2 次の場合、本ソフトウェアが正しく機能しないことがあります。

(1) 本ソフトウェアの取扱説明書に記載されている最小システム要件を満たしていないシステム上での使用

(2) 弊社が承認していない他の製品、材料、機器、部品、装置との併用

5.3 基本的にはお客様のご要求に応じて、弊社は本ソフトウェアのインストールと操作方法のトレーニングに関する技術サポートを提供します。但し、弊社が必要と認めた場合には別途の契約に基づいての提供となる場合がございます。

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6.3 お客様が本ソフトウェアとともに受け取る文書に記載されている既知の欠陥及び瑕疵は、セクション6.2 に基づき、いかなる場合においても弊社が責任を負うか又は修補する義務を負う欠陥とは見なされないものとします。

7 コンプライアンス

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7.2 お客様は、セクション7.1 の違反に起因又は関連して弊社が被ったあらゆる一切の責任、費用、経費、損害及び損失（直接的、間接的又は結果的な損失、逸失利益、評判の喪失、また、全ての利子、罰金、訴訟費用（全額補償）及びその他の全ての合理的な職業的経費と費用

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- (2) お客様が本サービスに対する料金支払いを行わない場合

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12.6 本セクションにおけるデータアクセス／処理の権利は、弊社がエンジンの監視や保守を無償で提供する義務を意味するものではありません。

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改正履歴 / Revision history

改正番号/Rev. No.	日付/Date	承認/ Approved by	照査/ Reviewed by	担当/ Prepared by
A	2023/4/1	Shuhei Ono		Kenji Nagahashi
B				
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MAN-ES-FGLD-2019.01.EULA

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- 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.
- 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 a piece of Software upon Your receipt of the Software and shall remain in full force and effect until terminated in accordance with this Section 8.



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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 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.



END USER LICENSE AGREEMENT

MAN-ES-FGLD-2019.01.EULA

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://extranet.mandieselturbo.com/Content/SoftwareEndUserLicenseAgre/Pages/Default.aspx>. 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 a specific piece of 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 willful 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 (including personal data if such data might be seen also as personal data under the applicable jurisdiction) from the Engine remotely or by LAN, or otherwise (hereafter "Data Access / Processing") for the purpose of using said data for marketing or for optimizing the Engine, including but not limited, to service, commissioning, benchmarking, technical optimisation and improvements of existing products, development of new products and statistical purposes, and You shall upon MAN's request procure that MAN can effectively access, collect, transfer, store, process and use data. MAN shall keep the data confidential and may only use and disclose it, as set out in this Section 13. MAN will anonymize all data before being used, except that MAN will need to be able to identify which Engine the data is coming from. MAN may utilize the Data Access / Processing to retrieve from time to time, and without prior notice, all available data regarding the Engine from the data logger and may transmit this data for storage, processing and use to a system located at MAN and/or as the case may be on the system of an external data processing operator on behalf of MAN who is under an obligation towards MAN to keep the data confidential and to observe all data protection provisions which are applicable. Notwithstanding the foregoing, to the extent that MAN has completely anonymized the data, including so it will not be possible to identify which specific Engine the data is coming from, MAN shall in all aspects be free to use and disclose such data to third parties for any purpose, as MAN may wish. MAN is allowed to share such data with sub-contractors or cooperation partners of MAN to the extent such sub-contractors or cooperation partners reasonably need access to such data in order to perform their services and provided the sub-contractors or cooperation partners are under an obligation towards MAN to keep the data confidential and to observe all data protection provisions which are applicable. If any data constitutes personal data, You undertake to ensure that relevant personnel is informed about the registration and processing of such data for the purpose of this Section 13.1, including MAN's data policy, which can be acquired from MAN or found on <https://www.man-es.com/dataprotection> and, to the extent needed, obtain their consent thereto, in accordance with applicable data protection laws, including (when applicable) the General Data Protection Regulation. Further, any data constituting personal data will be stored, processed or used by MAN within the European Union, the European Economic Area and Great Britain, but MAN reserves the right to transfer said data for processing by subcontractors in third countries. In the event any data constituting personal data will be processed and transmitted to a subcontractor of MAN outside the European Union, then MAN will ensure that such a transfer is carried out 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.

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- 13.2 If the Data Access / Processing is not already granted at this time, You hereby expressly consent to said Data Access / Processing for data which has already been collected or that will be collected in the future.
- 13.3 For the avoidance of doubt this right to Data Access / Processing does not imply any obligation for MAN to provide any monitoring of or any maintenance of the Engine.
- 14 Assignment**
- 14.1 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.
- 14.2 Except as expressly permitted in Sections 14.3 and 14.4 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.
- 14.3 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.
- 14.4 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.
- 15 Severability**
- 15.1 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.
- 16 Law and venue**
- 16.1 This EULA shall be construed in accordance with and governed in all aspects by the laws of Denmark, 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.
- 16.2 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 Copenhagen, Denmark 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.