

1 MATTHEW R. WALSH  
2 19197 GOLDEN VALLEY RD #333  
3 SANTA CLARITA, CA 91387  
4 (661) 644-0012

5 Plaintiff In Pro Per,

6 **UNITED STATES DISTRICT COURT**

7 **CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW R. WALSH  
Plaintiff In Pro Per,

vs.

ROKOKO ELECTRONICS  
(AND DOES 1 THROUGH 50,  
INCLUSIVE)

Defendant

Case No.: 2:25-CV-05340-ODW-RAO

*[Assigned to Hon. Otis D. Wright, II,  
Courtroom 5D; Hon. Rozella A. Oliver,  
Courtroom 590]*

Hearing Date: January 26, 2025  
Hearing Time: 1:30 PM

**DECLARATION OF MATTHEW R.  
WALSH re: ORIGINAL 2020  
CONTRACT**

8  
9 I, Matthew R. Walsh, declare I am the Plaintiff in this matter. I have personal  
10 knowledge of the following facts and if called as a witness I could and would  
11 testify competently hereto. All text, images and exhibits herein are true and  
12 accurate copies which I have received or have made and I am authenticating all of  
13 them under the penalty of perjury.

14

15

16 1. As Detailed in the Sanctions motion, Defendant spoliated the original 2020  
17 version of the Contract agreement Plaintiff agreed to when purchasing the  
18 equipment from them.

19 2. On or about January 21, 2025. Plaintiff finally, through technological means  
20 of public discovery -- recovered the lost spoliated terms (Exhibit 2) through  
21 Rokoko's own installer (Exhibit 1). The very terms that the Defendant's  
22 refuse to produce and claim in RFA's and RFP's are "confidential". Even a  
23 cursory review immediately makes it evident *why* spoliation occurred after  
24 litigation commenced:

25 a. **REQUEST FOR PRODUCTION NO. 2.** Produce all internal  
26 communications, drafts, or notes concerning changes to Rokoko's  
27 Terms of Service from January 1, 2020 to the present.

28 i. **RESPONSE:** In addition to the General Objections set forth  
29 above, Rokoko objects ... not described with reasonable  
30 particularity... seeks confidential or proprietary business  
31 information... calls for the disclosure of privileged or protected  
32 information...subject to the attorney-client privilege, attorney  
33 work product doctrine, or any other statutory or common-law  
34 privilege.

35 **3. CONTRADICTS ALL OF ROKOKO'S DEFENSES AND CLAIMS**

36 4. The operative 2020 Agreement expressly disclaims any implied license for  
37 Rokoko and fully **bars Rokoko from accessing Plaintiff’s computer, data,**  
38 **or outputs**, defines such access and collection as “Unauthorized Activities,”  
39 preserves those prohibitions **in perpetuity**, and provides now allowance for  
40 waiver or excuse of breaches absent written-waiver-by-physical-mail. The  
41 Agreement further characterizes the animation data produced by Plaintiff as  
42 **confidential trade secrets** for Plaintiff’s internal use only, while making all  
43 ancillary and later provided services **elective**. Rokoko’s later access,  
44 collection, use, and distribution of Plaintiff’s data therefore occurred without  
45 contractual authority, without waiver, and in direct violation of provisions  
46 that perpetually survived termination, providing a clear motive for  
47 subsequent spoliation and retroactive alteration of terms.

48 5. The gravamen here is: **Rokoko has never had any rights to do what it**  
49 **later built its business around doing... And they knew it. The Defendant**  
50 **hid the evidence it from the Plaintiff and the Court and refused to**  
51 **produce it in discovery while telling the Court Plaintiff could seek it.**

52  
53

54 **SUMMARY OF 2020 CONTRACTUAL TERMS**

55 6. **Disclaims all implied licenses**, limiting all of Rokoko’s rights strictly to  
56 those expressly granted by Plaintiff.

57 7. **Wholly restricts Rokoko’s access** to the software and related materials and  
58 grants only Plaintiff and his authorized personnel, barring Rokoko and third  
59 parties from any and all access absent express authorization.

60 8. Defines access, collection, transmission, cloud use, and disclosure outside  
61 the license scope as **“Unauthorized Activities.”**

62 9. **Characterizes the animation data and related outputs as confidential**  
63 **trade secret material**, usable internally only by Plaintiff and not  
64 distributable to Rokoko or third parties.

65 10. **Makes all ancillary services elective**, requiring affirmative election and  
66 acceptance of additional terms.

67 11. **Preserves prohibitions on unauthorized use, access, and disclosure in**  
68 **perpetuity** through survival clauses.

69 12. **Eliminates waiver and excuse of all breaches for all parties**, absent a  
70 written waiver signed by the affected party.

71 13. **Supersedes all agreements and understandings** past, present and future.  
72 Preventing reliance on informal permissions or course of dealing.

73 14. **Limits liability only for authorized, contract-compliant conduct**, while  
74 preserving non-waivable statutory and legal rights.

75 15. **Provides no post-termination authorization** for access, collection, or use  
76 of Plaintiff's data.

77 16. **Survives forever.**

78 **AUTOMATIC QUALIFICATION OF ALL USERS**  
79 **FOR PROTECTIVE CONTRACT TERMS**

80 17. [***1.2.1 Effect of Upgrades. If ROKOKO or a Reseller provides Licensee***  
81 ***with an Upgrade to other Licensed Materials previously licensed to***  
82 ***Licensee, the Licensed Materials previously licensed to Licensee and any***  
83 ***other ROKOKO Materials relating thereto will thereafter be deemed to be a***  
84 ***“Previous Version.” Except as set forth in Section 1.2.2 (Exception for***  
85 ***STRATEGIC PROGRAM LICENSEES), the license grant and other rights***  
86 ***with respect to any Previous Version will terminate sixty (60) days after***  
87 ***Installation of the Upgrade. Within such sixty (60) day period, except as set***  
88 ***forth in Section 1.2.2 (Exception for STRATEGIC PROGRAM LICENSEES),***  
89 ***(a) Licensee must cease all use of any Previous Version and Uninstall all***  
90 ***copies of the Previous Version, and (b) upon expiration of such period, such***  
91 ***Previous Version will no longer constitute Licensed Materials but rather***  
92 ***will be deemed to be Excluded Materials and Licensee will no longer have a***  
93 ***license for any such Previous Version. At ROKOKO’s request, Licensee***  
94 ***agrees to destroy or return to ROKOKO or the Reseller from which they***  
95 ***were acquired all copies of the Previous Version. ROKOKO reserves the***  
96 ***right to require Licensee to show satisfactory proof that all copies of any***  
97 ***Previous Version have been Uninstalled and, if so requested by ROKOKO,***  
98 ***destroyed or returned to ROKOKO or the Reseller from which they were***  
99 ***acquired.”]***

100

101 a. The “Effect of Upgrades” terms self-destruct and do not apply in cases  
102 where the user is enrolled in the following:

103  
104 [*“26. **“Strategic Program”** means (i) Subscription or (ii) a rental program*  
105 *offered generally by ROKOKO pursuant to which ROKOKO makes*  
106 *available Licensed Materials.”*]  
107

108 b. A subscription is defined as:

109  
110 [*“34. **“Subscription”** is the program offered generally by ROKOKO under*  
111 *which ROKOKO provides (among other things) updates and upgrades to,*  
112 *new versions of, and certain other support, services and training relating to*  
113 *ROKOKO Materials.”*]  
114

115 c. **NO OPT-IN OR PAYMENT REQUIRED:** The terms purport to require  
116 that, upon release of any new version, a user must upgrade and thereby  
117 become bound by the new terms **unless** the user is engaged in a  
118 “subscription.” However, the agreement nowhere defines a subscription as  
119 involving payment, opt-in, assent, or enrollment. Instead, a “subscription” is  
120 defined merely as “the program offered generally by ROKOKO,” through  
121 which upgrades, new versions, and services are provided—precisely the  
122 manner in which Plaintiff received software updates. When read together,  
123 Definitions (26) and (34) negate the operation of §1.2.1 entirely, leaving no  
124 contractual mechanism by which Plaintiff could be bound to later terms. As  
125 a result, Plaintiff remains governed exclusively by the 2020 Agreement in  
126 perpetuity, with no surviving clause permitting unilateral replacement or

127 supersession.

128  
129 d. The circular logic creates an unavoidable consequence:

130 **i. If ROKOKO:**

- 131 1. generally offers updates/upgrades (which they indisputably do),  
132 then  
133 2. every user is, by definition, a “Subscription” user, and therefore  
134 3. every user is a Strategic Program Licensee.  
135 4. The license and terms never terminate and all users – most  
136 importantly Plaintiff -- remain on the 2020 version.

137  
138 **ROKOKO BARRED THEMSELVES FROM ANY ACCESS TO**  
139 **PLAINTIFF’S COMPUTER AND INTELLECTUAL PROPERTY**

140  
141 18. Rokoko de-authorizes themselves in perpetuity from any access to Plaintiff’s  
142 computer by expressly stating no one may access Rokoko’s software except  
143 the person who installed it – Plaintiff.

144 19. [*“1.5 Authorized Users. Licensee may permit the Licensed Materials to be*  
145 *Installed and/or Accessed only by Licensee’s Personnel (except as otherwise*  
146 *designated in the applicable License Type), and any such Installation or*  
147 *Access will be subject to any other requirements imposed by this Agreement*  
148 *and the applicable License Type and Permitted Number. Licensee will be*

149 *responsible for compliance with this Agreement by Licensee’s Personnel and*  
150 *any other persons who may have Access to the ROKOKO Materials through*  
151 *Licensee (whether or not such Access is authorized by ROKOKO or within*  
152 *the scope of the applicable License Type and Permitted Number).”]*

153  
154  
155 **ROKOKO EXPRESSLY ADMITS ANY OTHER SERVICES**  
156 **ARE ELECTIVE**  
157

158 20. *[“1.8 Services. ROKOKO may provide, and Licensee may elect to receive or*  
159 *benefit from, certain Services from time to time. Any Services are subject to*  
160 *ROKOKO’s terms therefor, which terms are set forth in the applicable*  
161 *Services Terms. Licensee agrees that if it requests, accepts, or makes use of*  
162 *any Services, Licensee will be bound by such terms, as they may be modified*  
163 *from time to time in accordance with the applicable Services Terms (and*  
164 *such terms, as so modified from time to time, are a part of and incorporated*  
165 *by reference into this Agreement), and Licensee agrees to comply with such*  
166 *terms. Licensee acknowledges that ROKOKO may require a further*  
167 *acceptance of such terms as a condition to providing Services.”]*

168  
169 21. This clause which explicitly states any other services are elective and at the  
170 decision of Plaintiff -- completely destroys any possibility of Rokoko  
171 claiming that ‘Teams’, collection of I.P., use of I.P., etc. is a mandatory  
172 measure which Plaintiff assented to.

173  
174 **ROKOKO EXPRESSLY DISCLAIMED LICENSE OVER**  
175 **PLAINTIFFS INTELLECTUAL PROPERTY AND LABELED**  
176 **THE COLLECTION OR USE ‘UNAUTHORIZED ACTIVITIES’**  
177

178 a. It is first important to define ‘ROKOKO Materials’:  
179

180 *[“6. “ROKOKO Materials” means any materials distributed or made*  
181 *available by ROKOKO, directly or indirectly, including Software,*  
182 *Supplemental Materials, User Documentation and Excluded Materials*  
183 *(whether or not licensed to Licensee).”]*  
184

185 b. The problematic language for the Defendant is [“made available...  
186 directly or indirectly...”].

187 i. Directly = their software, services, etc.

188 ii. Indirectly = made from their software (“animation data”)

189 iii. Supplemental Materials defined in (35) specifically claim

190 Plaintiff’s animations (*“Supplemental Materials include, without*  
191 *limitation, (a) content, such as ... settings and animations”*)  
192

193 c. What is deemed as unauthorized access is expressly listed as “No license  
194 granted” and “unauthorized activities” and is not limited to Licensee, but  
195 rather, all parties – including Rokoko.

196  
197 d. ***[“2.1.1 No License Granted; Unauthorized Activities. The parties***  
198 *acknowledge and agree that, notwithstanding anything to the contrary in*  
199 *this Agreement, no license is granted (whether expressly, by implication*  
200 *or otherwise) under this Agreement (and this Agreement expressly*  
201 *excludes any right)*

202 i. (a) to Excluded Materials,

203 ii. (b) to any ROKOKO Materials that Licensee did not acquire  
204 lawfully or that Licensee acquired in violation of or in a manner  
205 inconsistent with this Agreement,

- 206           iii. *(c) for Installation of or Access to the Licensed Materials beyond*
- 207           *the applicable license term (whether a fixed term or Strategic*
- 208           *Program period or term) or outside the scope of the applicable*
- 209           *License Type or Permitted Number,*
- 210           iv. *(d) for Installation of the Licensed Materials on any Computer*
- 211           *other than a Computer owned or leased, and controlled, by*
- 212           *Licensee, unless otherwise authorized in writing by ROKOKO,*
- 213           v. *(e) to distribute, rent, loan, lease, sell, sublicense, transfer or*
- 214           *otherwise provide all or any portion of the ROKOKO Materials to*
- 215           *any person or entity except as expressly set forth in this Agreement*
- 216           *or as expressly authorized in writing by ROKOKO,*
- 217           vi. *(f) to provide or make available any features or functionality of the*
- 218           *ROKOKO Materials to any person or entity (other than to and for*
- 219           *Licensee itself for the purpose specified in the applicable License*
- 220           *Type), whether or not over a network and whether or not on a*
- 221           *hosted basis,*
- 222           vii. *(g) except as otherwise expressly provided with respect to a*
- 223           *specific License Type, to Install or Access or allow the Installation*
- 224           *of or Access to the ROKOKO Materials over the Internet or other*
- 225           *non-local network, including, without limitation, use in connection*
- 226           *with a wide area network (WAN), virtual private network (VPN),*
- 227           *virtualization, Web hosting, time-sharing, service bureau, **software***
- 228           ***as a service, cloud or other service or technology,***
- 229           viii. *(h) to remove, alter or obscure any proprietary notices, labels or*
- 230           *marks in the ROKOKO Materials,*
- 231           ix. *(i) to decompile, disassemble or otherwise reverse engineer the*
- 232           *ROKOKO Materials, or (j) to translate, adapt, arrange, or create*
- 233           *derivative works based on, or otherwise modify the ROKOKO*
- 234           *Materials for any purpose.”]*

235  
236 e. Rokoko expressly and unequivocally barred themselves any rights to:

- 237           i. ‘materials acquire unlawfully’ – such as Plaintiff’s animation data.
- 238           ii. ‘anything beyond license term’ (problematic as their 2022
- 239           agreement would make everything beyond 2022 inaccessible)
- 240           iii. ‘outside scope’ – such as Plaintiff’s animation data.

241 iv. ‘distribution’ – Which they have expressly declared that they have  
242 done with Plaintiff’s I.P.

243 v. ‘making available’ – which they have done by collection

244 vi. ‘network / cloud use’ – which has been demonstrated to have  
245 occurred.

246 vii. Any rights over Plaintiff’s animation data.

247  
248 **f. Rokoko did not exempt themselves. They expressly forbade the very**  
249 **actions they performed mutually.**

250  
251 **ROKOKO DECLARES IF PLAINTIFF ‘PERMITS’ ANY OF THE**  
252 **UNAUTHORIZED ACTIVITY, THE AGREEMENT IS BREACHED**

253  
254 22. [“**2.1.4 Effect of Unauthorized Use. Licensee will not engage in, and will**  
255 **not permit or assist any third party to engage in any of the uses or activities**  
256 **prohibited** (or any uses or activities inconsistent with the limitations  
257 described) in this Section 2.1 (Limitations and Exclusions) (collectively,  
258 “Unauthorized Uses”). Any such **Unauthorized Use**, and any Installation of  
259 or Access to the Licensed Materials provided under this Agreement, outside  
260 of the scope of the applicable license grants (including, without limitation,  
261 outside the applicable License Type and/or Permitted Number) or otherwise  
262 not in accordance with this Agreement, constitute or result in infringement  
263 of ROKOKO’s intellectual property rights **as well as a breach of this**  
264 **Agreement.** Licensee will notify ROKOKO promptly of any such  
265 Unauthorized Uses or other unauthorized Installation or Access.”]

267 23. The terms [*“Any such Unauthorized Use ... constitute[s] infringement of*  
268 *ROKOKO’s intellectual property rights as well as a breach of this*  
269 *Agreement”*]. Does **not** say “unauthorized use by Licensee”, “misuse by the  
270 user”, “conduct by Licensee or its personnel” it says “**any**” such  
271 unauthorized use... Even by Rokoko themselves, as also stated in 2.1.1.  
272 Both parties are bound.

273  
274 24. By Rokoko accessing Plaintiff’s files, harvesting and collecting his  
275 intellectual property and then using and distributing it – they themselves  
276 have breached the agreement as they forced Plaintiff to unknowingly  
277 “engage in” and “permit” such access.

278  
279 **ROKOKO AGREES THE ANIMATION DATA PRODUCED BY THEIR**  
280 **SOFTWARE IS A TRADE SECRET AND MAY NEVER BE DISCLOSED**  
281 **TO THIRD PARTIES**

282  
283 **25. [“3. All Rights Reserved ... The [structure and organization of Software]**  
284 ***included in the ROKOKO Materials, any source code or [similar materials]***  
285 ***[relating to such Software], any API Information and Development***  
286 ***Materials (both as described in Section 1.11 (APIs)), and any other Licensed***  
287 ***Materials [identified as confidential or proprietary] are valuable trade***  
288 ***secrets of, and confidential and proprietary information of, ROKOKO and***  
289 ***[its suppliers], and (a) may not be distributed, disclosed or otherwise***

290 *provided to third parties, and (b) may be used only internally and only in*  
291 *conjunction [with and for Licensee’s own authorized internal use] of the*  
292 *Licensed Materials.”]*

293  
294 26. Rokoko expressly classifies the structure and organization of the software  
295 and similar materials -- including animation data produced by the software --  
296 as valuable trade secrets that may not be distributed, disclosed, or provided  
297 to third parties, while permitting Plaintiff’s internal own uses. This  
298 admission directly contradicts Rokoko’s subsequent collection, use, and  
299 distribution of Plaintiff’s animation data through cloud-based services and  
300 third-party systems.

301 27. The clause in no way states the output is Rokoko’s intellectual property “*and*  
302 *confidential and proprietary information of, ROKOKO*”. They chose  
303 confidential and proprietary, **not ownership**.

304  
305 **ROKOKO OFFERS A WARRANTY PROMISE AND PRESERVES ALL**

306 **PLAINTIFF’S LEGAL RIGHTS**

307 28. [**5.1 Limited Warranty.** ROKOKO warrants that, as of the date on which  
308 the Licensed Materials are delivered to Licensee and for ninety (90) days  
309 thereafter or if the license term is shorter, such shorter period (“Warranty  
310 Period”), the Licensed Materials will provide the general features and  
311 functions described in the User Documentation portion of the Licensed  
312 Materials. ROKOKO's entire liability and Licensee’s exclusive remedy  
313 during the Warranty Period (“Limited Warranty”) will be, with the exception  
314 of any statutory warranty or remedy that cannot be excluded or limited under  
315 law, at ROKOKO's option, (i) to attempt to correct or work around errors, if

316 any, or **(ii) to refund the license fees, if any, paid by Licensee and**  
317 **terminate this Agreement or the license specific to such Licensed**  
318 **Materials.** Such refund is subject to the return, during the Warranty Period,  
319 of the ROKOKO Materials, with a copy of Licensee’s License  
320 Identification, to Licensee’s local ROKOKO office or the Reseller from  
321 which Licensee acquired the ROKOKO Materials. THE LIMITED  
322 WARRANTY SET FORTH IN THIS SECTION GIVES LICENSEE  
323 SPECIFIC LEGAL RIGHTS. LICENSEE MAY HAVE ADDITIONAL  
324 LEGAL RIGHTS UNDER LAW WHICH VARY FROM JURISDICTION  
325 TO JURISDICTION. **ROKOKO DOES NOT SEEK TO LIMIT**  
326 **LICENSEE’S WARRANTY RIGHTS TO ANY EXTENT NOT**  
327 **PERMITTED BY LAW.”]**  
328

329 29. Rokoko’s Limited Warranty affirmatively obligates Rokoko to correct  
330 defects or refund fees for nonconformities with documented features, and  
331 therefore any undisclosed access, data collection, or use constitutes a  
332 warranted defect for which Rokoko assumed responsibility. Further,  
333 Rokoko doesn’t disclaim Plaintiff’s rights – it enforces them.

334  
335 30. Although Section 5.2 attempts to broadly disclaim warranties, it expressly  
336 yields to the Limited Warranty in Section 5.1, which affirmatively warrants  
337 conformity with documented features and obligates Rokoko to correct  
338 defects or refund fees, rendering undisclosed access, data collection, or use  
339 outside the scope of any disclaimer.

341 **ROKOKO FAILED TO LIMIT LIABILITY**

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**31. ROKOKO’S ACTIONS DESTROY LIABILITY SHIELD** - Rokoko’s purported limitation of liability applies only to liability “arising out of or relating to” Rokoko Materials, Strategic Programs, or Services as contemplated by the Agreement, and **presumes lawful, authorized conduct within the scope of the license.** The Agreement elsewhere expressly defines numerous categories of conduct as “Unauthorized Uses,” including access, collection, transmission, cloud processing, and post-termination use, and affirmatively disclaims any implied license for such activities and that if such unauthorized use occurs by any party – breach has occurred, nullifying the agreement and liability. The limitation of liability does not expressly apply to, and cannot reasonably be construed to shield, conduct that the Agreement itself characterizes as unauthorized, infringing, or outside the scope of any license grant, including access or use occurring without disclosure, election, or contractual authorization, or after termination of the license.

**32. NO LIMITATION OF LIABILITY WHERE UNLAWFUL** - Moreover, the Agreement repeatedly preserves non-waivable statutory rights and remedies “to the maximum extent permitted by law,” and does not purport to limit liability for intentional, knowing, or concealed conduct, nor for

362 statutory violations, misrepresentation, trade secret misappropriation, or  
363 other extra-contractual wrongdoing. Any attempt to cap liability for such  
364 conduct would be unenforceable as a matter of law.

365 33. Finally, Rokoko’s liability cap which are tied to amounts “paid or payable”  
366 is illusory where fees were nominal, discounted, or unrelated to the scope of  
367 harm caused, and cannot reasonably be enforced to immunize Rokoko from  
368 liability for conduct that the Agreement itself prohibits and disclaims if any  
369 party breaches – including Rokoko.

370  
371 **TERMINATION CLAUSE DOESN’T INSULATE**

372 **BECAUSE ROKOKO IS THE BREACHING PARTY.**

373 **THIS SINGLE AGREEMENT SURVIVES FOREVER**

374  
375 34. Section 8.1 conditions termination and suspension on written notice, cure  
376 opportunities, and lawful authority, and does not authorize Rokoko to  
377 suspend or terminate licenses where Rokoko itself engaged in unauthorized  
378 conduct or failed to comply with the Agreement’s access, license, and  
379 disclosure limitations

380  
381 35. Rokoko made a fatal error in drafting the Contract as:

382 36. [“8.3 Survival. Sections 1.3 (Additional Terms), 1.4 (Other Materials), 1.5  
383 (Authorized Users), 1.6 (Third-Party Licensed Materials), 1.11 (APIs), 2.1.1  
384 (No License Granted; Unauthorized Activities), 2.1.4 (Effect of Unauthorized  
385 Use), 2.2 (Circumvention), 3 (All Rights Reserved), 4 (Privacy; Use of  
386 Information; Connectivity), 5.2 (Disclaimer), 6 (Warnings), 7 (Limitations of  
387 Liability), 8 (Term and Termination), and 9 (General Provisions) and  
388 Exhibit A will survive any termination or expiration of this Agreement.”]

389 37. Specifically ties them to the agreement regardless of any termination or  
390 expiration -- forever. By providing that Sections governing authorized  
391 access, unauthorized activities, privacy, and data use survive termination, the  
392 Agreement preserves -- **and does not relax** -- the prohibitions on access,  
393 collection, and use of Plaintiff’s data even after termination, while  
394 conferring no new post-termination rights on Rokoko.  
395

396  
397 **NO WAIVER OF RIGHTS AND NO BREACH EXCUSED**  
398

399 38. Rokoko expressly states that there are no waivers.. And that ‘no breach  
400 excused’. By either Party, causing automatic liability to be invited against  
401 their actions without limitation:  
402

403 39. [“9.6 No Waiver. No term or provision of this Agreement will be considered  
404 waived, and no breach excused, unless such waiver is in writing signed on  
405 behalf of the party against which the waiver is asserted. No waiver (whether  
406 express or implied) will constitute consent to, waiver of, or excuse of any  
407 other, different, or subsequent breach.”]

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40. Section 9.6 expressly provides that no breach is excused absent a written waiver, thereby foreclosing any argument based on delay, acquiescence, course of dealing, or implied consent. As a result, any unauthorized access, collection, or use of Plaintiff’s data remains an unexcused breach for which Rokoko bears continuing liability

41. Rokoko further declares, this agreement – is the entire agreement; overrides all prior agreements OR any other agreements whatsoever.. and as stated prior, exists *forever*.

42. [*“9.13 Entire Agreement. This Agreement and any other terms referenced in this Agreement (such as the Strategic Program Terms and the Services Terms) constitute the entire agreement between the parties (and merge and supersede any prior [or] contemporaneous agreements, discussions, communications, agreements, representations, warranties, advertising or understandings) ... ”*]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of January, 2026, in Santa Clarita, California.



Matthew R. Walsh  
Plaintiff In Pro Per

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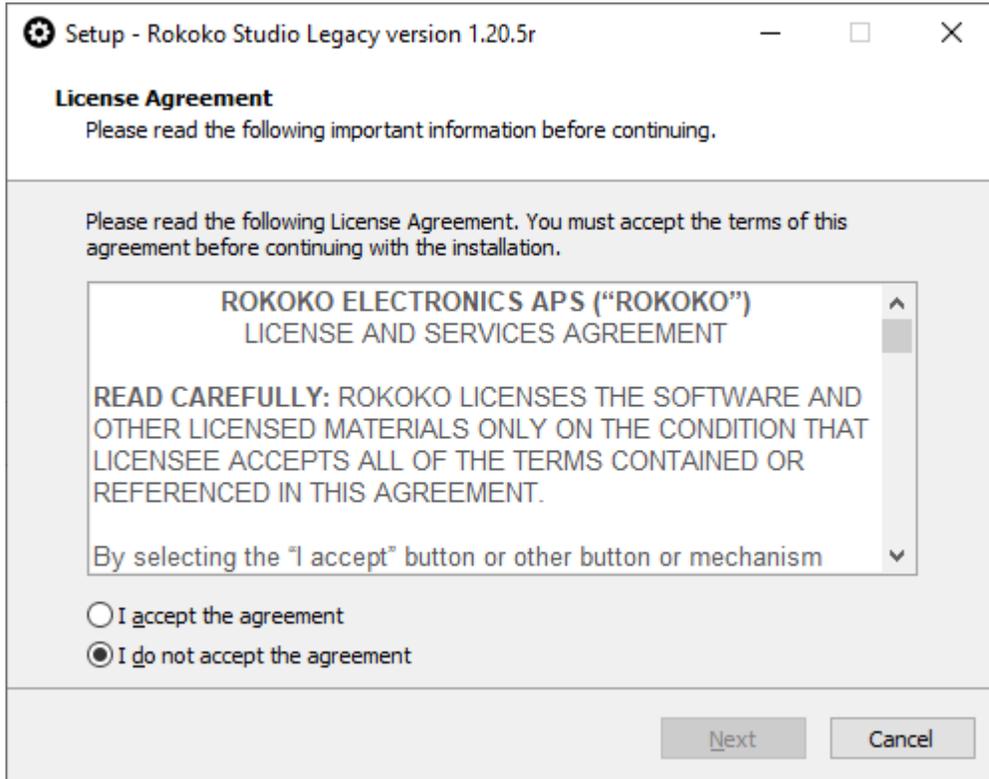
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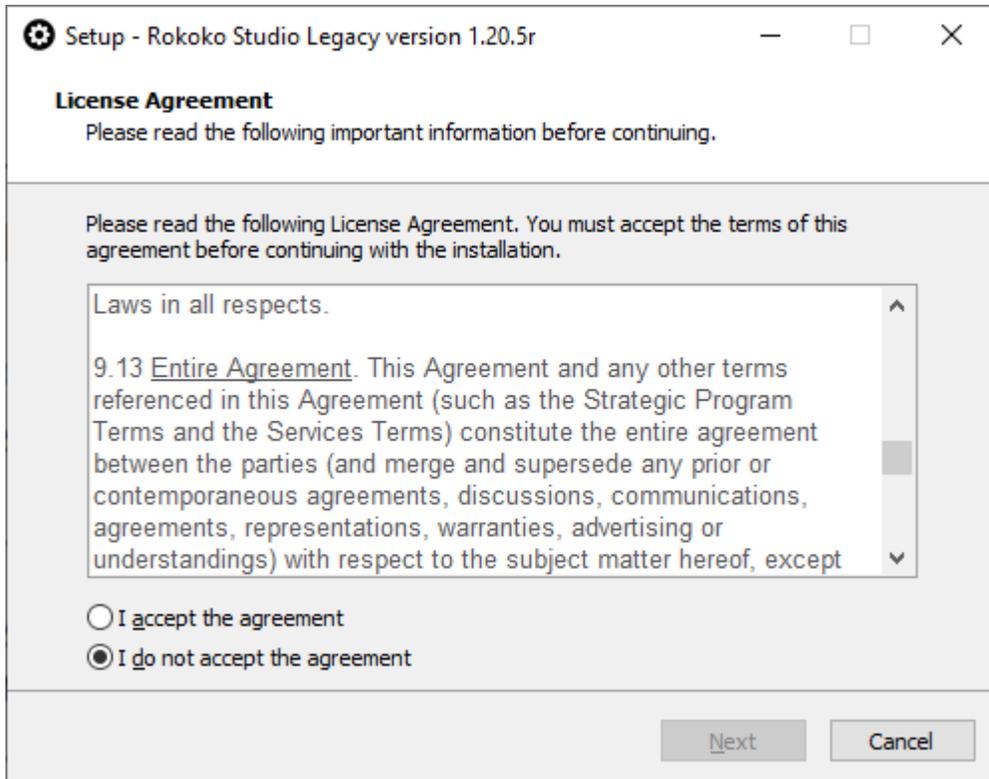
# **EXHIBIT 1**

440

441 The software Plaintiff received when he purchased in 2020 contains the agreement  
442 which binds him forever.



443



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# **EXHIBIT 2**

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451 **ROKOKO ELECTRONICS APS (“ROKOKO”)**

452 LICENSE AND SERVICES AGREEMENT

453

454 **READ CAREFULLY:** ROKOKO LICENSES THE SOFTWARE AND OTHER LICENSED  
455 MATERIALS ONLY ON THE CONDITION THAT LICENSEE ACCEPTS ALL OF THE  
456 TERMS CONTAINED OR REFERENCED IN THIS AGREEMENT.

457

458 By selecting the “I accept” button or other button or mechanism designed to acknowledge  
459 agreement to the terms of an electronic copy of this Agreement, or by installing, downloading,  
460 accessing, or otherwise copying or using all or any portion of the ROKOKO Materials, (i) you  
461 accept this Agreement on behalf of the entity for which you are authorized to act (e.g., an  
462 employer) and acknowledge that such entity is legally bound by this Agreement (and you agree  
463 to act in a manner consistent with this Agreement) or, if there is no such entity for which you are  
464 authorized to act, you accept this Agreement on behalf of yourself as an individual and  
465 acknowledge that you are legally bound by this Agreement, and (ii) you represent and warrant  
466 that you have the right, power and authority to act on behalf of and bind such entity (if any) or  
467 yourself. You may not accept this Agreement on behalf of another entity unless you are an  
468 employee or other agent of such other entity with the right, power and authority to act on behalf  
469 of such other entity.

470

471 If Licensee is unwilling to accept this Agreement, or you do not have the right, power and  
472 authority to act on behalf of and bind such entity or yourself as an individual (if there is no such  
473 entity), (a) DO NOT SELECT THE “I ACCEPT” BUTTON OR OTHERWISE CLICK ON  
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864 the applicable License Identification.

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866 6.3 Affected Data. Work product and other data created with Licensed Materials made available  
867 under certain License Types, including licenses that limit the permitted purpose to educational  
868 purposes or personal learning purposes, may contain certain notices and limitations that make the  
869 work product and other data usable only in certain circumstances (e.g., only in the education  
870 field). In addition, if Licensee combines or links work product or other data created with such  
871 Licensed Materials with work product or other data otherwise created, then such other work  
872 product or data may also be affected by these notices and limitations. ROKOKO will have no  
873 responsibility or liability whatsoever if Licensee combines or links work product or other data  
874 created with such Licensed Materials with work product or other data otherwise created. In  
875 addition, Licensee will not remove, alter or obscure any such notices or limitations.

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877 **7. Limitations of Liability**

878 7.1 Limitation on Type and Amount of Liability. IN NO EVENT WILL ROKOKO OR ITS  
879 SUPPLIERS HAVE ANY LIABILITY (DIRECTLY OR INDIRECTLY) FOR ANY  
880 INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES; FOR

881 LOSS OF PROFITS, USE, REVENUE, OR DATA; OR FOR BUSINESS INTERRUPTION  
882 (REGARDLESS OF THE LEGAL THEORY FOR SEEKING SUCH DAMAGES OR OTHER  
883 LIABILITY). IN ADDITION, THE LIABILITY OF ROKOKO AND ITS SUPPLIERS  
884 ARISING OUT OF OR RELATING TO ANY ROKOKO MATERIALS, STRATEGIC  
885 PROGRAM S OR SERVICES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE  
886 BY LICENSEE FOR SUCH ROKOKO MATERIALS, STRATEGIC PROGRAM S, OR  
887 SERVICES, RESPECTIVELY.

888

889 7.2 Application of and Basis for Limitations. THE LIMITATIONS OF LIABILITY IN THIS  
890 SECTION 7 (LIMITATIONS OF LIABILITY) WILL APPLY TO THE MAXIMUM EXTENT  
891 PERMITTED BY APPLICABLE LAW TO ANY DAMAGES OR OTHER LIABILITY,  
892 HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER  
893 DERIVED FROM CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION,  
894 NEGLIGENCE) OR OTHERWISE, EVEN IF ROKOKO HAS BEEN ADVISED OF THE  
895 POSSIBILITY OF SUCH LIABILITY AND REGARDLESS OF WHETHER THE LIMITED  
896 REMEDIES AVAILABLE HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE. ALSO,  
897 LICENSEE AGREES THAT THE LICENSE, STRATEGIC PROGRAM’S AND SERVICES  
898 FEES AND OTHER FEES CHARGED BY ROKOKO AND PAID BY LICENSEE ARE  
899 BASED ON AND REFLECTIVE OF THE ALLOCATION OF RISK CONTEMPLATED BY  
900 THIS SECTION 7 (LIMITATIONS OF LIABILITY) AND THAT THE LIABILITY  
901 LIMITATIONS IN THIS SECTION 7 (LIMITATIONS OF LIABILITY) ARE AN  
902 ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES.

903

## 904 **8. Term and Termination**

905 8.1 Term; Termination or Suspension. Each license under this Agreement, with respect to each  
906 specific set of Licensed Materials covered by this Agreement, will become effective as of the  
907 latest to occur of: (a) this Agreement becoming effective, (b) payment by Licensee of the  
908 applicable fees, excluding licenses (such as evaluation licenses) where no fees are required, (c)  
909 delivery of the specific Licensed Materials, and (d) in the case of ROKOKO Materials provided  
910 in connection with a Strategic Program , upon commencement of the applicable Strategic  
911 Program period or fixed term. Each of ROKOKO or Licensee may terminate this Agreement,  
912 Licensee’s license as to Licensed Materials, Licensee’s Strategic Program , and/or the provision  
913 of Services relating to the Licensed Materials if the other party is in breach of this Agreement  
914 and fails to cure such breach within ten (10) days after written notice of the breach; however, if  
915 Licensee is in breach of Section 1 (License) or Section 2 (License Limitations; Prohibitions),  
916 ROKOKO may terminate this Agreement, Licensee’s license as to Licensed Materials,  
917 Licensee’s Strategic Program , and/or the provision of Services relating to the Licensed Materials

918 immediately upon written notice of the breach. In addition, ROKOKO may, as an alternative to  
919 termination, suspend Licensee's license as to the Licensed Materials, Licensee's Strategic  
920 Program , the provision of Services relating to the Licensed Materials, and/or other ROKOKO  
921 obligations or Licensee rights under this Agreement (or under other terms, if any, relating to  
922 materials associated with the Licensed Materials), if Licensee fails to make a payment to  
923 ROKOKO or a Reseller or otherwise fails to comply with the provisions of this Agreement or  
924 other terms relating to any such license, Strategic Program , Services, or other associated  
925 materials. ROKOKO may also terminate this Agreement if Licensee becomes subject to  
926 bankruptcy proceedings, becomes insolvent, or makes an arrangement with Licensee's creditors.  
927 This Agreement will terminate automatically without further notice or action by ROKOKO if  
928 Licensee goes into liquidation.

929 Licensee acknowledges and agrees that ROKOKO may assign or sub-contract any of its rights or  
930 obligations under this Agreement.

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932 8.2 Effect of Termination of Agreement or License. Upon termination or expiration of this  
933 Agreement, the licenses granted hereunder will terminate. Upon termination or expiration of any  
934 license granted to Licensee, Licensee must cease all use of ROKOKO Materials to which such  
935 license applies, any Strategic Program (including, without limitation, associated services), and  
936 any Services and Uninstall all copies of the ROKOKO Materials. At ROKOKO's request,  
937 Licensee agrees to destroy or return to ROKOKO or the Reseller from which they were acquired  
938 all ROKOKO Materials. ROKOKO reserves the right to require Licensee to show satisfactory  
939 proof that all copies of the ROKOKO Materials have been Uninstalled and, if so requested by  
940 ROKOKO, destroyed or returned to ROKOKO or the Reseller from which they were acquired. If  
941 Licensee's Strategic Program is terminated or expires, but this Agreement and Licensee's  
942 license to the Licensed Materials remains in effect, any rights of Licensee based on the Strategic  
943 Program (including, without limitation, rights with respect to Previous Versions) will terminate,  
944 and (unless otherwise authorized by the Strategic Program Terms) Licensee must comply with  
945 the obligations of Section 1.2.1 (Effect of Upgrades) with respect to (including the obligations to  
946 cease use of, Uninstall and destroy or return) all copies of such Previous Versions.

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948 8.3 Survival. Sections 1.3 (Additional Terms), 1.4 (Other Materials), 1.5  
949 (Authorized Users), 1.6 (Third-Party Licensed Materials), 1.11 (APIs), 2.1.1 (No License  
950 Granted;Unauthorized Activities), 2.1.4 (Effect of Unauthorized Use), 2.2 (Circumvention), 3  
951 (All Rights Reserved), 4 (Privacy; Use of Information; Connectivity), 5.2 (Disclaimer), 6  
952 (Warnings), 7 (Limitations of Liability), 8 (Term and Termination), and 9 (General Provisions)  
953 and Exhibit A will survive any termination or expiration of this Agreement.

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**9. General Provisions**

9.1 Notices. Notices in connection with this Agreement by either party will be in writing and will be sent by electronic mail, postal service, or a delivery service (such as UPS, FedEx or DHL), except that Licensee may not provide notice to ROKOKO of an ROKOKO breach or provide notice of termination of this Agreement by electronic mail. Notices from ROKOKO to Licensee will be effective (a) in the case of notices by email, one (1) day after sending to the email address provided to ROKOKO, or (b) in the case of notices by mail or delivery service, five (5) days after sending by regular post or delivery service to the address provided to ROKOKO. Licensee hereby consents to service of process being effected on Licensee by registered mail sent to the address set forth on Licensee’s Customer Information Form (or, if no Customer Information Form has been provided, Licensee’s last address known by ROKOKO) if so permitted by applicable law. Notices from Licensee to ROKOKO will be effective (a) in the case of notices by email, one (1) day after sending to (and receipt by ROKOKO at) HI@ROKOKO.com, or (b) in the case of notices by mail or delivery service, when received by ROKOKO at ROKOKO APS, Sankt Gertruds Straede 6E, 1129 Copenhagen, Denmark, Attention: Copyright Agent. If Licensee participates in a Strategic Program , either party may also provide notice as set forth in the Strategic Program Terms.

9.2 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of Denmark. The laws of such jurisdictions shall govern without reference to the conflicts-of-laws rules thereof. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to (and are excluded from the laws governing) this Agreement. In addition, each party agrees that any claim, action or dispute arising under or relating to this Agreement will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of Denmark. Nothing in the foregoing will prevent ROKOKO from bringing an action for infringement of intellectual property rights in any country where such infringement is alleged to occur.

9.3 No Assignment; Insolvency. Licensee may not assign this Agreement or any rights hereunder (whether by purchase of stock or assets, merger, change of control, operation of law, or otherwise) without ROKOKO's prior written consent, which may be withheld in ROKOKO's sole and absolute discretion, and any unauthorized purported assignment by Licensee will be void. In the context of any bankruptcy or similar proceeding, Licensee acknowledges and agrees this Agreement is and shall be treated as an executory contract that may not be assumed and/or

990 assigned without ROKOKO's prior written consent, which consent may be withheld in  
991 ROKOKO's sole and absolute discretion whether pursuant to Section 365(c)(1) of Title 11 of the  
992 United States Code or any other applicable law respecting the treatment of executory contracts  
993 within bankruptcy. Any assignment (regardless of how or on what basis the assignment may  
994 occur) will be conditioned on compliance with the following: at least thirty (30) days before  
995 assigning or agreeing to any assignment of rights under this Agreement (including transferring  
996 any copies of or right to use the Software), (a) Licensee must provide written notice to  
997 ROKOKO, Uninstall all copies of the Software, and (without limitation of the generality of  
998 Section 9.7 (Audits)) allow ROKOKO or its designee to inspect the records, systems and  
999 facilities of (or operated for) Licensee and its subsidiaries and affiliates to verify (by any means  
1000 available to ROKOKO, whether remotely or on premises) that all copies of the Software have  
1001 been Uninstalled, (b) the proposed assignee must agree to comply (and Licensee must ensure that  
1002 the assignee will comply) with all of the obligations of this Agreement with respect to such  
1003 Software, which agreement must provide that ROKOKO is a third-party beneficiary of the  
1004 assignee's agreement, and the assignee must provide a copy of the agreement to ROKOKO, and  
1005 (c) Licensee and proposed assignee must comply with all other transfer procedures identified by  
1006 ROKOKO.

1007  
1008 9.4 ROKOKO Subsidiaries and Affiliates. Licensee acknowledges and agrees that ROKOKO  
1009 may arrange to have its subsidiaries and affiliates engage in activities in connection with this  
1010 Agreement, including, without limitation, delivering ROKOKO Materials and providing  
1011 Strategic Program's and Services, provided that ROKOKO (and not such subsidiaries and  
1012 affiliates) will remain subject to the obligations of ROKOKO under this Agreement. Licensee  
1013 also agrees that ROKOKO's subsidiaries and affiliates may enforce (including taking actions for  
1014 breach of) this Agreement.

1015  
1016 9.5 Exceptions to Prohibitions; Severability.

1017 9.5.1 Exceptions to Prohibitions. The prohibitions contained in this Agreement will not apply  
1018 where and to the extent applicable law does not allow such prohibitions to be enforced. Licensee  
1019 may have other rights under the laws of the state or country within the Territory where the  
1020 Licensed Materials are acquired, and this Agreement does not change Licensee's rights under the  
1021 laws of such state or country if and to the extent the laws of such state or country do not permit  
1022 this Agreement to do so. Licensee will bear the burden of proof to demonstrate that applicable  
1023 law does not allow (i) the enforcement of such prohibitions; or (ii) this Agreement to change  
1024 particular rights in a state or country (and that Licensee has not exceeded the bounds of the  
1025 unenforceable prohibitions and unchangeable rights).

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1027 9.5.2 Severability. If and to the extent any provision of this Agreement is held illegal, invalid, or  
1028 unenforceable in whole or in part under applicable law, such provision or such portion thereof  
1029 will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the  
1030 extent of its illegality, invalidity, or unenforceability and will be deemed modified to the extent  
1031 necessary to conform to applicable law so as to give the maximum effect to the intent of the  
1032 parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will  
1033 not in any way affect the legality, validity, or enforceability of such provision or any other  
1034 provision of this Agreement in any other jurisdiction.

1035

1036 9.6 No Waiver. No term or provision of this Agreement will be considered waived, and no  
1037 breach excused, unless such waiver is in writing signed on behalf of the party against which the  
1038 waiver is asserted. No waiver (whether express or implied) will constitute consent to, waiver of,  
1039 or excuse of any other, different, or subsequent breach.

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1041 9.7 Audits. Licensee agrees that ROKOKO has the right to require an audit (electronic or  
1042 otherwise) of the ROKOKO Materials and the Installation thereof and Access thereto. As part of  
1043 any such audit, ROKOKO or its authorized representative will have the right, on fifteen (15)  
1044 days' prior notice to Licensee, to inspect Licensee's records, systems and facilities, including  
1045 machine IDs, serial numbers and related information, to verify Licensee's Installation of and  
1046 Access to the ROKOKO Materials. Additionally, within fifteen (15) days of the audit request,  
1047 Licensee will provide to ROKOKO all records and information requested by ROKOKO in order  
1048 to verify Licensee's Installation of and Access to the ROKOKO Materials. Licensee will provide  
1049 full cooperation to enable any such audit. If ROKOKO determines that Licensee's Installation of  
1050 or Access to the ROKOKO Materials is not in conformity with the applicable agreements or  
1051 terms of service, Licensee will obtain immediately and pay for valid license(s) to bring  
1052 Licensee's Installation and Access into compliance and pay the reasonable costs of the audit. In  
1053 addition to such payment rights, ROKOKO reserves the right to seek any other remedies  
1054 available at law or in equity.

1055

1056 9.8 Language. The English language version of this Agreement is legally binding in case of any  
1057 inconsistencies between the English version and any translations.

1058

1059 9.9 Construction. Ambiguities in this Agreement will not be construed against the drafter.

1060

1061 9.10 Force Majeure. ROKOKO will not be liable for any loss, damage or penalty resulting from  
1062 delays or failures in performance resulting from acts of God, supplier delay or other causes  
1063 beyond ROKOKO's reasonable control.

1064

1065 9.11 U.S. Government Rights. For U.S. Government procurements, all ROKOKO Materials are  
1066 deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted  
1067 rights as defined in FAR Section 52.227-19 "Commercial Computer Software - Restricted  
1068 Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial  
1069 Computer Software Documentation", as applicable, and any successor regulations. Any use,  
1070 modification, reproduction release, performance, display or disclosure of the ROKOKO  
1071 Materials by the U.S. Government shall be solely in accordance with license rights and  
1072 restrictions described herein.

1073

1074 9.12 Export Control. Licensee acknowledges and agrees that the ROKOKO Materials and  
1075 Services (including any data submitted by Licensee in connection with a Service and any  
1076 Licensee-specific output generated by a Service) are subject to the export control and trade  
1077 sanctions laws, rules and regulations of the Denmark and may be subject to the export control  
1078 and trade sanctions laws, rules and regulations of other countries, including but not limited to  
1079 countries where Licensee is located or operates. Together, these Danish and other country laws,  
1080 rules, and regulations are referred to as the "Export Control Laws." Licensee will comply with  
1081 the Export Control Laws in all respects.

1082

1083 9.13 Entire Agreement. This Agreement and any other terms referenced in this Agreement (such  
1084 as the Strategic Program Terms and the Services Terms) constitute the entire agreement between  
1085 the parties (and merge and supersede any prior or contemporaneous agreements, discussions,  
1086 communications, agreements, representations, warranties, advertising or understandings) with  
1087 respect to the subject matter hereof, except that particular ROKOKO Materials may be subject to  
1088 additional or different terms associated with such ROKOKO Materials. The parties acknowledge  
1089 that, in entering into this Agreement, they are not relying on any agreements, discussions,  
1090 communications, agreements, representations, warranties, advertising or understandings other  
1091 than as expressly set forth in this Agreement. Licensee acknowledges and agrees that ROKOKO  
1092 may add to or change the Strategic Program Terms and the Services Terms from time to time,  
1093 provided that ROKOKO will provide written notice of the additions or changes (and may allow  
1094 Licensee not to renew, may permit Licensee to terminate, and may offer other options with  
1095 respect to Strategic Program s or Services) before the additions or changes are effective as to

1096 Licensee. In the event of a conflict between this Agreement and any other terms of ROKOKO  
1097 (including, without limitation, the Strategic Program Terms, the Services Terms, or such  
1098 additional or different terms), the other terms will apply. Terms stipulated by Licensee in any  
1099 communication by Licensee which purport to vary this Agreement or such other terms will be  
1100 void and of no effect unless agreed in a writing signed by an authorized representative of  
1101 ROKOKO. Any other modifications to this Agreement will also be invalid unless agreed to in a  
1102 writing signed by an authorized representative of ROKOKO.

1103

1104 **Exhibit A**

1105 **Definitions**

1106 1. “Access” or “Accessible” means, with respect to a computer program or other materials, (a) to  
1107 use or execute the computer program or other materials or (b) to use or otherwise benefit from  
1108 the features or functionality of the computer program or other materials.

1109 2. “Agreement” means this License and Services Agreement, including all exhibits and schedules  
1110 thereto, as the License and Services Agreement may be amended from time to time in  
1111 accordance with the terms thereof.

1112 3. “Authorized User” means any individual person who Installs or Accesses, or is authorized to  
1113 Install or Access, any of the Licensed Materials.

1114 4. “ROKOKO” means ROKOKO ELECTRONICS APS, a Danish corporation.

1115 5. “ROKOKO License Manager” means the tool known as ROKOKO License Manager or any  
1116 future ROKOKO tool for managing, monitoring or controlling Installation of or Access to  
1117 ROKOKO Materials.

1118 6. “ROKOKO Materials” means any materials distributed or made available by ROKOKO,  
1119 directly or indirectly, including Software, Supplemental Materials, User Documentation and  
1120 Excluded Materials (whether or not licensed to Licensee).

1121 7. “Computer” means (i) a single electronic device, with one or more central processing units  
1122 (CPUs), that accepts information in digital or similar form and manipulates the information for a  
1123 specific result based on a sequence of instructions, or (ii) a software implementation of such a  
1124 device (or so-called virtual machine).

1125 8. “Customer Information Form” means a form completed by or on behalf of Licensee and  
1126 submitted to ROKOKO or a Reseller, directly or indirectly, in connection with Licensee’s order  
1127 for a license of ROKOKO Materials, Strategic Program or Services.

1128 9. “Educational Licensee” means a Licensee who is also (a) a Qualified Educational Institution,  
1129 (b) Faculty, (c) Student or (d) Other Authorized Educational Licensee. An Educational Licensee  
1130 may be required to show proof of eligibility if requested by ROKOKO. ROKOKO, in its sole  
1131 discretion, retains the right to determine the eligibility of an Educational Licensee.

1132 10. “Educational Purposes” means (i) in the case of a Qualified Educational Institution, Faculty  
1133 or Other Authorized Educational Licensees, purposes directly related to learning, teaching,  
1134 training, research and development that are part of the instructional functions performed by a  
1135 Qualified Educational Institution or Other Authorized Educational Licensee and (ii) in the case  
1136 of Students, purposes related to learning, training, research or development. “Educational  
1137 Purposes” does not include commercial, professional or any other for-profit purposes, except if  
1138 otherwise authorized in writing by ROKOKO.

1139 11. “Evaluation Purposes” means purposes of evaluation and demonstration of the capabilities of  
1140 the Software or Supplemental Materials but excludes competitive analysis and any commercial,  
1141 professional, or other for-profit purposes.

1142 12. “Excluded Materials” means any materials, including Software, Supplemental Materials or  
1143 User Documentation (and including, without limitation, any computer programs, modules or  
1144 components of a computer program, functionality or features of a computer program,  
1145 explanatory printed or electronic materials, content or other materials, if any), that may be  
1146 provided or become available to Licensee, by any means, or that are on any media delivered to  
1147 Licensee, for which (a) Licensee does not have a License Identification, or (b) Licensee has not  
1148 paid (and continued to pay) the applicable fees. Licensee acknowledges that Excluded Materials  
1149 are included on media or via download for convenience of the licensing mechanism used by  
1150 ROKOKO, and inclusion does not in any way authorize, expressly or impliedly, a right to use  
1151 such Excluded Materials.

1152 13. “Faculty” means an individual person who is an employee or independent contractor working  
1153 for a Qualified Educational Institution.

1154 14. “Install” and “Installation” means, with respect to a computer program or other materials, to  
1155 copy the program or other materials onto a hard disk or other storage medium.

1156 15. “License Identification” means one or more designations by ROKOKO that set forth the  
1157 License Type (among other things) for Licensee’s license of the Licensed Materials. The License  
1158 Identification may be (a) located (i) in the Licensed Materials (e.g., in an “About” box, license  
1159 information dialog box, or text file of Software), (ii) on or with ROKOKO packaging, or (iii) in a  
1160 written confirmation or other notice issued to Licensee by ROKOKO and transmitted via email,  
1161 facsimile, physical delivery, or otherwise, or (b) obtained from ROKOKO on request. For  
1162 clarification, License Identification does not include a designation, confirmation, packaging or  
1163 other document provided by a Reseller or other third party.

1164 16. “License Type” means a type of license specified by ROKOKO for ROKOKO Materials,  
1165 including the types set forth in Exhibit B. License Type includes the terms specified by  
1166 ROKOKO for each type of license, including the applicable terms set forth in Exhibit B. License  
1167 Type is determined by ROKOKO and may be specified in the applicable License Identification.

1168 17. “Licensed Materials” means Software, Supplemental Materials and User Documentation (a)  
1169 downloaded by clicking on the “I accept” button or other button or mechanism associated with  
1170 this Agreement or by otherwise indicating assent to this Agreement, (b) delivered prepackaged  
1171 with this Agreement, or (c) otherwise accompanied by this Agreement, provided that (i) in the  
1172 case of Software, the Software is identified in an applicable License Identification, and (ii)  
1173 Licensee has paid (and continues to pay) the applicable fees. Licensed Materials also includes  
1174 Supplemental Materials and User Documentation that ROKOKO provides or makes available to  
1175 Licensee for use with Software licensed under this Agreement if there are no separate terms for  
1176 such materials specified by ROKOKO. Licensed Materials includes, without limitation, any error  
1177 corrections, patches, service packs, updates and upgrades to, and new versions of, the Licensed  
1178 Materials that ROKOKO provides or makes available to Licensee under Licensee’s then-current  
1179 license. Licensee acknowledges that availability of Upgrades and new versions may be subject to  
1180 additional fees and the Strategic Program Terms. In addition, Licensed Materials includes,  
1181 without limitation, any Previous Versions and other ROKOKO Materials that Licensee receives  
1182 or retains pursuant to the Strategic Program Terms, but only for so long as and to the extent  
1183 expressly authorized by the Strategic Program Terms. Notwithstanding the foregoing (or any  
1184 other provision of this Agreement), Licensed Materials in all cases excludes Excluded Materials.

1185 18. “Licensee” means (a) the company or other legal entity on behalf of which ROKOKO  
1186 Materials are acquired, if the ROKOKO Materials are acquired on behalf of such an entity (e.g.,  
1187 by an employee, independent contractor, or other authorized representative), or (b) if there is no  
1188 such entity, the individual who accepts this Agreement (e.g., by selecting the “I accept” button or  
1189 other button or mechanism associated with this Agreement or otherwise indicating assent to this  
1190 Agreement, or by installing, downloading, accessing, or otherwise copying or using all or any  
1191 portion of the ROKOKO Materials). For clarification, “Licensee” refers only to a single,  
1192 specifically identified legal entity or individual, and does not include any subsidiary or affiliate  
1193 of any such legal entity or individual or any other related person.

1194 19. “Licensee’s Internal Business Needs” means, in reference to Licensed Materials, the use of  
1195 such Licensed Materials (and the features and functionality thereof) by Licensee’s own  
1196 Personnel to meet the internal requirements of Licensee’s business in the ordinary course of such  
1197 business, provided that Internal Business Needs will in no event include providing or making  
1198 available such Licensed Materials (or the features or functionality thereof) to any third party.

1199 20. “Networked Basis” means a computing environment that includes a Computer acting as a file  
1200 server which allows the Licensed Materials Installed on such Computer to be uploaded and

1201 Installed to, and operated, viewed or otherwise Accessed from, other Computers through a local  
1202 area network connection or through a VPN connection subject to compliance with the VPN  
1203 Requirements.

1204 21. "Permitted Number" means a maximum number (e.g., number of authorized users, number of  
1205 concurrent users, number of computers, sessions, etc.) applicable to a license of the Licensed  
1206 Materials and to the License Type associated with such license. Such number is determined by  
1207 ROKOKO and may be specified in the applicable License Identification.

1208 22. "Personal Learning Purposes" means (i) personal learning as a Student or (ii) in the case of a  
1209 non-Student, personal learning, excluding (a) in-person or online classroom learning in any  
1210 degree-granting or certificate granting program, and (b) learning related to any commercial,  
1211 professional or other for-profit purposes.

1212 23. "Personnel" means (a) Licensee's individual employees and (b) individual persons who are  
1213 independent contractors working on Licensee's premises and who Install and Access the  
1214 Licensed Materials only on and through Computers owned or leased and controlled by Licensee.

1215 24. "Previous Versions" means, as to any then-current release of Licensed Materials, a prior  
1216 release of the Licensed Materials as to which such then-current release is a successor or  
1217 substitute (as determined by ROKOKO).

1218 25. "Qualified Educational Institution" means an educational institution which has been  
1219 accredited by an authorized governmental agency within its applicable local, state, provincial,  
1220 federal, or national government and has the primary purpose of teaching its enrolled students.

1221 26. "Strategic Program" means (i) Subscription or (ii) a rental program offered generally by  
1222 ROKOKO pursuant to which ROKOKO makes available Licensed Materials.

1223 27. "Strategic Program Terms" means the terms for a Strategic Program or any successor or  
1224 supplemental web page of ROKOKO (the URL for which may be obtained on ROKOKO's  
1225 website or on request).

1226 28. "Reseller" means a distributor or reseller authorized directly or indirectly by ROKOKO to  
1227 distribute authentic ROKOKO Materials to Licensee.

1228 29. "Services" means services (including the results of services) provided or made available by  
1229 ROKOKO, including, without limitation, support services, storage, simulation and testing  
1230 services, training and other benefits, but excluding services provided or made available as part of  
1231 a Strategic Program .

1232 30. "Services Terms" means the terms for Services set forth at a location where a user may order  
1233 or register for, or that is displayed in connection with ordering or registering for, such Services  
1234 (e.g., a web page) or any successor or supplemental web pages of ROKOKO.

1235 31. “Software” means a computer program, or a module or component of a computer program,  
1236 distributed or made available by ROKOKO. The term “Software” may also refer to functions and  
1237 features of a computer program.

1238 32. “Stand-alone Basis” means (i) the Licensed Materials are Installed on a single Computer and  
1239 (ii) the Licensed Materials cannot be Installed on, or operated, viewed or otherwise Accessed  
1240 from or through any other Computer (e.g., through a network connection of any kind).

1241 33. “Student” means an individual person enrolled as a student at a Qualified Educational  
1242 Institution.

1243 34. “Subscription” is the program offered generally by ROKOKO under which ROKOKO  
1244 provides (among other things) updates and upgrades to, new versions of, and certain other  
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1286 and (iv) the VPN connection is secure and complies with current industry standard encryption  
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1288

1289 **Exhibit B**

1290 **License Types**

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