

THIS SOFTWARE LICENCE AGREEMENT (the “Agreement”)

BETWEEN:

FACTOR OF MATT (the “Licensor”)

– AND –

You (the “Licensee”)

BACKGROUND:

The Licensor wishes to licence computer software to the Licensee and the Licensee desires to use the software licence under the terms and conditions stated below.

IN CONSIDERATION OF the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Licence

1. Under this Agreement the Licensor grants to the Licensee a non-exclusive and non-transferable licence (the “Licence”) to use DesTestMAX, DesTestMAX-SL, DesTestFull and/or DesTestKernal (the “Software”).
2. “Software” includes the executable computer programs and any related printed, electronic and online documentation and any other files that may accompany the product.
3. Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with the Licensor. Intellectual property rights include the look and feel of the Software. This Agreement constitutes a licence for use only and is not in any way a transfer of ownership rights to the Software.
4. The rights and obligations of this Agreement are personal rights granted to the Licensee only. The Licensee may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity.
5. The Software may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.
6. Failure to comply with any of the terms under the Licence section will be considered a material breach of this Agreement.
7. You may redistribute the distribution archive.
8. You may host an unmodified copy of the distribution-archive on your website.
9. The Licensee may build a DesTestMAX, DesTestMAX-SL, DesTestFull or DesTestKernal cartridge or PROM only using an unmodified version of the binary supplied in the distribution archive.
10. You may not sell completed DesTestMAX, DesTestMAX-SL, DesTestFull or DesTestKernal cartridges or PROMs (or multicartridges or multiPROMs that contain DesTestMAX, DesTestMAX-SL, DesTestFull or DesTestKernal binaries) without express permission from FACTOR OF MATT.

Licence Fee

11. There is no fee to use the Software.

Limitation of Liability

12. The Software is provided by the Licensor and accepted by the Licensee “as is”. The Licensor will not be liable for any general, special, incidental, or consequential damages including, but not limited to, loss of

production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by the Licensee arising out of the use or failure to use the Software.

13. The Licensor makes no warranty expressed or implied regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for the specific requirements of the Licensee.
14. The Licensor does not warrant that use of the Software will be uninterrupted or error-free. The Licensee accepts that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.

Warrants and Representations

15. The Licensor warrants and represents that it is the copyright holder of the Software. The Licensor warrants and represents that granting the licence to use this Software is not in violation of any other agreement, copyright or applicable statute.

Acceptance

16. All terms, conditions and obligations of this Agreement will be deemed to be accepted by the Licensee (“Acceptance”) upon **downloading of the Software**.

User Support

17. No user support or maintenance is provided as part of this Agreement.

Term

18. The term of this Agreement will begin on Acceptance and is perpetual.

Termination

19. This Agreement will be terminated, and the Licence forfeited where the Licensee has failed to comply with any of the terms of this Agreement or is in breach of this Agreement. On termination of this Agreement for any reason, the Licensee will promptly destroy the Software or return the Software to the Licensor.

Force Majeure

20. The Licensor will be free of liability to the Licensee where the Licensor is prevented from executing its obligations under this Agreement in whole or in part due to Force Majeure or any other unforeseen and uncontrollable event.

Governing Law

21. The Parties to this Agreement submit to the jurisdiction of the courts of the Province of Ontario for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement. This Agreement will be enforced or construed according to the laws of Canada.

Miscellaneous

22. This Agreement can only be modified in writing signed by both the Licensor and the Licensee.
23. This Agreement does not create or imply any relationship in agency or partnership between the Licensor and the Licensee.
24. This Agreement contains the entire agreement between the parties. Only the written terms of this Agreement will bind the parties.