

dSPACE MODEL COMPARE LICENSE AGREEMENT

**IMPORTANT – USE OF THIS SOFTWARE IS SUBJECT TO LICENSE RESTRICTIONS
CAREFULLY READ THIS LICENSE AGREEMENT BEFORE USING THE SOFTWARE**

This license is a legal Agreement between you, the end user, either individually or as an authorized representative of the company acquiring the license (collectively “the Customer”), and dSPACE digital signal processing and control engineering GmbH acting directly or through its local dSPACE companies or authorized distributors (collectively “the Licensor”), concerning the use of dSPACE Software along with all modifications, updates and any new releases of the Software which the Licensor may make available to you at any future date. This Agreement does not cover customer-specific developments, which are subject to separate agreements between the parties. A REFERENCE TO THIS LICENSE AGREEMENT HAS BEEN PROVIDED TO YOU TOGETHER WITH THE LICENSOR’S COMMERCIAL OFFER. INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE INDICATES YOUR COMPLETE AND UNCONDITIONAL ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, ESPECIALLY BUT NOT LIMITED TO THE RESTRICTIONS ON USE CONTAINED IN ARTICLE III. SECTION 3.8, AS WELL AS TERMS AND CONDITIONS FOR ANY THIRD-PARTY COMPONENTS AS REFERENCED UNDER ARTICLE IV. SECTION 4.2. IF YOU DO NOT AGREE TO THE LICENSE CONDITIONS, DO NOT INSTALL OR USE THIS SOFTWARE. IN SUCH CASE YOU MAY RETURN IT TO THE LICENSOR FOR A FULL REFUND WITHIN THIRTY (30) DAYS OF DELIVERY.

Article I. Agreement, Period, and Definitions

- 1.1 **Agreement and Term.** The Licensor and the Customer (collectively "the Parties") agree that the terms and conditions of this Agreement apply to the provision of Licensed Software and Services (as defined below) to the Customer by the Licensor. This Agreement remains effective until expiration or termination. The Licensor may terminate or withdraw from this Agreement if the Customer or anyone acting on the Customer’s behalf fails to comply with any term or condition of this Agreement or if the Customer fails to pay for the license when due and an unsuccessful reminder has been sent or does not have to be sent because a binding or defined deadline for payment was set. If the Software is provided for use for a limited period, this Agreement will automatically expire at the end of the authorized period. Upon termination or expiration of the License, the Customer agrees to cease all use of the Software and to return it to the Licensor or to certify the deletion and destruction of the Software, including all copies and subcomponents, to the Licensor’s reasonable satisfaction.
- 1.2 **Certain Definitions.** The following definitions apply to this Agreement:
- (a) “Affiliated companies” refers to companies that control, are controlled by, or are under common control with another company. “Control” as used here means the ownership of more than fifty percent (50%) of such company’s capital or equivalent voting rights.
 - (b) “Dongle” means a small piece of hardware that connects to a PC and that is used as a form of copy protection or digital rights management to authenticate a piece of installed software.
 - (c) “Evaluation purposes” means using the Licensed Software for the purpose of testing whether the Licensed Software might meet the requirements of the Customer with regard to its use for a specific project.
 - (d) "Licensed Software" means dSPACE Model Compare, including but not limited to respective object code, that is or will be provided by the Licensor according to this Agreement. Unless otherwise explicitly stated hereinafter, the definition of Licensed Software also includes any enhancements, translations, modifications, updates, releases,

or other changes to the Licensed Software which are or will be provided as part of the Licensor's performance of warranty service obligations or prepaid support services according to this Agreement.

- (e) "Permanent License" means a license to use the Licensed Software in perpetuity, for which a one-time payment has been made.
- (f) "Real-Time Code" means code that is suitable for simulating the behavior of a particular physical system while complying with well-known real-time constraints, like the timely execution of operations.
- (g) "Research and Development" means the Customer's in-house activities with the aim of creating, improving or enhancing products, services or processes, gaining or enhancing knowledge or skills, or developing prototypes. The results of such activities may provide a basis for future productive work. Any direct use of results in production or in external applications does not constitute Research and Development. "Direct use" means use as a tool or component – either as a whole or in parts – without prior complete and thorough testing and validation by the Customer.
- (h) "Server" denotes a computer program in a network that performs tasks for a client when requested by that client, and also the hardware on which such a computer program runs.
- (i) "Site" means geographically contiguous buildings, each of which, in whole or in part, is occupied or accessed by the Customer.
- (j) "Software Documentation" means written information that is part of the software delivery and that describes the features and various aspects of the software's intended operation, e.g., tutorials, user guides, and product descriptions, whether distributed in print or electronic form, that are in effect as of the date on which the Licensed Software is shipped to the Customer.
- (k) "Third Party" means any party other than the Licensor or the Customer.

Article II. Provision of Licensed Software

- 2.1 **Grant of License.** For each item of Licensed Software received by the Customer, and subject to the terms of this Agreement, especially but not limited to the restrictions under Article III Section 3.8, the Licensor grants the Customer a nonexclusive license to use, execute and store the version of the Licensed Software provided by the Licensor for the purpose described in the Licensor's software product description or software documentation. With the exception of Evaluation Licenses (Article II. Section 2.2 (e)), a permanent license is granted unless the Licensor's commercial offer explicitly states otherwise.
- 2.2 **Types of Licenses.** Depending on the Licensed Software, the Licensor may provide the following types of licenses:
 - (a) A "*Dongle License*" permits the Customer the use of one instance of the Licensed Software at a time on a single PC, but is not fixed to a designated PC. The use of the software on a specific PC is authorized by plugging a dongle into the PC's USB port and by license files.
 - (b) A "*Floating Network License*" permits the Customer the use of one or more instances of the Licensed Software on a client and is limited only by the number of licenses available on the license server. It uses a license server and license files to authorize the use of the Software. A Floating Network License is granted subject to the following restrictions:

- (i) Unless otherwise approved by the Licensor in writing, the Floating Network Licenses shall be used only in the country in which they were purchased. A Floating Network License must not be invoked or used from outside said country. Global sharing of centrally installed licenses is not permitted.
- (ii) Depending on the Licensed Software, a timeout mechanism (linger time) of 30 minutes may apply, i.e. the licenses are not released and made available to other users until 30 minutes after the last action triggering an automatic license check. The linger time applies to software in which the start time and end time of use are not defined precisely (e.g., TargetLink, RTI and PowerPC compiler). The Licensor’s commercial offer will inform the Customer of any linger time applying to the license. The licenses for all other software become available to other users immediately when the software is closed.
- (c) The “*Licenses for Simulation Models*” specify the scope of use of the simulation models provided by dSPACE (Automotive Simulation Models (ASM) and XSG libraries) and are divided into the following license types:
 - (i) A “Development License” is required to create Simulink models by using the ASM/XSG components, to modify them, to simulate them in Simulink and to generate real-time code from them for use on a dSPACE platform.
 - (ii) An “Execution License” allows the user to use the real-time code that was generated with a Development License on a dSPACE platform. If the generated real-time code is intended to be executed on multiple dSPACE platforms simultaneously, a matching number of Execution Licenses must be available. Furthermore, an Execution License allows the user to simulate Simulink models by using ASM components that were specially prepared for execution in Simulink by dSPACE.
- (d) An “*Evaluation License*” permits the Customer to install and use a certain number of copies of the Licensed Software for evaluation purposes and only for a limited period of time. The Evaluation License permits the Customer the use of a limited number of software instances according to the kind of license that was provided to the Customer and is subject to the following restrictions:
 - (i) The Evaluation License might grant access to only a limited range of functions of the Licensed Software.
 - (ii) The Evaluation License must not be used for work paid for by third parties.
 - (iii) The Customer must in no event reveal any benchmark results or other comparisons obtained with the Licensed Software to any individual or party, other than the Customer’s employees with a need to know, without prior written consent from the Licensor.
 - (iv) The Evaluation License shall not be assigned or transferred to any third party, including any affiliated company.
 - (v) After expiration of the Evaluation License the Licensed Software must be uninstalled.
- (e) The Licensor acknowledges and agrees that the Licensed Software acquired through the Licensor can be made available to third parties who provide services to the Customer (“Third-Party Service Providers”) and who were commissioned by the Customer to perform tasks for the Customer, but only within an area that is directly accessible to and under the control of the Customer. The usage rights of such Third-Party Service Providers is limited to the delivery form provided to the Customer (e.g., object code) and to the usage rights granted to the Customer (license types and conditions). The use of Licensed Software by Third-Party Service Providers is further subject to the provision that such third party utilizes

the Licensed Software and Documentation solely to carry out work requested by the Customer. The Customer is responsible for compliance by its Third-Party Service Providers with the terms and conditions set forth in this Agreement, including but not only the restrictions under Article III below.

- 2.3 License Protection. The Licensed Software contains a mechanism that protects it against unauthorized use according to the applicable license type.

The Customer must not circumvent or try to circumvent the License Protection, neither by using any technical means (hardware or software) nor otherwise. This expressly includes the reproduction of the Licensed Software, the bypassing of the protection mechanism by means of a virtual machine, and the indirect use of a dongle via a device server or other network technique such as running the Licensed Software on a server for automatic code generation or deployment purposes. Any attempt to circumvent the License Protection is prohibited and constitutes a material breach of this License Agreement and will be prosecuted to the maximum possible extent.

- 2.4 Retention of Title. In the event that a permanent license is granted under this Agreement, any tangible copy of the Licensed Software and the Documentation remain the property of the Licensor until full payment of the applicable license fee has been made. The Customer may, however, commence using the Licensed Software and Documentation as intended from the time of delivery.

- 2.5 Assignment. Permanent Licenses may be sold (not leased) to any third party subject to the condition that the Customer has fully paid the applicable license fee, abandons all rights to the sold copy of the Licensed Software and informs the Licensor of the name and address of the purchaser. For the avoidance of doubt, licenses shall be sold only in the same form and to the same extent as granted to the Customer, particularly under the condition of compliance with this License Agreement

- 2.6 Software Updates. The Licensor grants the Customer the entitlement to receive free updates for a period of 6 months following the invoice date, in the event that new versions are officially issued during that period. The free update service is restricted to the initial purchase of the Licensed Software. It explicitly does not apply to the purchase of software updates. The updates shall either be made available on the Internet for the Customer to download or be automatically sent to the Customer, as the Licensor decides.

- 2.7 Basic Technical Support. Beyond the Licensor's performance of warranty service obligations as stipulated under Article V below, the Licensor provides free technical support to such an extent and for such period of time as the Licensor, at its sole discretion, thinks reasonable and appropriate ("basic technical support"). In the event that any support request goes beyond such basic technical support and therefore would have to be charged for, the Licensor shall inform the Customer accordingly and shall not start the provision of support services without the consent of the Customer. The terms of Article V. shall remain unaffected.

- 2.8 Software Maintenance Service (including Premium Support). The Customer may extend its entitlement to receive regular software updates as mentioned under Section 2.6 above by purchasing a Software Maintenance Service. The Customer will then automatically receive all the upgrades and enhancements released during the maintenance period and be given Premium Support for the Licensor's products listed in the Licensor's official price lists. Premium Support means high priority, guaranteed response times, unlimited telephone support, online support via WebEx and access to senior staff from the Licensor's development departments when appropriate. The Software Maintenance Service is subject to special Software Maintenance Service Terms and Conditions and has to be ordered separately.

Article III. Restrictions

- 3.1 Application Fields. The Licensed Software is designed exclusively for use in research and development. It must be put into operation exclusively by suitably trained and expert operating personnel, under strict compliance with the safety measures described in the software documentation. Any results obtained from or by use of the Licensed Software must be thoroughly tested and validated by the Customer before being incorporated, distributed or otherwise used in or in connection with any end product or application.
- 3.2 Proprietary Markings. The Customer shall not remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed Software.
- 3.3 Duplication / Copying. The Customer may duplicate Licensed Software Documentation, at no additional charge and for the Customer's use only, as long as all the required proprietary markings are retained on all the duplicated copies.

Copying of the Licensed Software is prohibited unless it is necessary for using the Licensed Software as intended according to the agreement between the Parties or for normal archiving practices, or is otherwise permitted under applicable law.

- 3.4 No Modification, Decompilation, etc. The Customer shall not modify, adapt, translate or create derivative works based upon the Licensed Software or associated documentation. Further, the Customer shall not reverse-engineer, decompile, disassemble, or otherwise attempt to discover the source code of, the Licensed Software except to the extent that decompilation is expressly permitted by applicable law (including but not only Section 69 (e) of the German Copyright Act) or by the stipulations under Article IV, 4.2. Any proprietary markings, serial numbers or other attributes of identification shall not be modified.
- 3.5 No Sublicenses. The Customer may not lease or sublicense the Licensed Software unless this is approved by the Licensor in writing.
- 3.6 No Internet, Network or Virtual Applications. The Customer is not authorized to access (directly or indirectly) the Licensed Software or its license protection mechanism via Internet or network applications (e.g., Citrix, Microsoft Remote Desktop or other terminal/device servers) or to grant third parties such access. This restriction does not include the use of the Licensed Software within the framework of a Floating Network License as permitted under Article II. 2.2 item (c).

Furthermore, the Customer is not authorized to run the Licensed Software on a server for automatic code generation or deployment purposes or as an application program on a virtual machine

- 3.7 Export. The Licensed Software might be subject to export restrictions, including but not limited to restrictions under German, EU and US export law, which prohibit the export or diversion of certain products, information about the products, and direct products of the products to certain countries and certain persons. The Customer agrees not to export any Licensed Software or direct product of Licensed Software in any manner without first obtaining all necessary permissions from appropriate government agencies.
- 3.8 LOCAL RESTRICTIONS. PRODUCT USE PROHIBITED IN UNITED STATES. The Customer is not licensed to use the Licensed Software in the United States. The Customer agrees not to use or permit others to use the Licensed Software in the United States or in any way that violates the laws of the United States.
- 3.9 Audit Rights. Should there be reasonable grounds for suspecting that the Customer has violated this License Agreement, the Licensor shall have the right to inspect or have an independent auditor inspect the Customer's facilities and records to verify the Customer's compliance with the

terms and conditions of this Agreement, provided that such audit(s) shall be conducted during normal business hours and in such a manner as not to interfere unreasonably with the operations or to endanger confidential information of the Customer. If such an inspection reveals that the Customer is not compliant with said terms and conditions, the Licensor may exercise any or all rights and remedies provided under this Agreement or by law, including but not limited to the right to recover the cost of such audit.

Article IV. Ownership and Third-Party Intellectual Property Rights

- 4.1 Ownership of Licensed Software. The Licensed Software shall be and remain the intellectual property of the Licensor or third parties which have granted the Licensor the right to license the Licensed Software. The Customer shall have no rights, title or interests therein except as explicitly set forth in this Agreement.
- 4.2 Third-Party Components. Some of the Licensed Software may utilize or contain third-party software (hereinafter “third-party components”). “Third-party components” includes open-source software that provides open source code and can be copied and distributed, even after being modified, if certain conditions are met. The use of third-party components may be subject to special or additional terms and conditions (hereinafter “license conditions”) that differ from those stipulated in this License Agreement and that have to be adhered to when the third-party component is used.

A list of information on third-party components whose license conditions the Licensor is obliged to pass on can be viewed at our website under www.dspace.com/goto?EULA and is also available as a PDF file on the DVD with the Licensed Software. On accepting the dSPACE License Agreement, the Customer also accepts the relevant terms and conditions for the third-party components mentioned thereunder.

As per Articles V-VII, the Licensor is responsible for ensuring that the planned use of third-party components together with the Licensed Software and the contractually agreed use of the Licensed Software is in line with the relevant license conditions of the third-party component and that the contractually agreed use of the Licensed Software – unless explicitly agreed otherwise – is not limited by said license conditions.

If the license conditions of third-party components contain liability limitations or exemptions, said limitations and exemptions apply only to the creator of the third-party component. The Licensor’s liability remains unaffected and is determined only by stipulations in the dSPACE End User License Agreement, unless explicitly agreed otherwise.

If the Licensed Software shall be executed together with a third-party component that is subject to the GNU Lesser General Public License via compilation or linking, and if the Licensed Software is distributed in combination with or linked to the third-party component, the Customer may modify the third-party component and then combine it again with the Licensed Software. Deviating from Article III, 3.4, the modifications to the Licensed Software that are required for such linking are permitted, but only if and to the extent that this is required to combine the new version of the third-party component with the Licensed Software, and exclusively for Customer-internal purposes. This also applies to reverse engineering that is performed to eliminate errors that occur when the third-party component is integrated in the Licensed Software.

Unless the third-party license conditions explicitly grant more rights, and in cases where no additional license conditions are referenced in the above-mentioned list, the Customer may use the third-party component only in combination with the Licensed Software and only within the scope required by the contractual use of the Licensed Software.

Conditions that were agreed upon or accepted by the Customer in individual cases apply independently of this.

- 4.3 Infringement of Third-Party Rights. Should the Licensed Software infringe any third-party intellectual property rights, the regulations under Articles V-VII below shall apply accordingly.

Article V. Warranty under Paid Licenses

- 5.1 Warranty. The Licensor warrants that the Licensed Software has the functions and features contained in the software product description or software documentation of the software version that is valid at the time the license is granted.

Any non-substantial variation from the agreed functionalities, which does not impair the use of the Licensed Software as intended according to the agreements between the Parties, shall not be considered a defect and does not establish any warranty rights.

- 5.2 Further Warranty or Guarantee. No other or further characters and/or features or a purpose beyond what is stated in the software product description or software documentation shall be deemed to have been agreed unless expressly confirmed in writing by the Licensor. The same applies to the alleged grant of any guarantee.

- 5.3 Warranty Rights under Permanent Licenses. Should the Licensed Software fail to have substantial functions or features contained in the product description or software documentation within a warranty period of 12 months from its delivery, or should the software medium prove to be defective within this time, the Licensor, at its own discretion, may either

- (a) Correct the defect(s) by performing repairs or by supplying a new version of the Licensed Software to fulfill its contractual duties (subsequent performance), or
- (b) Take back the Licensed Software and refund the license fee(s) already paid.

Should the Licensor finally fail to correct the defect(s), the Customer may, at its own discretion, either demand a reasonable reduction of the license fee or withdraw from the contract

- 5.4 Warranty Rights under Time-Limited Licenses. Should the Licensed Software fail to have substantial functions or features contained in the product description or software documentation, or should such functions or features cease to exist during the license term, the Licensor shall correct the defect(s) either by performing repairs or by supplying a new version of the Licensed Software. Should the Licensor be unable to correct the defect(s) within a reasonable period of time, i.e. a period that does not significantly impair the Customer's use of the Licensed Software, the Customer may demand a reasonable reduction of the license fee depending on the severity and duration of the impact until the defect(s) is/are finally corrected.

This does not affect any right of the parties to terminate the contract for good cause.

- 5.5 Subsequent Performance by Supplying New Release Subsequent performance can also consist of supplying a new release of the Licensed Software in the event that correcting the defects in, or adapting the original version of, the Licensed Software (for example, by developing a patch) is viewed as unreasonable by the Licensor, particularly in view of the anticipated costs in relation to the product price. Following the receipt of a new release, the Customer has a 2-week period in which to refuse to consent to subsequent performance by means of supplying a new release. If the customer does not refuse consent within the 2-week period, the supply of the new release is deemed to constitute subsequent performance, provided that the new version remedies the defect that was the subject of the complaint.

- 5.6 Notification of Defects. The Customer shall notify the Licensor of any defect in writing and without undue delay. The assertion of warranty claims is otherwise excluded.
- 5.7 Intervention by Customer. The Customer's warranty claim shall expire if the Licensed Software is treated incorrectly or used for a purpose for which it is not intended, or if an attempt to modify or repair any of the Licensed Software or components is made by a person not explicitly authorized by the Licensor to do so, unless the Customer supplies proof that the action is not causally connected with the defect.
- 5.8 Claims for Damages. A warranty period of 24 months applies to claims for damages made by the Customer for personal injury or damage to health due to a defect for which the Licensor or a legal representative or agent of the Licensor is responsible. With regard to any claims for damages due to any defect in the Licensed Software, Article VI shall additionally apply.

Article VI. Liability under Paid Licenses

- 6.1 Licensor's Liability. No claims for damages may be asserted against the Licensor (including its legal representatives and agents) on any legal grounds whatsoever except in compliance with the following terms:
- (a) The Licensor is liable for intentional acts and in cases where liability is mandatory by law, including, but not restricted to, cases where product liability law applies, where there is culpably caused injury or damage to health or loss of life, or material damage due to the absence from the Licensed Software of features that are guaranteed by the Licensor.
 - (b) The Licensor is also liable in cases of gross negligence and in cases of slight negligence in which an essential contractual duty is violated. A contractual duty is considered to be essential if its fulfillment is a precondition for proper fulfillment of the agreement and if the other party to the agreement was regularly able to rely on it being performed (also called a cardinal duty).
 - (c) In cases of damage to property or financial damage due to slight negligence, liability shall be limited to the damage that is typical for the contract and that might reasonably have been predicted at the time of its conclusion.
 - (d) In the event of data loss, the Licensor is liable under the conditions stated above only for and up to the cost of recovering the data, and only on the condition that proper data backup has been performed by the Customer.
 - (e) No liability is otherwise accepted. This particularly applies to consequential harm caused indirectly by a defect, including loss of profit and nonachievement of savings.

Article VII. Warranty and Liability for Software and Services Provided Free of Charge

- 7.1 Free-of-Charge Software and Services. Under certain conditions and at the Licensor's sole discretion, Licensed Software or services may be provided to the Customer free of charge. Software updates and basic technical support provided free of charge according to Article II, Sections 2.6 and 2.7 above are not deemed to be free-of-charge software or services as covered by this term.
- 7.2 No Warranty. No warranty is given for software and services provided by the Licensor free of charge. However, in the event that the Licensed Software fails to have functions or features

necessary in order to use the Licensed Software according to the contract and that the Licensor maliciously concealed this from the Customer at the time the Licensed Software was provided to the Customer, the Licensor shall indemnify the Customer for any damage resulting from the Customer's reliance on said functions or features.

- 7.3 Limited Liability. The Licensor's liability under the terms of Article VI above shall apply to software and services provided by the Licensor free of charge with the following restriction:

Except for any liability for intentional acts, and in cases where liability is mandatory by law, including, but not restricted to, cases where product liability law applies, where there is culpably caused injury or damage to health or loss of life or damage due to the absence from the Licensed Software of certain features guaranteed by the Licensor, the Licensor is liable only for gross negligence, not for slight negligence.

Article VIII. Customer's Liability

- 8.1 Indemnity. The Customer agrees to defend the Licensor, to hold the Licensor harmless and to indemnify the Licensor against any and all liabilities, losses, actions, damages, or claims (including all reasonable expenses, costs, and attorneys' fees) arising out of or relating to any use of the Licensed Software by or with permission of the Customer in violation of the terms and conditions herein, especially but not limited to the restrictions under Article III Section 3.8.
- 8.2 Additional Remedies. The aforesaid applies without prejudice to any other or further remedies which may exist under applicable law.

Article IX. Miscellaneous

- 9.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter. With regard to commercial/business terms and conditions, any general terms and conditions agreed between the Parties may apply additionally unless they are inconsistent with the terms contained herein. Inconsistent terms and conditions, including but not only the Customer's conditions of purchase, shall not constitute part of the contract, even if the Customer makes reference to them in connection with the order placement.
- 9.2 Written Form Requirement. Any amendments or additions to this Agreement must be made in writing and must be expressly marked as such. This also applies to this written form requirement.
- 9.3 Severability. In the event that any of the above terms is or becomes invalid, the remaining terms shall continue in full force and effect.
- 9.4 Headings. Any headings in this Agreement are included for convenient reference only and shall not affect the interpretation of this Agreement.
- 9.5 Waiver. Any failure to enforce, or any waiver of, any right under this Agreement by the Licensor shall not be construed as a waiver of future rights.
- 9.6 Choice of Law Except in cases where the provisions of this Agreement differ from the legal regulations, the latter shall apply additionally. This Agreement shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

- 9.7 Place of Jurisdiction. Paderborn, Germany, is agreed as the exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement, unless a different place of jurisdiction is mandatory on the basis of legal requirements.