

HEXAGON TECHNOLOGY CENTER GMBH

End User License Agreement

THIS AGREEMENT entered into by and between **HEXAGON TECHNOLOGY CENTER GMBH** ("Licensor"), a Swiss company having principal offices at Heinrich -Wild-Strasse 201, CH-9435 Heerbrugg, Switzerland and the undersigned customer ("Licensee") determines the rights and licenses granted to Licensee in the Licensed Software (hereinafter defined) supplied by the Licensor.

IMPORTANT—READ CAREFULLY: This Agreement is a legal agreement between the Licensee and Licensor. By installing, copying, downloading, accessing or otherwise using the Licensed Product (as defined below), the Licensee agrees to be bound by the terms of this Agreement. If the Licensee does not agree to the terms of this Agreement, do not install or use the Licensed Product.

1. Definitions. As used in this agreement, the following definitions apply:

- (a) "Activated Software" means Licensed Product for which Licensee has paid applicable license fees and charges and for which Licensor has delivered a Security Device.
- (b) "Licensed Documentation" means all the documentation, in printed or electronic form, that is delivered from Licensor to Licensee and related to the Licensed Software.
- (c) "Licensed Product" means collectively the Licensed Software and the Licensed Documentation, including the Security Device when provided by Licensor with Activated Software.
- (d) "Licensed Software" or "Software" means the Licensor's software, selected by Licensee, in executable code only, as licensed under this Agreement.
- (e) "Maintenance Fees" means fees payable for Software Maintenance of Activated Software.
- (f) "Security Device" means a device (whether tangible or intangible, like a license key) issued by Licensor and licensed to Licensee to enable Licensee's Use of Activated Software to achieve functionality for which Licensee has paid Licensor applicable license fees and charges.
- (g) "Software Maintenance" means corrections, revisions, patches, service packs, updates, and subsequent releases of the Licensed Product made available by Licensor from time to time.
- (h) "Subscription License" means a form of license of the Licensed Product for a year or other fixed term as may be agreed between Licensor and Licensee and is identified as a Subscription License in a quotation from Licensor. A Subscription License includes Software Maintenance during the term of the Subscription License.

- (i) "Unactivated Software" means Licensed Product for which no license fees and charges have been paid by Licensee and for which no Security Device has been issued, thus limiting authorized use of the Software to Viewer Mode.
- (j) "Use" means Licensee's right to install, use, access, run, or otherwise read the Software into and out of memory in strict accordance with the Licensed Documentation and all the terms of this license granted from Licensor to Licensee pursuant to this Agreement.
- (k) "Viewer Mode" means use of Software only for purposes of evaluating the Software or viewing a file or other work product not created by the Unactivated Software.

2. License grant; Use of Data from Licensee.

- (a) Subject to the payment of the license fees and charges to Licensor, Licensor grants to Licensee a limited, nonexclusive and nontransferable license for Use of the Licensed Product during this Agreement's term defined in Paragraph 4. Licensee agrees that it has no right, power or authority to make any modifications to or unauthorized copies of the Licensed Product.
- (b) At Licensor's request upon the expiration or other termination of Licensee's authorized Use of the Software, Licensee will return to Licensor all Licensed Documentation, including the Security Device.
- (c) Licensor may use, disclose, store, transmit and otherwise dispose of information, including personally identifiable information, disclosed to Licensor by Licensee, to the extent permitted and described in the privacy policy published by Licensor at <https://hexagon.com/privacy-policy>.

3. License fees, charges and taxes.

- (a) Licensee shall pay Licensor's license fees and charges for the Licensed Product in effect at the time of Licensee's acceptance of this Agreement. No license fees and charges apply when the Licensed Software is Unactivated Software.
- (b) The license fees and charges, taxes and other applicable charges are due and payable upon installation of the Activated Software unless separate arrangements for deferred payment are made with Licensor prior to installation.

4. Term.

- (a) The term of Licensee's Use of Activated Software, excluding Activated Software licensed under a Subscription License, shall commence upon first Use of the Software and shall continue in force until terminated or cancelled as provided by this Agreement. Licensee acknowledges that if Licensee at any time fails to extend the term of Software Maintenance by payment of applicable Maintenance Fees, no versions of Activated Software will be obtained following the expiration of the latest period for which

Software Maintenance has been purchased. The foregoing does not apply to Activated Software licensed under a Subscription License, because the term of the license and Software Maintenance are coterminous. However, Licensor has the right prior to the end of any term for which Software Maintenance has been purchased to notify Licensee that Licensor will not provide Software Maintenance after that term.

- (b) Unless otherwise terminated or cancelled as provided by this Agreement, the term of Licensee's Use of Activated Software licensed under a Subscription License, shall commence upon first Use of the Software and shall continue for that term set out in Licensor's quotation.

5. Protection of Licensed Product.

- (a) Licensee acknowledges and agrees that the Licensed Product and all permitted copies are Licensor's exclusive property and a valuable trade secret of Licensor. Licensee will not disclose or make available to third parties the Licensed Product or any portion or any information from Licensor marked "confidential" without Licensor's prior written approval. Licensor reserves title to, ownership of, and all proprietary rights to the Licensed Product, as well as any related work product and major or minor releases of the Software, if any. Licensee shall promptly and in good faith take all action reasonably necessary, advisable, or requested by Licensor to assure compliance with this Paragraph 5 by all employees and agents of Licensee.
- (b) Upon reasonable notice during this Agreement's term and within six (6) months after termination or expiration of this Agreement, Licensor may arrange for the inspection and review of Licensee's computer systems to assure compliance with all terms and provisions of this Agreement during Licensee's normal business hours and in such a manner as not to interfere unreasonably with Licensee's operations. In the event such audit discloses that the number of permitted copies has been exceeded, Licensee shall promptly pay to Licensor the appropriate license fees and charges for the additional computers or users.

6. Prohibited Uses. Licensee shall not:

- (a) At any one time, use, share, or use concurrently more than one installation or copy of the Software on any one computer, including but not limited to a workstation, terminal, or other digital electronic device, except that Unactivated Software is not subject to such restrictions;
- (b) Modify, translate, reverse engineer, decompile, disassemble, reduce the Software to a humanly perceivable form, or create derivative works based upon the Licensed Product, or cause or permit another to do so;
- (c) Remove any proprietary notices, labels, copyright marks, or trademarks on the Licensed Product;

- (d) Modify, adapt, rent, lease, commercially host, sublicense, redistribute, or lend the Software;
- (e) Copy or attempt to copy the Software for any purpose whatsoever, except as expressly permitted by the terms of this Agreement;
- (f) Attempt to access or use Activated Software, except by means of the Security Device licensed by Licensor to Licensee; or
- (g) Attempt to alter, modify, reprogram or otherwise tamper with any Security Device issued by Licensor, regardless of whether the Security Device has been licensed to Licensee.

7. Support services and updates.

- (a) The provisions of this Paragraph 7(a) apply particularly to Activated Software not licensed as a Subscription License. For Activated Software Licensor will provide Licensee with all Software Maintenance made available by Licensor for the Software during the period of time for which Licensee has purchased and paid for Software Maintenance. Initially, Licensor will provide Licensee Software Maintenance through the expiration date of the Security Device first provided by Licensor to enable functionality of the Activated Software. Subject to the provisions of Paragraph 4, Licensee's right to receive Software Maintenance can be extended for succeeding periods of time upon payment of then applicable Maintenance Fees. If Licensee allows Software Maintenance to lapse, Licensor may, but need not, reinstate and continue Software Maintenance upon Licensee's payment of any and all Maintenance Fees for the period or periods of time during which Software Maintenance lapsed, plus a reinstatement fee.
- (b) Activated Software licensed under a Subscription License includes Software Maintenance during the term set out in Paragraph 4(b).
- (c) As part of Software Maintenance purchased by Licensee, Licensor or its designee shall provide support services to attempt to correct any error, malfunction or defect in the Activated Software's functionality or provide an alternative process, provided that Licensee gives Licensor or its designee, as the case may be, prompt notice of the problem and sufficient information to either diagnose or recreate such problems. Licensee acknowledges that the Licensed Software is complex and may not be error free and that all errors, if any, may not be correctable or avoidable.
- (d) Any updates received as part of the Software Maintenance become integrated in the Licensed Product and are treated as such for the purpose of this Agreement.

8. Warranty.

- (a) Licensor warrants that, for a period of sixty (60) days after delivery of the Licensed

Product to Licensee:

(1) Under normal Use and service, the media on which the Licensed Software is delivered (if so delivered otherwise than electronically) shall be free from defects in material and workmanship, and

(2) The Licensed Product will meet Licensor's then current published specifications for the Software.

- (b) If the Licensed Product fails to meet the media warranty of Paragraph 8(a)(1) and Licensee gives Licensor written notice thereof during the applicable warranty period, Licensor shall replace such media. If the Licensed Product fails to meet the warranty of Paragraph 8(a)(2) and Licensee gives Licensor written notice thereof during the applicable warranty period, Licensor's sole obligation shall be to provide technical services to attempt to correct the failure, provided that Licensee gives Licensor detailed information regarding the failure and Licensor is able to duplicate or view the same. Licensee acknowledges that the Licensed Product is complex, may not be error free, and that all errors, if any, may not be correctable or avoidable.
- (c) EXCEPT AND TO THE EXTENT EXPRESSLY PROVIDED IN PARAGRAPH 8 AND IN LIEU OF ALL OTHER WARRANTIES, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, INFORMATIONAL CONTENT, FITNESS FOR A PARTICULAR PURPOSE OR SYSTEM INTEGRATION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE LICENSED PRODUCT. Some jurisdictions do not permit the exclusion of implied warranties or limitations on applicable statutory rights of the consumer, and, as such, some portion of the above limitation may not apply to Licensee. In such jurisdictions, Licensor's liability is limited to the greatest extent permitted by law.
- (d) Licensee shall be solely responsible for the selection, Use, efficiency, and suitability of the Licensed Product and neither Licensor nor any of Licensor's affiliates shall have any liability therefor.
- (e) The warranty provision of this Paragraph 8 do not apply if the Software has been subject to modification by other than Licensor or on Licensor's instruction or by an affiliate of Licensor, has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Licensor, is subject to accident or abuse, or is used in ultra hazardous activities.
- (f) Licensor warrants that the Software is date compliant. The duration of this warranty and remedies available to the Licensee for breach of this warranty shall be limited to repair or replacement of the Software where such non-compliance is discovered and made known to Licensor in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies Licensee may otherwise have under this Agreement with respect to other defects.

- (g) DESPITE ANY OTHER PROVISION HEREOF TO THE CONTRARY, LICENSOR'S AND ITS AFFILIATES' LIABILITY OF ANY KIND SHALL NEVER EXCEED THE AMOUNT SET OUT IN PARAGRAPH 11.
- (h) Despite any other provision hereof to the contrary "UNACTIVATED SOFTWARE", AS HEREIN DEFINED, IS SUBJECT TO NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, INFORMATIONAL CONTENT, FITNESS FOR A PARTICULAR PURPOSE OR SYSTEM INTEGRATION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE LICENSED PRODUCT.

9. Negation of proprietary rights indemnity.

THERE IS NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S QUIET ENJOYMENT OF THE LICENSED PRODUCT OR AGAINST INFRINGEMENT, AND NEITHER LICENSOR NOR ANY OF LICENSOR'S AFFILIATES HAS ANY LIABILITY TO LICENSEE FOR THE INFRINGEMENT OF PROPRIETARY RIGHTS BY THE LICENSED PRODUCT OR ANY PORTION THEREOF.

10. Termination/cancellation.

- (a) Licensor has the right to terminate or cancel this Agreement in accordance with other provisions of this Agreement and also if:
- (1) Licensee fails to pay Licensor any license fee or charges when due; or
 - (2) Licensee is in default of any other provision hereof and such default has not been cured within ten (10) days after Licensor learns of the default and gives Licensee written notice thereof; or
 - (3) Licensee becomes insolvent or seeks protection, voluntarily or involuntarily, under any bankruptcy law; or
 - (4) Licensee attempts to assign or sublicense its rights under this license.
- (b) In the event of any termination or cancellation, Licensor may:
- (1) Declare all amounts owed hereunder to Licensor to be immediately due and payable;
 - (2) Require that Licensee cease any further use of the Licensed Product or any portion thereof and immediately destroy, erase from any temporary RAM and permanent memory, and return to Licensor all copies of the Licensed Product, including the

Security Device;

(3) Cease performance of all of Licensor's obligations hereunder without liability to Licensee; and

(4) Electronically render the Software of no further Use by Licensee.

Upon Licensor's request, an authorized representative of Licensee shall provide a written certification that warrants compliance with Paragraph 10(b)(2).

- (c) Licensor's foregoing rights and remedies shall be cumulative and in addition to all other rights and remedies available to Licensor in law and in equity.
- (d) UPON ANY TERMINATION, EXPIRATION, OR CANCELLATION OF THIS AGREEMENT, DUE TO BREACH OR OTHERWISE, LICENSOR SHALL IN ALL EVENTS HAVE ALL RIGHTS, POWER AND AUTHORITY TO EXERCISE ELECTRONIC SELF-HELP AND TO EXERCISE ALL RIGHTS, REMEDIES AND RECOURSE TO WHICH IT MAY BE ENTITLED, WHICH SELF-HELP SHALL INCLUDE WITHOUT LIMITATION, ALL ELECTRONIC MEANS AVAILABLE TO LICENSOR.

11. Limitation of liability.

IN NO EVENT SHALL LICENSOR OR ITS AFFILIATES BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF THE ACTION, ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, EVEN IF LICENSOR OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF.

LICENSOR'S AND ITS AFFILIATES' LIABILITY TO LICENSEE HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL OF THE LICENSE FEES PAID TO LICENSOR HEREUNDER BY LICENSEE.

IN NO EVENT SHALL LICENSOR OR ITS AFFILIATES BE LIABLE TO LICENSEE FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF THE SOFTWARE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, LOST DATA TIME, PROFITS, DELIVERY DELAY OR LICENSOR'S PERFORMANCE OF SERVICES UNDER THIS LICENSE AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO ONE OR MORE OF THE FOREGOING LIMITATIONS MAY NOT BE APPLICABLE TO LICENSEE. In such jurisdictions, Licensor's and its affiliates' liability is limited to the greatest extent permitted by law.

12. General.

- (a) Any claim arising out of or related to this Agreement must be brought no later than two (2) years after it has accrued.
- (b) This Agreement is the sole agreement between the parties relating to the subject matter and supersedes all prior understandings, writings, proposals, representations, or communications, written or oral, of either party. Only a writing executed by the authorized representatives of both parties may amend this Agreement.
- (c) No Assignability. This Agreement and the licenses granted hereunder cannot be transferred or assigned by Licensee without the prior written consent of Licensor.
- (d) Severability and Survivability. If any part of this Agreement is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible to reflect the original intention of the parties and all other portions of this Agreement remain in full force and effect. In the event of any expiration, termination or cancellation of this Agreement, provisions that are intended to continue and survive shall do so.
- (e) This Agreement is binding upon the Licensor's and Licensee's successors and assigns.
- (f) Failure of either party to enforce any provision of this Agreement will not be deemed a waiver of the provision or the right to enforce that provision.
- (g) Licensee shall not export or re-export, or allow the export or re-export of the Software or any copy, portion or direct product of the foregoing, in violation of any export laws, restrictions, national security controls or regulations of the United States or any other applicable foreign agency or authority. By accepting this license Agreement, Licensee represents and warrants that it is not located in, under control of, or a national or resident in a United States embargoed country, or on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Denied Person's List or Entity List.
- (h) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The number of arbitrators shall be three (3) and the arbitrators shall consider the dispute at issue in New York, New York. The language of the arbitration shall be English. If Licensee is organized under the laws of a state not a contracting state to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"), Licensor shall be free to initiate legal proceedings in any court that has jurisdiction over Licensee.
- (i) Any controversy or claim arising out of or relating to this Agreement or its subject

- matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.
- (j) During this Agreement's term, Licensee agrees to regularly back-up its data on a separate medium. Licensee acknowledges that any failure to do so may significantly decrease its ability to mitigate any harm or damage arising from any problem or error in the Licensed Products or the provision of services under this Agreement.
 - (k) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IT IS SPECIFICALLY ACKNOWLEDGED AND AGREED THAT NO REPRESENTATION, WARRANTY OR OTHER ASSURANCE IS MADE, DIRECTLY OR INDIRECTLY, THAT (I) ALL OR ANY PORTION OF THE LICENSED PRODUCT COMPLIES WITH ANY FEDERAL, STATE OR LOCAL LAWS, RULES, REGULATIONS OR ORDINANCES, AS THE SAME MAY BE CHANGED FROM TIME TO TIME, OR (II) LICENSEE'S USE OF THE LICENSED PRODUCT WILL RESULT IN LICENSEE'S COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL LAWS, RULES, REGULATIONS, OR ORDINANCES, AS THE SAME MAY BE CHANGED FROM TIME TO TIME.
 - (l) The Software is a "commercial item," as defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation," as defined in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software by the United States government, its agencies or instrumentalities shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted herein.

13. Licensee's Acceptance.

Licensee will be deemed to accept the terms of this Agreement and agree to perform all obligations of Licensee under this Agreement upon installation of the Software or Use of the Software or by any other means, electronic or otherwise, prescribed by Licensor and accepted by Licensee.

- END