

CMC Driver Framework and CMC Driver End User License Agreement

This CMC Driver Framework and CMC Driver End User License Agreement ("Agreement") is made by and between you (as defined below) and Choose Movement Consulting, LLC ("CMC" which may also be referred to in this Agreement as "we", "us" and "our"). This Agreement constitutes a binding contract between you and CMC (together, the "Parties" and individually, each a "Party").

YOU WILL HAVE ACCEPTED THIS AGREEMENT IF YOU: 1) DOWNLOAD, ACCESS, SUBSCRIBE TO OTHERWISE PURCHASE LICENSES TO, OR USE THE CMC SOFTWARE; OR 2) CLICK AN "I ACCEPT" OR SIMILAR BUTTON INDICATING AGREEMENT ASSOCIATED WITH THIS AGREEMENT.

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CMC IS WILLING TO ALLOW THE LICENSE AND YOUR ACCESS AND USE OF THE CMC SOFTWARE ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. BY ACCEPTING THIS AGREEMENT YOU ARE BINDING YOURSELF TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN CMC IS UNWILLING TO ALLOW THE LICENSE OF THE CMC SOFTWARE AND YOU MUST NOT ACCESS OR USE THE CMC SOFTWARE.

1. CERTAIN DEFINITIONS. In addition to other terms that are defined as set forth in this Agreement, the following terms shall have the following definitions:

1.1. "Authorized CMC Reseller" means a person or entity that has entered into a signed, written agreement with CMC to resell some or all of the CMC Software and that is in compliance with that written agreement, including without limitation in relation to you and the sale of any licenses of CMC Software to you.

1.2. "Device" means your computer, tablet, smartphone, or any other electronic device.

1.3. "Intellectual Property" means any and all of the following in any jurisdiction throughout the world and all rights in, arising out of, or associated therewith: (a) patents, utility models, and applications therefor, and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof, and equivalent or similar rights anywhere in the world in inventions and discoveries, including invention disclosures; (b) all trade secrets, inventions (whether or not patentable and whether or not reduced to practice), and other rights in know-how and confidential or proprietary information; (c) all

mask works, works of authorship and copyrights, registrations and applications therefor, and all other rights corresponding thereto (including moral rights), throughout the world; (d) rights in software (including without limitation APIs, source code, object code, and mark-up language); (e) rights of publicity, personality, identification, or similar personal or group attributes; (f) trade names, logos, common law trademarks and service marks, trade dress, trademark and service mark registrations, and applications therefor and any goodwill associated therewith; and (g) any similar, corresponding, or equivalent rights to any of the foregoing and any other intellectual property or proprietary rights throughout the world.

1.4. "CMC Driver" means the software interface provided by CMC that includes the code necessary to communicate with certain pieces of hardware (e.g., to set configuration values or take certain actions), and may also include a simulated version of the hardware device in software form in addition to the software code necessary for communicating with the designated hardware device, and its content, documentation, and all Intellectual Property in and related thereto.

1.5. "CMC Driver Framework" means the LabVIEW coding framework provided by CMC, which is used to rapidly implement a hardware abstraction layer, and which consists of a set of tools built to expedite configuration of hardware and debugging of hardware communication, and its content, documentation, any drivers designated as free and provided free of charge by CMC, and all Intellectual Property in and related thereto.

1.6. "CMC Tests and Validation Documentation" means testing and validation documentation provided by CMC and to be used to aid in demonstrating that the software is validated for a specific regulated industry, and its content, documentation, and all Intellectual Property in and related thereto.

1.7. "Fee-Based CMC Software" means software licensed by CMC subject to the payment of fees, which includes all CMC Drivers except those included for free as a part of the CMC Driver Framework and CMC Tests and Validation Documentation.

1.8. "Modifications" means additional or modified functionality, updates, enhancements, security updates and patches, and upgrades to CMC Software or to remove or terminate the functionality of any CMC Software in accordance with the termination provisions of this Agreement.

1.9. "CMC Software" means collectively and individually the CMC Driver Framework, the CMC Drivers, and the CMC Tests and Validation Documentation.

1.10. "Users" means each individual user of the CMC Software.

1.11. "You" and "Your" (capitalized or otherwise) refer to any person or entity acquiring or using under the terms of this Agreement the CMC Software. In this Agreement, "you" and "your" refer collectively to you, the customer, and any corporation, partnership, company or other entity you represent.

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2.1. LIMITED EVALUATION LICENSE. Subject to the terms of this Agreement, you are hereby granted a non-exclusive, perpetual, revocable, non-sublicensable, non-transferrable license to download, install, access, and use for your internal evaluation purposes only the CMC Driver Framework. The Fee-Based CMC Software is not subject to the aforementioned license, but may instead be subject to a separate evaluation license as indicated by the terms set forth in relation to the downloadable files, as a part of the download and installation, or pursuant to a written agreement with an Authorized CMC Reseller, for a period of thirty (30) days after you first install Fee-Based CMC Software ("Evaluation Period"). If you want to continue to use any version of the Fee-Based CMC Software after the Evaluation Period, you must acquire from CMC or through an Authorized CMC Reseller an extension to the Evaluation Period or, for a fee, a fee-based license for such CMC Software. If you do not purchase a license to Fee-Based CMC Software after the Evaluation Period (as extended, if applicable), your ability to use the Fee-Based CMC Software subject to the evaluation license may automatically cease to function after the Evaluation Period.

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- 3.3. distribute or otherwise make the CMC Software or any password, key, or other access code for the CMC Software available to any third party;
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- 3.5. make error corrections to, or otherwise modify or adapt, the CMC Software or to create derivative works based upon the CMC Software or permit third parties to do the same;
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- 3.7. sublicense, lease, lend, or rent the CMC Software or perform, display, or otherwise access or use the CMC Software for the benefit of others or to provide services or make available to others whether on a service bureau or time sharing basis or otherwise;
- 3.8. remove, minimize, block, or modify any titles, logos, trademarks, copyrights and patent notices, digital watermarks, disclaimers, or other legal notices that are included in the CMC Software, whether or not they are CMC's or a third party's;
- 3.9. cause any of the CMC Software to become subject to a license that requires, as a condition of use, modification, or distribution, that (a) code subject to the license be disclosed or distributed in source code form or (b) others have the right to modify or create derivative works of the code subject to the license;
- 3.10. use any CMC Software scripting functionality to create an application that performs the functionality of an editor for a graphical programming environment;
- 3.11. use the CMC Software except as in accordance with the applicable documentation that accompanies the CMC Software, if any, and not in any manner that circumvents or is intended to circumvent such documentation or the intent of this Agreement;
- 3.12. access or use the CMC Software to develop any competitive software application or similar products and services; or
- 3.13. access or use all or any portion of the CMC Software in any manner that is inconsistent with the terms of this Agreement or in violation of any applicable law or regulation.

4. MAINTENANCE AND UPGRADES. You acknowledge that the CMC Software licenses are granted separately from any subscription to future upgrades, updates and fixes to it, unless specifically stated in relation to the particular license, and you are not automatically entitled to any of the same or any software maintenance services under this Agreement. Nothing herein shall prevent you and CMC from entering into a separate agreement regarding such upgrades, updates, fixes, maintenance services or other service provided by CMC, and to the extent CMC supplies any Modifications to you through any existing subscription without a separate agreement, such Modifications shall be subject to the rights and obligations, including without limitation the applicable license terms and license restrictions, set forth in and referenced by this Agreement.

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5.2. You may provide feedback to CMC, directly or indirectly (e.g., through Authorized CMC Resellers) with respect to the CMC Software. Notwithstanding any provision of the Agreement to the contrary, CMC may use such feedback for any purpose without obligation or payment of consideration to you of any kind. You hereby assign to CMC all right title, and interest in any such feedback, including without limitation all Intellectual Property in and related to such feedback.

6. **DEVICE RESPONSIBILITY.** In order to use the CMC Software, you must provide all Devices, equipment and software necessary to use CMC Software and a Device that is in working order running an operating system and software compatible with the CMC Software and that is suitable for use in connection with the CMC Software. You are responsible for ensuring that your Device, equipment and/or software do not disturb or interfere with CMC operations or the operations of other users of the CMC Software or any third party data or systems. If any Modification to the CMC Software requires changes in your Device, equipment or software, you must effect these changes at your own expense.

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provide CMC with certification from a principal officer of your organization that you have complied in full with the requirements of this Section.

10. **WARRANTY.** THE CMC SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES WHATSOEVER, AND YOU ARE NOT RELYING ON ANY DESCRIPTIONS, STATEMENTS, SPECIFICATIONS, PHOTOGRAPHS OR OTHER ILLUSTRATIONS REPRESENTING THE CMC SOFTWARE. NEITHER CMC NOR ITS LICENSORS WARRANT THAT THE CMC SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE CMC SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE. THE CMC TESTS AND VALIDATION DOCUMENTATION MAY NOT BE APPROPRIATE FOR YOUR USE OR FOR EVERY SYSTEM, AND YOU ARE SOLELY LIABLE FOR ENSURING PROPER TESTING AND VALIDATION FOR YOUR SYSTEMS AND INTENDED PURPOSES. CMC AND ITS LICENSORS HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. TO THE FULLEST EXTENT ALLOWED BY LAW, YOU EXPRESSLY WAIVE ANY CLAIM THAT YOU MAY HAVE AGAINST CMC OR ITS LICENSORS BASED ON ANY PRODUCT LIABILITY OR INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO THE CMC SOFTWARE AND ALSO WAIVE ANY RIGHT TO INDEMNIFICATION FROM CMC OR ITS LICENSORS AGAINST ANY SUCH CLAIM MADE AGAINST YOU BY A THIRD PARTY. YOU ACKNOWLEDGE THAT NO EMPLOYEE OF CMC OR AUTHORIZED CMC RESELLER IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF CMC THAT IS NOT IN THIS AGREEMENT.

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12. LIMITATION OF LIABILITY. TO THE FULL EXTENT ALLOWED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN WILL CMC OR ITS LICENSORS, SUPPLIERS, RESELLERS, DISTRIBUTORS, SUBCONTRACTORS OR AGENTS (THE "CMC PARTIES") BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, UNAUTHORIZED ACCESS TO, LOSS, OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUES OR SAVINGS, OR OTHERWISE ARISING OUT OF OR IN RELATION TO THIS AGREEMENT, INCURRED BY YOU OR ANY THIRD PARTY, EVEN IF CMC HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST YOU BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH YOUR IMPLEMENTATION OF ANY CONCLUSION OR RECOMMENDATION BY CMC BASED ON, RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO THE CMC SOFTWARE OR ANY DAMAGE CAUSED BY YOUR PRODUCTS OR SERVICES THAT USE OR RELY UPON THE CMC SOFTWARE (INCLUDING WITHOUT LIMITATION DAMAGES CAUSED BY OR IN RELATION TO YOUR PRODUCTS OR SERVICES INCORPORATING OR USING A CMC DRIVER); OR (D) ANY UNAVAILABILITY OF THE CMC SOFTWARE FOR USE OR ANY LOST, DAMAGED OR CORRUPTED DATA OR SOFTWARE. IN THE EVENT OF ANY LIABILITY INCURRED BY ANY OF THE CMC PARTIES, THEIR AGGREGATE AND CUMULATIVE LIABILITY FOR DAMAGES FROM ANY CAUSE WHATSOEVER RELATED TO THE CMC SOFTWARE OR ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL IN NO EVENT EXCEED THE GREATER OF THE MINIMUM AMOUNT ALLOWED BY LAW OR THE DOLLAR AMOUNT PAID BY YOU IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT THAT GAVE RISE TO

THE LIABILITY FOR THE LICENSE TO THE SPECIFIC PIECE OF CMC SOFTWARE THAT GAVE RISE TO THE LIABILITY.

13. INDEMNITY BY YOU. In addition to the indemnities otherwise set forth in this Agreement, you will, to the fullest extent permitted by law, indemnify the CMC Parties and their respective officers, directors, shareholders, members, parent companies, subsidiaries, employees and agents and their respective successors and assigns (collectively, the “CMC Indemnified Parties”) against and hold the CMC Indemnified Parties harmless from any and all claims, liabilities, losses, damages, judgments, awards, costs and expenses, including reasonable expert and attorneys' fees in connection with investigating, defending, and settling any claim relating to or arising out of any acts or omissions on the part of you which are a breach of this Agreement or give rise to claims against CMC Indemnified Parties by third parties in relation to your downloading, installing, accessing, or using the CMC Software, excluding any claim to the extent due to the negligent or intentionally wrongful acts of CMC.

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