

## **RESOURCE TUNER END USER LICENSE AGREEMENT**

NOTICE TO USER: THIS IS A CONTRACT. BY INSTALLING THIS SOFTWARE YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

This End User License Agreement (the "EULA") is a legal contract between you (either an individual or an entity) and Heaventools Software ("Heaventools"), for the Heaventools Resource Tuner software product in object code (the "SOFTWARE"). The term "SOFTWARE" also shall include any supplied corrections, bug fixes, enhancements, updates or other modifications created and supplied to you by Heaventools and any related user documentation and explanatory materials or files provided in written or electronic form. By installing and/or using the enclosed, attached, or about-to-be-installed SOFTWARE you accept all the terms and conditions of this EULA. For purposes hereof, "you" means the individual person installing or using the SOFTWARE on his or her own behalf; or, if the SOFTWARE is being downloaded or installed on behalf of an organization, such as an employer, "you" means the organization for which the SOFTWARE is downloaded or installed and you represent that you have authorized the person accepting this agreement to do so on your behalf. For purposes hereof the term "organization", without limitation, includes any partnership, limited liability company, corporation, association, unincorporated organization, or governmental authority. You assume responsibility for the selection of the SOFTWARE to achieve your intended results, and for the installation, use and result obtained from the SOFTWARE. Do not use the SOFTWARE in any case where significant damage or injury to persons, property or business may happen if an error occurs. If you do not agree to the terms of this EULA, Heaventools is unwilling to license the SOFTWARE to you. In such event, promptly stop the installation process, cease to use the SOFTWARE, and erase this SOFTWARE and all of its associated files from your system.

### **1. LICENSE GRANT.**

1.1. Evaluation Period. When you first obtain a copy of the SOFTWARE, you are granted an evaluation period of not more than thirty (30) days (unless we specify otherwise), after which time you must pay for the SOFTWARE according to the terms and prices discussed in the SOFTWARE's documentation, or you must remove the SOFTWARE from your computer. You are expected to use the SOFTWARE on your system and to thoroughly evaluate its usefulness and functionality before making a purchase. This "try before you buy" approach is the ultimate guarantee that the SOFTWARE will perform to your satisfaction. You may process any number of files using the SOFTWARE, provided that such processed output be used internally for evaluation purposes only. You may not distribute or publish any of your products that are processed by the SOFTWARE using this evaluation version of SOFTWARE. You must obtain a License for the SOFTWARE in order for you to distribute or incorporate works produced while utilizing the evaluation period of the SOFTWARE.

1.2. License. Heaventools grants to you a non-exclusive and non-transferable license to use the specified version of the SOFTWARE on a specified number of computers or other devices under your control for which the SOFTWARE was designed (each, a "Client Device") pursuant to the terms and conditions of this EULA ("License"). "Use" means storing,

loading, installing, executing or displaying the SOFTWARE. You hereby agree and accept such License as follows:

a) Personal Use License. If the SOFTWARE is licensed under Personal Use License as reflected in the terms specified in the applicable invoicing or packaging for the SOFTWARE you may use one copy of the SOFTWARE on one (1) Client Device solely for Personal Use. For purposes of this EULA, "Personal Use" shall mean personal non-commercial use, and not on behalf or for the benefit of any clients and excludes any commercial purposes whatsoever, which include without limitation any products that are commercially distributed, whether or not for a fee, or any materials or services for sale or for which fees or charges are paid or received.

b) Business Use License. If the SOFTWARE is licensed under Business Use License as reflected in the terms specified in the applicable invoicing or packaging for the SOFTWARE you may use the SOFTWARE for Personal or Commercial Use. For purposes hereof, "Commercial Use" shall mean any use of the SOFTWARE for legal business, commercial, or government purpose. One purchased Business Use License entitles you to use one copy of the licensed SOFTWARE on one (1) Client Device provided that if multiple or volume licenses for the SOFTWARE are purchased, the number of the Client Devices and/or the number of permitted users shall be as provided and permitted by invoicing terms and/or applicable License Key.

1.3. Updates, Support and Maintenance Services. Heaventools will provide you with email Support and Maintenance Services for a period of one year from the purchase date, provided however that you may extend the Support and Maintenance Services, as available, by paying the appropriate fees to Heaventools per applicable terms and conditions set forth on the Heaventools website. During the term thereof, you may download free Updates to the SOFTWARE when and as Heaventools publishes them on its website. Maintenance and Support terms and conditions are subject to change without notice. Notwithstanding any provision to the contrary herein, nothing in this EULA shall be construed as to grant you any rights or licenses with regard to the New Releases of the SOFTWARE or to entitle you to any New Release. This EULA does not obligate Heaventools to provide any Updates. Notwithstanding the foregoing, any Updates that you may receive become part of the SOFTWARE and the terms of this EULA apply to them (unless this EULA is superseded by a further Agreement accompanying such Update or modified version of the SOFTWARE).

1.4. Term and Termination. The term of this EULA ("Term") shall begin when you purchase or otherwise legally receive the SOFTWARE until the termination of the EULA as provided herein. This EULA may be terminated by a superseding agreement, offered by Heaventools and accepted by you, for the SOFTWARE, Update or New Release of the SOFTWARE and conditioning your continued use of the SOFTWARE or Update or New Release of the SOFTWARE on your acceptance of such superseding agreement. Without prejudice to any other rights, this EULA and the License granted hereinabove will terminate automatically without notice from Heaventools if you fail to comply with any of the limitations or other requirements described herein. Upon any termination or

expiration of this EULA, you must immediately cease use of the SOFTWARE and permanently erase all copies of the SOFTWARE and all of its associated files from your system.

1.5. No Rights Upon Termination. Upon termination of this EULA you will no longer be authorized to use the SOFTWARE in any way.

1.6. Material Terms and Conditions. You specifically agree that each of the terms and conditions of this Section 1 are material and that failure of you to comply with these terms and conditions shall constitute sufficient cause for Heaventools to immediately terminate this EULA and the License granted under this Agreement. The presence of this Section 1.6 shall not be relevant in determining the materiality of any other provision or breach of this EULA by either party hereto.

## 2. RESERVATION OF RIGHTS AND OWNERSHIP.

2.1. The SOFTWARE is protected by civil and criminal law, and by the law of copyright, trade secret, trademark and patent of the United States, other countries and international treaties. Heaventools or its suppliers own and retain all proprietary rights, title, and interest in and to the SOFTWARE, including without limitations any error corrections, bug fixes, enhancements, updates or other modifications, including custom modifications to the SOFTWARE, whether made by Heaventools or any third party, and all copyrights, patents, trade secret rights, trademarks, and other intellectual property rights therein. The SOFTWARE is licensed, not sold. This EULA does not grant you any intellectual property rights in the SOFTWARE and you acknowledge that the License granted under this EULA only provides you with a right of limited use under the terms and conditions of this EULA. Heaventools reserves all rights not expressly granted to you in this EULA.

2.2. No Modification. You agree not to modify or alter the SOFTWARE in any way. You may not remove or alter any copyright notices or other proprietary notices on any copies of the SOFTWARE.

## 3. RESTRICTIONS.

3.1. No Transfers. Under no circumstances you shall sell, loan, rent, lease, loan, license, sublicense, publish, display, distribute, or otherwise transfer to a third party the SOFTWARE, any copy or use thereof, in whole or in part, without Heaventools' prior written consent, provided that if such non-waivable right is specifically granted to you under applicable law in your jurisdiction you may transfer your rights under this EULA permanently to another person or entity, provided that (i) you also transfer this EULA, the SOFTWARE, all accompanying printed materials, and all other software bundled or pre-installed with the SOFTWARE, including all copies, updates and prior versions, to such person or entity; (ii) retain no copies, including backups and copies stored on a Client Device; and (iii) the receiving party accepts the terms and conditions of this EULA and any other terms and conditions upon which you legally purchased a license to the SOFTWARE. In no case you may permit third parties to benefit from the use or functionality of the

SOFTWARE via a timesharing, service bureau, or remote access to the SOFTWARE through any means at any time.

3.2. Prohibitions. Except as otherwise specifically provided for in this EULA, you may not use, copy, emulate, clone, rent, lease, sell, modify, decompile, disassemble, otherwise reverse engineer, or otherwise reduce any part of the SOFTWARE to human readable form or transfer the licensed SOFTWARE, or any subset of the licensed SOFTWARE, nor permit any third party to do so, except to the extent the foregoing restriction is expressly prohibited by applicable law. Notwithstanding the foregoing sentence, decompiling the SOFTWARE is permitted to the extent the laws of your jurisdiction give you the non-waivable right to do so to obtain information necessary to render the SOFTWARE interoperable with other software; provided, however, that you must first request such information from Heaventools and Heaventools may, in its discretion, either provide such information to you (subject to confidentiality terms) or impose reasonable conditions, including a reasonable fee, on such use of the SOFTWARE to ensure that the Heaventools' and its suppliers and/or licensors proprietary rights in the SOFTWARE are protected. You may not modify, or create derivative works based upon the SOFTWARE in whole or in part. You may not alter or modify the installation package or create a new installation package for the SOFTWARE. Any such unauthorized use shall result in immediate and automatic termination of this EULA and the License granted hereunder and may result in criminal and/or civil prosecution. Neither SOFTWARE's binary code nor source may be used or reverse engineered to re-create the program algorithm, which is proprietary, without written permission of Heaventools. All rights not expressly granted here are reserved by Heaventools and/or its suppliers and licensors, as applicable.

3.3. Proprietary Notices. You may not remove any proprietary notices or labels on the SOFTWARE.

3.4. License Key. For purposes hereof, "License Key" shall mean a file or a unique sequence of digit and/or symbols provided to you by Heaventools confirming the purchase of the License from Heaventools, which may carry the information about the License, i.e. its type, the end user name and the number of licenses purchased, and enabling the full functionality of the SOFTWARE in accordance with the License granted under this EULA. The License Key provided by Heaventools constitutes the confidential proprietary information of Heaventools. You agree to implement reasonable security measures to protect such confidential information. You may not give, make available, give away, sell or otherwise transfer your License Key or any copy thereof to a third party. The License Key may not be distributed, except as provided herein, outside of the area of legal control of the person or persons who purchased the original License, without written permission of Heaventools. Doing so will result in an infringement of copyright. Heaventools retains the right of claims for compensation in respect of damage which occurred by your giving away the License Key or registration code contained therein. This claim shall also extend to all costs which Heaventools or its licensors incur in defending themselves.

3.5. Compliance with Law. You agree that in operating the SOFTWARE and in using any report or information derived as a result of operating this SOFTWARE, you will comply with all applicable international, national, state, regional and local laws and regulations, including, without limitation, privacy, copyright, export control and obscenity law. Any use of the SOFTWARE which is illegal under international or local law is forbidden by this EULA.

3.6. No Transfer of Rights. Except as otherwise specifically provided herein, you may not transfer or assign any of the rights granted to you under this EULA or any of your obligations pursuant hereto.

## 5. DISCLAIMER OF WARRANTY.

5.1. NO WARRANTIES. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, THE SOFTWARE IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY WHATSOEVER AND HEAVENTOOLS MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE, REGARDING OR RELATING TO THE SOFTWARE OR CONTENT THEREIN OR TO ANY OTHER MATERIAL FURNISHED OR PROVIDED TO YOU PURSUANT TO THIS EULA OR OTHERWISE. YOU ASSUME ALL RISKS AND RESPONSIBILITIES FOR SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE. HEAVENTOOLS MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR FREE OR FREE FROM INTERRUPTION OR FAILURE, OR THAT IT IS COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HEAVENTOOLS DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE AND THE ACCOMPANYING WRITTEN MATERIALS OR THE USE THEREOF. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. YOU HEREBY ACKNOWLEDGE THAT THE SOFTWARE MAY NOT BE OR BECOME AVAILABLE DUE TO ANY NUMBER OF FACTORS INCLUDING WITHOUT LIMITATION PERIODIC SYSTEM MAINTENANCE, SCHEDULED OR UNSCHEDULED, ACTS OF GOD, TECHNICAL FAILURE OF THE SOFTWARE, TELECOMMUNICATIONS INFRASTRUCTURE, OR DELAY OR DISRUPTION ATTRIBUTABLE TO VIRUSES, DENIAL OF SERVICE ATTACKS, INCREASED OR FLUCTUATING DEMAND, AND ACTIONS AND OMISSIONS OF THIRD PARTIES. THEREFORE, HEAVENTOOLS EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY REGARDING SYSTEM AND/OR SOFTWARE AVAILABILITY, ACCESSIBILITY, OR PERFORMANCE. HEAVENTOOLS DISCLAIMS ANY AND ALL LIABILITY FOR THE LOSS OF DATA DURING ANY COMMUNICATIONS AND ANY LIABILITY ARISING FROM OR RELATED TO ANY FAILURE BY HEAVENTOOLS TO TRANSMIT ACCURATE OR COMPLETE INFORMATION TO YOU.

5.2. LIMITED LIABILITY; NO LIABILITY FOR CONSEQUENTIAL DAMAGES. YOU ASSUME THE ENTIRE COST OF ANY DAMAGE RESULTING FROM YOUR USE OF THE SOFTWARE AND THE

INFORMATION CONTAINED IN OR COMPILED BY THE SOFTWARE, AND THE INTERACTION (OR FAILURE TO INTERACT PROPERLY) WITH ANY OTHER HARDWARE OR SOFTWARE WHETHER PROVIDED BY HEAVENTOOLS OR A THIRD PARTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL HEAVENTOOLS OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF GOODWILL, WORK STOPPAGE, HARDWARE OR SOFTWARE DISRUPTION IMPAIRMENT OR FAILURE, REPAIR COSTS, TIME VALUE OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, OR THE INCOMPATIBILITY OF THE SOFTWARE WITH ANY HARDWARE, SOFTWARE OR USAGE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HEAVENTOOLS SHALL HAVE NO OBLIGATION TO YOU WITH RESPECT TO ANY CLAIM OF INFRINGEMENT BASED UPON YOUR USE OF THE SOFTWARE IN COMBINATION, OPERATION OR OTHERWISE WITH THE DATA OR MATERIALS NOT SUPPLIED BY HEAVENTOOLS. IN NO EVENT WILL HEAVENTOOLS' TOTAL LIABILITY TO YOU FOR ALL DAMAGES IN ANY ONE OR MORE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE EXCEED \$10. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## 6. U.S. GOVERNMENT-RESTRICTED RIGHTS.

6.1. Notice to U.S. Government End Users. The SOFTWARE and accompanying Documentation are deemed to be "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," respectively, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights, including any use, modification, reproduction, release, performance, display or disclosure of the SOFTWARE and accompanying Documentation, as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

## 7. YOUR INFORMATION AND HEAVENTOOLS' PRIVACY POLICY.

7.1. Privacy Policy. You acknowledge receipt of and agree to the Heaventools' privacy statement which is made available to you in connection with installation and is set forth in full at [www.heaventools.com/privacy.htm](http://www.heaventools.com/privacy.htm). You hereby expressly consent to the Heaventools' processing of your personal data (which may be collected by Heaventools or its distributors) according to the Heaventools' current privacy policy as of the date of the effectiveness hereof which is incorporated into this EULA by reference. By entering into this EULA, you agree that Heaventools may collect and retain information about you,

including your name and email address. Heaventools employs other companies and individuals to perform certain functions on its behalf. Examples include delivering packages, sending postal mail and e-mail, removing repetitive information from customer lists, analyzing data, providing marketing assistance, and providing customer service. They have access to personal information needed to perform their functions, but may not use it for other purposes. Heaventools publishes a privacy policy on its website and may amend such policy from time to time in its sole discretion. You should refer to the Heaventools' privacy policy prior to agreeing to this EULA for a more detailed explanation of how your information will be stored and used by Heaventools. If "you" are an organization, you will ensure that each member of your organization (including employees and contractors) about whom personal data may be provided to Heaventools has given his or her express consent to the Heaventools' processing of such personal data. Personal data will be processed by Heaventools or its distributors in the country where it was collected, and possibly in the United States and Germany. United States laws regarding processing of personal data may be less or more stringent than the laws in your jurisdiction.

## 8. MISCELLANEOUS.

8.1. Governing Law; Jurisdiction and Venue. This EULA shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia without reference to conflicts of law rules and principles. To the extent permitted by law, the provisions of this EULA shall supersede any provisions of the Uniform Commercial Code as adopted or made applicable to the Software Products in any competent jurisdiction. This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed and excluded. The federal and state courts within the Commonwealth of Virginia shall have exclusive jurisdiction to adjudicate any dispute arising out of this EULA. You agree that this EULA is to be performed in the Commonwealth of Virginia and that any action, dispute, controversy, or claim that may be instituted based on this EULA, or arising out of or related to this EULA or any alleged breach thereof, shall be prosecuted exclusively in the federal or state courts in of the Commonwealth of Virginia and you, to the extent permitted by applicable law, hereby waive the right to change venue to any other state, county, district or jurisdiction; provided, however, that Heaventools as claimant shall be entitled to initiate proceedings in any court of competent jurisdiction.

8.2. Period for Bringing Actions. No action, regardless of form, arising out of the transactions under this EULA, may be brought by either party hereto more than one (1) year after the cause of action has occurred, or was discovered to have occurred, except that an action for infringement of intellectual property rights may be brought within the maximum applicable statutory period.

8.3. Entire Agreement. This EULA is the entire agreement between you and Heaventools and supersedes any other prior agreements, proposals, communications or advertising, oral or written, with respect to the SOFTWARE or to subject matter of this EULA. You

acknowledge that you have read this EULA, understand it and agree to be bound by its terms.

8.4. Severability. If any provision of this EULA is found by a court of competent jurisdiction to be invalid, void, or unenforceable for any reason, in whole or in part, such provision will be more narrowly construed so that it becomes legal and enforceable, and the entire EULA will not fail on account thereof and the balance of the EULA will continue in full force and effect to the maximum extent permitted by law or equity while preserving, to the fullest extent possible, its original intent.

8.5. No Waiver. No waiver of any provision or condition herein shall be valid unless in writing and signed by you and an authorized representative of Heaventools provided that no waiver of any breach of any provisions of this EULA will constitute a waiver of any prior, concurrent or subsequent breach. Heaventools' failure to insist upon or enforce strict performance of any provision of this EULA or any right shall not be construed as a waiver of any such provision or right.