

Matrikon Software License Agreement

End-User License Agreement

Please read this document carefully before proceeding. This Agreement licenses the software to you and contains warranty and liability disclaimers. By installing the software, you are confirming your acceptance of the software and agreeing to become bound by the terms of this Agreement. If you do not wish to do so, click "do not accept" below and do not install the software.

If you, as the purchaser of this software are in the United States of America, this license is with Matrikon International, Inc. Otherwise the license is with Matrikon International, Inc. or Matrikon Inc. as the case may be is herein after called Matrikon.

The following are the terms and conditions under which Matrikon licenses its software.

1. Definitions

1.1. Licensed Product(s) means the computer software which accompanies this License, including its compiled object, including their API's, as well as any images, photographs, templates, animations, audio, text, and applets, and online or electronic or printed documentation of the Matrikon software referred to in this License. If the Client has a maintenance and support agreement with Matrikon for the Licensed Product(s), any updates, supplemental software code, and supporting materials shall be considered part of the Licensed Product(s) and shall be subject to the terms and conditions of this License.

1.2. Computer System means the computer hardware equipment on which the Client has elected to install and/or execute the Licensed Product(s).

2. Terms

2.1. Unless otherwise agreed, all charges shall be invoiced to the Client.

2.2. Payment shall be net 30 days after invoice dates. Late payments shall be subject to interest at a rate of TWO (2%)

PERCENT per month, compounded monthly (26.8% annually).

3. Taxes and Governmental Authorization

3.1. The license fees and any other amounts payable pursuant to this Agreement are exclusive of all national, state, regional, local, municipal, or other taxes and fees including, but not limited to, excise, sales, use, property, ad valorem, intangibles, goods and services and value added taxes, or registration fees, now in force or enacted in the future, and all such taxes and fees, except taxes based on Matrikon's net worth, capital or net income shall be paid directly by the Client, or if paid by Matrikon, the Client will reimburse Matrikon.

3.2. The Client shall obtain from governmental authorities any licenses or other authorizations, and pay all costs therefore, which may be required to permit Matrikon personnel to render the services and supply the products agreed upon. Matrikon shall not be responsible if any license or other authorization is delayed, denied, revoked, restricted, or not renewed and the Client shall be liable for any costs incurred by Matrikon as a result of the failure to obtain such licenses or other authorizations or if such licenses or other authorizations are delayed, denied, revoked, restricted, or not renewed.

4. License Grant

4.1. The Licensed Product(s) are furnished to the Client under a nonexclusive, non-transferable license. The type of License and additional restrictions on use are set out in this License. THIS IS A LICENSE, NOT A SALE. The Licensed Product(s) may only be copied once for archival or backup purposes with the proper inclusion of Matrikon's and any Matrikon licensor's copyright notice.

4.2. The Client may NOT or attempt to:

- Use or make copies of the Licensed Product(s) except as permitted by this License;
- Translate, reverse compile, disassemble, reverse engineer the Licensed Product(s);
- Rent, lease, assign, lend, or transfer the Licensed Product(s), or merge all or any part of the Licensed Product(s) with another program;
- Separate the component parts of the Licensed Product(s);
- Disclose any source code of which the Client becomes aware.

4.3. If the Client is unable to operate the Licensed Product(s) on the Computer System due to equipment malfunction, the Licensed Product(s) may be transferred temporarily to another Computer System during the period of equipment malfunction.

5. Installation

5.1. The Client shall install the Licensed Product(s) only on one computer.

6. Title

6.1. No title to or ownership in the Licensed Product(s) is transferred to the Client. Title to and all applicable rights in patents, copyrights, and trade secrets in the Licensed Product(s) shall remain in Matrikon or third parties from whom Matrikon has obtained rights to license the Licensed Product(s). Licensed Product(s) provided hereunder, including the ideas, concepts, know-how, and technology contained therein, are proprietary and confidential to and contain trade secrets of Matrikon or third parties from whom Matrikon has obtained rights to license the Licensed Product(s), and the

Client agrees to be bound by and observe the proprietary, confidential, and trade secret nature thereof as herein provided. The Client agrees to take appropriate action by instruction or agreement with its employees who are permitted access to the Licensed Product(s) to fulfill its obligations hereunder. Except as may be permitted in writing by Matrikon, the Client shall not provide, disclose, or otherwise make available, the Licensed Product(s) or copies thereof to any third party.

7. Term and Termination

7.1. The term of the license is perpetual (subject to Section 7.2), commencing upon the date the license fee is paid by the Client.

7.2. Matrikon shall have the right to terminate the Client's license if the Client fails to pay any required license fee(s) or otherwise fails to comply with these license terms and conditions. Matrikon shall give written notice to the Client of such default and if such default has not been remedied within 30 days after such notice, this license shall terminate. This License shall also terminate automatically upon:

The Client being assigned or petitioned into Bankruptcy;

a. The insolvency of the Client;

b. The Assignment of the Client's assets for the benefit of its creditor;

c. The Appointment of a receiver or trustee of the Client.

7.3. The Client agrees, upon termination by reason of the Client's default, to immediately return or destroy the Licensed Product(s) and copies thereof as directed by Matrikon and, if requested by Matrikon, to certify in writing as to the destruction or return of the Licensed Product(s) and all copies thereof.

8. Warranty

8.1. Matrikon warrants that, for a period of 90 days after delivery of the licensed product(s) to the client, the licensed program(s) will perform in accordance with the Matrikon user documentation. In the event the licensed product(s) do not perform in accordance with the user documentation, then during the 90 day warranty period, Matrikon shall at its option (i) correct any variance between the licensed product(s) performance and the licensed product(s) user documentation; or (ii) replace the licensed product(s) media. The foregoing shall be the client's sole and exclusive remedy for error and defect in the licensed product(s).

8.2. The warranties above (Section 8.1) are in lieu of all other warranties or, express, implied or statutory, including without limitation the warranty of merchantable quality, satisfactory quality, merchantability, and fitness for a particular purpose or those arising by law, statute, usage of trade course of dealing, or otherwise.

9. Patent and Copyright Indemnification

9.1. Matrikon shall defend or settle any action, suit, or proceeding brought against the Client in so far as it is based on

a claim that the Licensed Product(s) delivered hereunder infringes any existing patent or copyright issued or registered as of the date of this License, provided that Matrikon is promptly notified by the Client of the action and given full authority, information, and assistance (at Matrikon's expense) for the defense of the action. Matrikon shall pay all damages and costs awarded therein against the Client, but shall not be responsible for any compromise made without its consent. Matrikon may, at its option and expense, replace or modify the Licensed Product(s) so that infringement will not exist or procure for the Client the right to continue using the allegedly infringing Licensed Product(s) or refund to the Client the price thereof as depreciated or amortized by an equal annual amount over the lifetime of the Licensed Product(s) as established by Matrikon. Matrikon's commitment shall not extend to that part of any infringement or claim thereof related to the Licensed Product(s) when based upon:

a. The combination of the Licensed Product(s) with software not supplied by Matrikon;

b. Modification of the Licensed Product(s);

c. Use of the Licensed Product(s) in any manner other than allowed by this License;

d. Use of the Licensed Product(s) in combination with other hardware or software.

10. Use of Licensed Product(s) and Limitation of Liability

10.1. The Client shall retain full control over the use of the Licensed Product(s) and any modifications or enhancements thereof as well as the Client's use of any recommendations provided Matrikon during the course of providing services under this License or any other Agreement between Matrikon and the Client. Accordingly, the Client agrees to be solely responsible for the design, repair, and configuration of the Client's equipment, machinery, systems, and/or products. The Client assumes all risks and liability for results obtained by the use or implementation of the Licensed Product(s) or the provision of services, whether Licensed Product(s) are used singly or in combination with other programs or products. The Client agrees that in no event shall Matrikon be liable for indirect, incidental, ordinary, special, or consequential damages either real or alleged, including but not limited to any loss of revenue or profit, lost or damaged hardware or other equipment, or other commercial or economic loss even if Matrikon has been advised of the possibility of such damages or

they are foreseeable.

10.2. The liability of Matrikon in any event, regardless of the form of action, whether in contract or tort, including claims of negligence against Matrikon, shall be limited to the total of all amounts the Client has paid to Matrikon as license fees for the Licensed Product(s) that are alleged to have caused damages or that is related to the cause of action. No action, regardless of form, arising out of the transactions under this License may be brought by the Client more than two years after the cause of action has occurred.

11. Maintenance and Support

11.1. Maintenance and Support to be provided by Matrikon to the Client, if any, is set out in the Software Product Maintenance and Support Agreement.

12. Notices

12.1. All notices, authorizations, and approvals and written communications pertaining to this agreement are to be delivered by one of the following methods:

a. For addresses in the United States or Canada and mailed from within the continental United States of Canada only: by depositing the notice in the mail, using registered mail, return receipt requested, addressed to the address below or to any other address the party may designate in writing.

b. By facsimile to the telephone number set forth below, or to any other telephone number the party may designate in writing,

c. By overnight delivery or courier service addressed to the address below or to any other address the party may designate in writing

e. By hand delivery to the individual designated below or to any other individual the party may designate in writing,

f. By e-mail with attachments in Acrobat .pdf format or as scanned images in any graphics format.

12.2. All notices, authorizations and approvals shall be deemed delivered:

a. If by registered mail, seven (7) days after the notice's deposit in the mail;

b. If by facsimile, on the day the notice is delivered;

c. If by overnight delivery or courier service, on the day of delivery;

d. If by hand delivery, on the date of hand delivery;

e. If by e-mail, on the date of delivery.

12.3. The Matrikon address to which notices, authorizations, and approvals and written communications pertaining to this agreement are to be delivered is: If Matrikon International. is the Licensor then:

Matrikon Inc.

#1800, 10405 Jasper Avenue, Edmonton, Alberta T5J 3N4 Canada

Telephone Number: +1 780 448-1010

Facsimile Number: +1 780 448-9191

13. Force Majeure

13.1. Neither party shall be considered in default in performance of obligations hereunder to the extent that performance of such obligations, or any of them, is affected by Force Majeure. Force Majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion, strike, epidemic, accident, fire, flood, wind, earthquake, explosion, blockade, or embargo, lack of or failure of transportation facilities or any law, proclamation, regulation or ordinance, demand or requirement of any Government or Governmental agency having or claiming to have jurisdiction over the services or with respect to materials purchased for the services, or over the parties hereto, or any Act of God, or other act of Government, or any cause whether of the same or different nature existing or future, which is beyond the control and without the fault or negligence of the parties hereto. Lack of funds and century date non-compliance shall not be considered as affected categories respecting Force Majeure.

14. Freight Terms

14.1. The Licensed Product(s) shall be delivered at the destination agreed upon by the parties. The Client shall promptly notify Matrikon of any shipment lost or damaged, and shall render reasonable assistance to Matrikon in tracing lost shipments.

15. General

15.1. The validity, construction, and interpretation of this License and the right and duties of the parties hereto shall be governed by the laws of Canada and the Province of Alberta, and all disputes shall be submitted to the jurisdiction of the courts of the Province of Alberta.

15.2. The headings in the License are for reference purposes only and shall not effect in any way the meaning or interpretation of the License.

15.3. Any waivers of any terms and conditions of this License shall only be effective when made in writing. Any waiver of any terms and conditions of this License is not a continuing waiver of, or consent to any subsequent, breach or default of this License or of a requirement to obtain consent pursuant to this License.

15.4. The parties agree that this License shall be written in English. Les parties aux présentes ont exigé que cette entente et tous autres documents envisagés par les présentes soient rédigés en anglais.

15.5. The terms and provisions contained in Sections 6 and 10.2 shall survive the termination of this License.

15.6. Matrikon may, at its expense and with prior written approval from the Client, enter upon the Client's premises during the Client's regular business hours to audit the Client's compliance with the provisions of this License.

15.7. The Client acknowledges and agrees that Matrikon may install software manufactured by third parties (Third-Party Software) which is necessary for the Licensed Product(s) to operate. The Client acknowledges and agrees it has appointed Matrikon as its agent to obtain such Third-Party Software for the Client and the Client is the party which has purchased, become the licensee of, or otherwise acquired such Third-Party Software. The Client is bound by all licenses and other agreements which are in effect as a result of the Client having purchased, become the licensee of or having otherwise acquired such Third-Party Software including, without limitation, being bound by such licenses and agreements which come into effect by Matrikon opening, installing, or configuring such Third-Party Software on behalf of the Client.

15.8. To be eligible to purchase this License for the Product(s) the Client must be in compliance with applicable export laws. By acquiring this Licensed Product(s) the Client is representing and warranting to Matrikon that it is compliant with the following statements:

a. The Client is not a citizen, national, or resident of, and is not under the control of, the government of Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, nor any other country to which the United States has prohibited export;

b. The Client will not download or otherwise export or re-export the Licensed Product(s), directly or indirectly, to the countries mentioned in clause 1 nor to citizens, nationals or residents of those countries;

c. The Client is not listed in the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, or Specially Designated Narcotic Traffickers, nor is the Client listed on the United States

Department of Commerce Table of Denial Orders;

d. The Client will not download or otherwise export or re-export the Licensed Product(s), directly or indirectly, to persons on the lists mentioned in clause 3;

e. The Client will not use the Licensed Product(s) for, and will not allow the Licensed Product(s) to be used for, any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture, or production of nuclear, chemical, or biological weapons of mass destruction;

f. The Client is in compliance with all applicable export and import laws.

g. If the Client cannot represent and warrant that it is in compliance with the above statements, the Client is not eligible to purchase this License for the Product.

15.9. Since the unauthorized use, copying or transfer of the Licensed Product(s) or breach of this License shall diminish the value to Matrikon of the Licensed Product(s), Matrikon shall be entitled to obtain equitable relief to protect its interests including without limitation, injunctive relief as well as money damages and the Client acknowledges that remedies other than equitable relief are inadequate to fully protect Matrikon. The rights and remedies of Matrikon under the License are not exclusive and are in addition to other rights and remedies in law, equity or by statute.

15.10. If any provision of this License is declared by a Court of competent jurisdiction to be invalid, illegal, or unenforceable, such a provision shall be severed from the License and the other provisions shall remain in full force and effect.

15.11. All payments shall be made in the currency of the United States.

15.12. This License may not be assigned by the client without the prior written consent of Matrikon.

15.13. No amendment or variation of this agreement shall be of any force and effect unless such amendments or variations shall be reduced to writing, duly executed by all parties hereto in the same manner and with the same formality as this License is executed.

15.14. This License shall be read with all changes of number and gender as may be required by the context. Any references to individuals shall be read as references to bodies corporate and vice versa as required by the context.

15.15. In the event of breach of this License by the Client, the Client shall pay all of Matrikon's legal costs incurred as a result of the breach.

15.16. In the event of a breach of this License, the party not in breach shall have two (2) years within which to take steps to enforce their remedies pursuant to this agreement.

15.17. This License shall be binding upon the parties hereto and their heirs, successors, administrators, personal representatives, and permitted assigns.