

# E-ON SOFTWARE, SARL END USER LICENSE AGREEMENT

**IMPORTANT – READ CAREFULLY:** THIS END USER LICENSE AGREEMENT ("EULA") IS A LEGAL AGREEMENT BETWEEN SUBSCRIBER (EITHER AN INDIVIDUAL OR A SINGLE ENTITY), THE "SUBSCRIBER", AND E-ON SOFTWARE, SARL ("E-ON") FOR THE E-ON SOFTWARE AND ASSOCIATED ONLINE OR ELECTRONIC DOCUMENTATION THAT ACCOMPANIES THIS EULA, WHICH INCLUDES THE ASSOCIATED MEDIA AND E-ON INTERNET-BASED SERVICES HEREINAFTER REFERRED TO AS "SOFTWARE" WHICH REFERENCE INCLUDES "TEST SOFTWARE" DEFINED BELOW.

If Subscriber is an entity or person ("Evaluator") using Software or certain features of Software distributed to Subscriber for testing and evaluation purposes ("Test Software"), license rights and obligations with respect to such Evaluator use are set forth in Article 3 of this EULA. To the extent there is a conflict between Article 3, and either Articles 1 or 2 of this EULA with respect to Subscriber's use of Test Software, Article 3 shall take priority.

**SUBSCRIBER AGREES TO BE BOUND BY THE TERMS OF THIS EULA BY DOWNLOADING, INSTALLING, COPYING, REGISTERING, OR OTHERWISE ACCESSING OR USING THE SOFTWARE. SUBSCRIBER'S ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS EULA IS A CONDITION TO THE GRANT OF LICENSE BELOW. THIS EULA, AS MAY BE MODIFIED BY ANY APPLICABLE SIGNED WRITTEN AGREEMENT BETWEEN SUBSCRIBER AND E-ON, REPRESENTS THE ENTIRE SET OF TERMS AND CONDITIONS GOVERNING SUBSCRIBER'S SUBSCRIPTION AND USE OF THE SOFTWARE AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN COMMUNICATIONS, PROPOSALS AND PRESENTATIONS WITH RESPECT TO THE SOFTWARE OR THE SUBJECT MATTER OF THE EULA.**

If this EULA is translated into a language other than English and there is a conflict of terms between the English and the other language, the English version will control. Subscriber should keep a copy of this EULA for Subscriber's records. The latest version of this EULA appears in its entirety on [https://info.e-onsoftware.com/hubfs/Legal/e-onsoftware\\_EULA.pdf](https://info.e-onsoftware.com/hubfs/Legal/e-onsoftware_EULA.pdf). E-ON may update or amend the EULA at any time without notice to Subscriber; however, the form of the EULA in effect at the time of the Software acquisition or Subscriber's latest renewal will apply.

## ARTICLE 1: TERMS AND CONDITIONS

### 1. CERTAIN DEFINITIONS.

- 1.1. "CAL" means client access license.
- 1.2. "Device" means a single personal computer, workstation, terminal, hand held computer, pager, telephone, personal digital assistant, Server or other electronic device used by a User.
- 1.3. "Documentation" means descriptive, interactive or technical information resources pertaining to the Software.
- 1.4. "Effective Date" means the activation date of the Software, subject to User's acceptance of the terms of this EULA.
- 1.5. "Evaluation Use" means the use of a Software solely for internal evaluation of such Software. Evaluation Use expressly excludes use in connection with ongoing projects, use for compensation of any kind, and Production Use.
- 1.6. "License Key" means the document furnished to User by E-ON in electronic or such other format, as determined in E-ON's sole discretion, that identifies the Software licensed and authorizes use of the Software.
- 1.7. "Network Rendering" means mass-processing of multiple rendering tasks or jobs on a single network.
- 1.8. "Object Code" means the Software in a machine readable form that is not convenient to human understanding of the program logic, and that can be executed by a computer using the appropriate operating system without compilation or interpretation. Object Code specifically excludes source code.
- 1.9. "Order" means the Software, subscription Term and Solution purchased by User from E-ON or Reseller under the terms of this EULA.
- 1.10. "Production Use" means use of the Software in Object Code form by a single User or a Device, as applicable, solely for internal Production purposes in support of one Site.
- 1.11. "Reseller" means individuals and companies who are authorized by E-ON to sell and/or provide support services as set forth in this EULA.
- 1.12. "Server Software" means Software that resides on a server and provides functionality that Users access by connecting to the server using client applications or mobile apps.
- 1.13. "Site" means the geographic boundaries of a single Country within which User Uses or manages the operation the Software.
- 1.14. "Solution" means subscription licensing options offered by E-ON from time to time, that may include Enterprise Solution, Professional Solution, Creator Solution.
- 1.15. "Technical Support" means Internet and electronic mail based support to assist User.
- 1.16. "Term" means collectively or separately "Annual Term" and "Monthly Term", as defined in Section 5.1.

1.17. "Time Clocks" means any time clocks, copy-protection mechanisms, or other security devices embedded in the Software which may deactivate the Software after expiration of any applicable Subscription Term.

1.18. "Update" means a maintenance release for the Software.

1.19. "Upgrade" means a commercial release of the Software which has substantial added functionality over the Software it is intended to replace.

1.20. "Usage Data" means such data or information as E-ON may collect relating to User's installation, access or use of the Software, Software features and functionality and other E-ON service.

1.21. "User" or "Evaluator" means Subscriber, and with respect to Use of Software the term "User" or "Evaluator" shall refer to: (i) one of User's or Evaluator's full-time, part-time, or temporary employees; or (ii) agency temporary personnel or an independent contractor engaged in Software Use and working under User's or Evaluator's direct supervision and control.

1.22. "Use" (whether or not capitalized) means utilization of the Software by an individual.

**2. GRANT OF LICENSE.** As and for so long as User complies with all of the terms of this EULA and for the term of the license, E-ON grants User the non-exclusive right to (a) install and use one copy of the Software for Production Use on a single computer at any one time (User's with an Annual Term subscription may install and use the Software on a secondary computer (for instance, a laptop), provided that (i) said secondary computer is not operated at the same location as primary computer, and (ii) that the Software is not used simultaneously on the primary and secondary computers). and (b) use the Documentation for internal, non-commercial reference purposes only.

THE SOFTWARE MAY INCLUDE ASSOCIATED MEDIA, PRINTED MATERIALS, AND "ONLINE" OR ELECTRONIC DOCUMENTATION AND FILES. ITS COMPONENT PARTS MAY NOT BE SEPARATED FOR USE ON MORE THAN ONE COMPUTER OR SOLD SEPARATELY.

THE SOFTWARE INCLUDES ANY UPDATES, UPGRADES SUPPLEMENTS OR AMENDMENTS TO THE ORIGINAL SOFTWARE PROVIDED TO USER DURING THE SUBSCRIPTION TERM. IF THE UPDATES, UPGRADES, SUPPLEMENTS OR AMENDMENTS CONTAIN A SEPARATE AGREEMENT WHICH EITHER AMENDS OR REPLACES THIS EULA, USE OF THE UPDATE, UPGRADE, SUPPLEMENT OR AMENDMENT CONSTITUTES USER'S FULL AGREEMENT TO THE AMENDED OR REPLACEMENT THIS EULA.

ANY OTHER SOFTWARE PROVIDED ALONG WITH THE SOFTWARE THAT IS ASSOCIATED WITH A SEPARATE LICENSE AGREEMENT IS LICENSED TO USER UNDER THE TERMS OF THAT LICENSE AGREEMENT. IF USER DISAGREES WITH ANY OF THE EULA TERMS, IN PART OR IN WHOLE, USER IS NOT ALLOWED TO USE THE SOFTWARE, AND SHOULD REMOVE THE DOWNLOADED SOFTWARE FROM USER'S HARD DRIVE OR SYSTEM. USER IS SUBJECT TO ANY ADDITIONAL RETURN POLICIES AND REQUIREMENTS OF THE DEALER FROM WHICH USER PURCHASED THE SOFTWARE (SEE E-ON FAQ OR

CONTACT E-ON FOR DETAILS).

3. **RESERVED RIGHTS.** User acknowledges and agrees that the Software is a proprietary Software of E-ON or its suppliers, distributors and unrelated third parties ("**Suppliers**") protected by copyright and other applicable intellectual property laws and treaty provisions. User further acknowledge and agree that the entire right, title and interest in and to the Software including associated intellectual property rights, shall remain with E-ON or its Suppliers. This license grant may be made by E-ON on behalf of Suppliers as third party beneficiaries of the license rights provided herein. E-ON retains all rights not expressly granted to User in this EULA. **THE SOFTWARE IS LICENSED NOT SOLD.** User shall have no right hereunder to receive, review, use or otherwise have access to the source code for the Software.

4. **REGISTRATION.** User acknowledges that registration or activation may be required in order for User to utilize the full benefits of the Software and the support program.

## 5. TERM AND TERMINATION.

### 5.1. Term.

(a) **Annual.** If User purchased an annual subscription, this EULA commences on the Effective Date and will continue in effect for twelve (12) months (the "**Annual Term**"). This EULA and the license granted therein shall expire at the conclusion of the Annual Term, unless terminated earlier pursuant to the terms herein.

(b) **Monthly.** If User purchased a monthly subscription, this EULA commences on the Effective Date and will continue in effect for thirty (30) days (the "**Monthly Term**") and shall renew automatically at the conclusion of the then term for another thirty day term, at the then current subscription fee, unless either party cancels this EULA in writing no later than thirty (30) days prior to the next renewal, unless terminated earlier pursuant to the terms herein.

(c) Use of the Software after expiration of the Term is not allowed and will constitute a copyright violation.

5.2. **Termination.** If User breaches the terms and conditions of this EULA, E-ON may terminate this EULA without prejudicing any of its other rights. In such event User must destroy and remove all copies of the Software from User's Device(s). Sections 1, 3, 6, 15, 23, 24, 26, 29, 30, 31, 32, 33, 34, 38 and 42 specifically survive termination.

5.3. **Consequences of Termination.** Upon the termination of this EULA for any reason, all of the rights and licenses granted to User in this EULA shall terminate immediately.

## 6. PAYMENT TERMS.

(a) **Fees.** All fees are as set forth in the Order (the "**License Fee**").

(b) **Monthly Subscription Payment.** After payment of initial Monthly Term License Fee, User shall pay each monthly License Fee in advance ("**Renewal License Fee**"). User authorizes E-ON to charge the applicable monthly Renewal License Fee in advance of the applicable Monthly Term to the credit card User places on file with E-ON (or a third-party credit card processor, selected by E-ON in its sole discretion). It is User's responsibility to maintain on file with E-ON a valid credit card. E-ON shall have no liability for User's failure to maintain a valid credit card on file and User shall be liable to E-ON for any additional charges incurred by E-ON due to an invalid credit card. If payment in full is not received by E-ON prior to the applicable Monthly Term, E-ON reserves the right to suspend User's right of Use under this EULA. E-ON reserves the right to suspend User's rights or terminate this EULA, if E-ON, in its sole discretion, allows User use of the Software beyond the renewal date without receipt of payment; and E-ON may, in its sole discretion, require payment from User for usage during said period prior to User renewing for a future Monthly Term or entering into a new license agreement. Nothing under this Section prohibits E-ON's right to terminate this EULA and the license granted therein at any time, upon User's failure to timely pay an Renewal License Fee.

7. **NO RENTAL OR COMMERCIAL HOSTING.** Software is licensed for Production Use only. User may not rent, lease, lend or provide commercial hosting services with the Software. User may also not use the Software to provide fee or transaction based services. Contact E-On for the availability of alternate pricing if User desire to use the Software in such fashion.

## 8. "MULTIPLEXING" OR POOLING.

Unless User purchased an Enterprise Solution License, Use of software or hardware that reduces the number of electronic devices directly monitored or managed by the

Software or directly accessing or utilizing the Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of licenses required; the number of licenses required would equal the number of distinct inputs to the multiplexing or pooling hardware/software "front end."

For Enterprise Solution Licenses, E-ON hereby grants to User a limited non-transferable non-exclusive right to use the Software for Production Use only on multi-user computer networks, and to install the licensed Software on more than one computer or hard disk. User shall allow the management and monitoring of pooled licensing usage by E-ON. User acknowledges that the continuing operation of the Software under pooled licensing is predicated upon Usage Data communications between the Software and E-ON in a manner determined in the sole discretion of E-ON. User hereby agrees not to interfere with the transmission to E-On of accurate Usage Data by the Software. E-ON shall establish time intervals and measure the number of unique Devices on which User Uses the Software per Site per interval ("**Pooled Usage**"). The interval over which Pooled Usage is measured is subject to change, as well as other criteria.

User agrees and acknowledges that E-ON will from time to time collect Usage Data and that all Usage Data shall be owned by E-ON and deemed E-ON Proprietary Information. User agrees not to alter or interfere with the collection by E-ON of accurate Usage Data.

9. **Records; Audit.** User shall maintain complete and accurate records of Software licenses acquired and use of Software hereunder to permit E-ON to determine whether User has complied with its obligations hereunder. These records shall include the location and identification of the User hardware on which User uses each copy of the Software and identify the Users. If E-ON suspects Usage Data is incomplete, inaccurate or indicative of non-compliance with User's granted rights, E-ON may request, and User shall, upon seven (7) days advance written notice by E-ON, permit, reasonable inspection and copying of such records by E-ON or a third-party auditor retained by E-ON.

10. **COPYRIGHT.** The Software is owned by E-ON and is protected by U.S. copyright law as well as by international intellectual property conventions. Any reproduction, sale, transfer, transcription, storage in a retrieval system, translation into any language in any form or distribution by any means whatsoever of the Software, in part or in full, without the prior written permission from E-ON is strictly forbidden. Any such act shall constitute a copyright violation and shall be prosecuted to the fullest extent of the law.

Any portion of the Software merged into or used in conjunction with another program will continue to be the property of E-ON and subject to the terms and conditions of this EULA. User shall reproduce and include all copyright notices and proprietary legends of E-ON, or its licensors as they appear in or on the original media containing the Software supplied by E-ON on any portion merged in or used in conjunction with another program.

11. **LIMITATIONS ON REVERSE ENGINEERING.** User may not decode, reverse engineer, reverse assemble, reverse compile, or otherwise translate the Software except only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. To the extent that User are expressly permitted by law to undertake any of the activities listed in the previous sentence, User will not exercise those rights until User have provided E-ON with thirty (30) days prior written notice of User intent to exercise such rights.

12. **ARCHIVAL OR BACKUP COPY.** User may make a single backup copy of the Software, provided the backup copies are not installed or used for other than archival purposes.

14. **RESTRICTIONS ON CERTAIN SOFTWARE.** Software identified as demo, evaluation, Beta, Technology Preview or "NFR" (or "Not for Resale" or with words of similar meaning) may not be sold, bartered or otherwise transferred. Such Software may not be used for any purpose other than User's testing or evaluation unless specified otherwise in writing agreed upon in writing by the parties.

15. **TIME CLOCKS.** User acknowledges that the Software may be delivered to User with embedded Time Clocks. User agrees that Time Clocks are not considered a defect of the Software and User releases E-ON from any and all claims, however characterized, arising from or related to Time Clocks or their operation.

16. **TRANSFER.** *Internal.* User may transfer the Software and the EULA to a different Device at the same Site, provided User completely removes the Software from all prior Devices. User may also make a one-time transfer of a CAL to another of User's Users or Devices located at the same Site. In order to accomplish these transfers User may need to contact E-ON. *External.* User may not transfer the Software and license granted under this EULA, or a CAL, to a third party without

E-ON's prior written consent. If such consent is obtained, User may permanently transfer the Software and the license granted under this EULA, or the CAL, provided User transfers the Software and all and media to such third party, and User do not retain any copies. The recipient of such transfer must agree to all terms and conditions of the EULA. Any purported sublicense, assignment, transfer or encumbrance is void without E-ON's prior consent. When such transfer is on a permanent basis, User may not keep any copies of the Software, and must remove it from User's hard drive(s). E-ON must be notified by User in writing of the transfer, including the name, permanent address, phone number and email address of the person to whom User transfers the software.

**17. NO EXTENSION OF CAPABILITIES.** User may develop User's own applications that interoperate or integrate with the Software. E-ON prices its Software, among other factors, based on capabilities that we expose to User. User may not extend the Software to enable or unlock capabilities of the Software not specifically identified by E-ON as forming part of the specified end user functionality.

**18. NO AUTOMATED USE.** Except as may apply to Network Rendering if allowed under the purchased Solution, a license for the Software may not be shared or used concurrently on different Devices, nor shared or used to support multiple User or operational requests as indicated above. As a result, User may not use the Software in an automated, unattended, non-interactive server application or component (including ASP) where: (i) multiple User requests from different Users are queued for processing; or (ii) multiple requests from one User are queued for processing but acting against content created or edited by other Users. Examples which would violate this Section 18 include but are not limited to use as a plot server, file translator, print server or other applications using or employing similar methods.

#### 19. Proprietary Information.

- (a) User understands and agrees that E-ON may, in connection with the provision of Software and services hereunder, disclose to User confidential, proprietary and technical information pertaining to Software and to E-ON's technology and business practices (collectively "**Proprietary Information**"). User agrees to treat all Proprietary Information in accordance with this Section 19.
- (b) User shall maintain the confidentiality of all Proprietary Information. User shall not reproduce or copy Proprietary Information except as permitted in this EULA or as may be expressly authorized in writing in advance by E-ON. All such copies shall be marked by User as proprietary and confidential information.
- (c) User shall only use Proprietary Information in furtherance of this EULA and may disclose Proprietary Information only to those employees required to have knowledge of same to perform their duties pursuant to this EULA. User shall not disclose or make Proprietary Information available to any third party at any time.
- (d) User shall treat Proprietary Information with the same degree of care as it uses to protect its own confidential information, and in no case less than a reasonable degree of care.
- (e) Upon the termination of this EULA, User shall return to E-ON or, if so requested, destroy all Proprietary Information in its possession.
- (f) User shall have no obligation of confidentiality with respect to any Proprietary Information that (i) has entered the public domain other than through a breach of this EULA, (ii) has been rightfully obtained by User from a third party with no obligation of confidentiality, or (iii) is previously known by User as demonstrated by clear and convincing evidence.
- (g) User shall promptly inform E-ON upon knowledge of any actual or potential unauthorized use or disclosure of the Proprietary Information.

**20. No Benchmarks.** User may not disclose the results of any Software testing, including but not limited to benchmarks, to any third party without first obtaining E-ON's written consent to do so.

#### 21. Support Services

- (a) E-ON may provide support services to User either directly or, at its discretion, through authorized Resellers. A Reseller's authorization may be limited to a particular Site or Sites. User acknowledges that Resellers are independent contractors of E-ON, and that there is no employer/employee relationship between E-ON and its Resellers.

- (b) E-ON shall provide Technical Support services to User, which includes electronic mail, and Internet based support to assist Users regarding the use of the Software and reasonable efforts to respond to technical inquiries within two Business Days ("**Business Days** means Monday through Friday, except for National Holidays observed in France).
- (c) E-ON shall have no obligation to provide a response or other service hereunder if User's technical inquiry is caused by: (1) incorporation or attachment of a feature, program, or device to a Software not approved or supplied by E-ON; (2) any nonconformance caused by accident, transportation, neglect, misuse, alteration, modification, or enhancement of a Software; (3) failure to provide a suitable installation environment; (4) use of the Software other than as described in its Documentation or as authorized under this EULA; or (5) failure to incorporate any Update previously released by E-ON. E-ON shall offer support services for a given version of a Software for at least twelve months.
- (d) If User experiences a Software-stopping anomaly, E-ON will use good faith efforts to create an appropriate solution and deliver it electronically, or through such other means as E-ON may choose in its sole discretion.
- (e) User agrees that E-ON may collect and utilize technical information gathered as part of Software support services that may be provided to User. Data capture in this form will only be used to improve E-ON's Software and/or provide customized services to User and will not be disclosed or disseminated to third parties except in an aggregated form.
- (f) User agrees that in order to qualify for any technical or customer support, including any replacement of any component of the Software under the terms of this EULA, Software must be registered with E-ON.

**22. LIMITED WARRANTY.** Except for Software which is identified as no-charge, free, demo, evaluation, Beta, Technology Preview, or NFR, which is provided to User "AS-IS" and specifically without warranty of any kind, for thirty (30) days from the date of first installation (the "**Warranty Period**"), E-ON warrants that (i) the Software will perform substantially in accordance with the functional specifications in the documentation which accompanies the Software; and (ii) the media on which the Software is distributed meets generally accepted industry standards. It is understood that neither E-ON nor its Suppliers are responsible for User's use of the Software or the results from such use. It is further understood that there may be errors or omissions in the information contained in the Software, that the information contained in the Software may not be current or complete and that defects in hardware or software may prevent User from gaining access to the Software. This limited warranty is offered by E-ON alone and is not extended to any software code that may be contributed to the Software by our Suppliers. Any supplements or updates to the Software (including but not limited to fixes, work in progress builds, or subsequent updates) provided to User after the expiration of the Limited Warranty period above are not covered by any warranty or condition, express, implied or statutory.

Any replacement Software or Documentation will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

**23. DISCLAIMER.** THE FOREGOING LIMITED WARRANTY STATES THE SOLE AND EXCLUSIVE REMEDIES FOR E-ON'S OR ITS SUPPLIER'S BREACH OF WARRANTY. EXCEPT FOR THE LIMITED WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, E-ON AND ITS SUPPLIERS PROVIDE THE SOFTWARE AS IS AND WITH ALL FAULTS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN USER'S JURISDICTION, E-ON AND ITS SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES, FOR ITSELF AND FOR ALL SUPPLIERS, EITHER STATUTORY, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITED WARRANTY GIVES USER SPECIFIC RIGHTS; USER MAY HAVE OTHER RIGHTS, WHICH VARY AMONG JURISDICTIONS.

**24. HIGH RISK ACTIVITIES.** The Software is not fault tolerant and is not designed, manufactured or intended for use or resale as control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("**High Risk Activities**"). Accordingly, E-ON and its Suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

**25. USER REMEDIES.** If a defect in the Software appears that constitutes a breach of the above Limited Warranty, E-ON shall, at its sole option, repair the Software, refund the price User paid for the Software or replace the defective item(s), provided that: (i) User notify E-ON of the defect during the Warranty Period; (ii) the Software is not modified, changed, or altered by anyone other than E-ON, unless authorized by E-ON in writing; (iii) User's computer equipment is in good operating order and the Software is installed in an officially supported environment; and (iv) the non-conformity is not caused by a third party or by User, User's agents, employees or contractors. Repaired, corrected, or replaced Software shall be covered by this limited warranty for the period remaining under the warranty covered by the original Software, or if longer, for thirty (30) days after the date: (a) of installation by User of the repaired or replaced Software, or (b) E-ON advised User how to operate the Software so as to achieve the functionality described in the documentation. **USER AGREE THAT THE FOREGOING CONSTITUTES USER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH BY E-ON OF THE LIMITED WARRANTY MADE IN THIS EULA.**

**26. LIMITATION OF LIABILITY.** Regardless of whether any remedy set forth herein fails of its essential purpose by law, in no event will E-ON or its Suppliers be liable for indirect, special, incidental, economic or consequential damages, regardless of the nature of the claim, including without limitation lost profits, costs of delay, interruption of business, loss of use, costs of lost or damaged data or documentation or liabilities to third parties arising from any source, even if E-ON has been advised of the possibility of such damages. In no event shall the liability of E-ON or its Suppliers exceed the amount paid by User (in the currency used to purchase) for the Software. Some jurisdictions do not allow the exclusion or limitation of implied warranties or limitation of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to User. **THE PROVISIONS OF THIS EULA ALLOCATES THE RISKS BETWEEN E-ON AND USER. E-ON'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.**

**27. STATUTORY CONSUMER RIGHTS.** Nothing in this EULA is meant to contravene statutory rights that consumers may have pursuant to local law.

**28. INDEMNIFICATION BY E-ON.**

- (a) E-ON shall pay any damages finally awarded against User based on a claim against User that the Software which is developed and owned by E-ON infringes a third party's copyright under the laws of a Berne Convention signatory country, or results in a misappropriation of a third party's trade secret, in the Country where User has been authorized to place the Software subject to such claim into Production Use, if User provides to E-ON: (a) prompt written notice of any such claim, (b) all available information and assistance, and (c) the opportunity to exercise sole control of the defense and settlement of any such claim.
- (b) E-ON shall also have the right, at its expense, either to procure the right for User to continue to use the Software or to replace or modify such Software so that it becomes non-infringing. If neither of the foregoing alternatives is available on terms that E-ON, in its sole discretion, deems desirable, User shall, upon written request from E-ON, return to E-ON the allegedly infringing Software, in which event E-ON shall refund to User the prorated unused portion of the price paid by User for each copy of such returned Software. In no event shall E-ON's liability under this sub-section (b) to User exceed the License Fees paid by User for the allegedly infringing Software.
- (c) E-ON shall have no liability and this indemnity shall not apply if the alleged infringement is contained in Software which is not developed or owned by E-ON or is due to modification of the Software by User or the combination, operation or use of the Software with other software that does not originate from E-ON or if User is in breach of this EULA. E-ON shall also have no liability, and this indemnity shall not apply, for the portion of any claim of infringement based on use of a superseded or altered release of a Software if the infringement would have been avoided by the use of a current, unaltered release of the Software.

This Section 28 sets forth User's sole remedy for intellectual property infringement.

**29. EXPORT CONTROLS.** The Software is subject to U.S. export control laws, regulations and requirements, in addition to export control laws, regulations and requirements of other agencies or authorities based outside of the United States (collectively referred to as "**Export Controls**"). Regardless of any disclosure made by User to E-ON of an ultimate destination of the Software, User must not export, re-export or transfer, whether directly or indirectly, the Software, or any portion thereof, or any system containing such Software or portion thereof, to anyone

without first complying strictly and fully with all Export Controls that may be imposed on the Software. The countries subject to restriction by action of the United States Government, or any other governmental agency or authority outside of the United States, are subject to change, and it is User's responsibility to comply with applicable Export Controls as they may be amended from time to time. User shall indemnify, defend and hold E-ON harmless for any breach of User's obligations pursuant to this Section.

**30. U.S. GOVERNMENT RESTRICTED RIGHTS.** If the Software is acquired for or on behalf of the United States of America, its agencies and/or instrumentalities ("**U.S. Government**"), it is provided with restricted rights. The Software and accompanying documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and 227.7202, and "restricted computer software" pursuant to 48 C.F.R. 52.227-19(a), as applicable. Use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the U.S. Government are subject to restrictions as set forth in this EULA and pursuant to 48 C.F.R. 12.212, 52.227-19, 227.7202, and 1852.227-86, as applicable. Contractor/Manufacturer is E-ON Software, SARL, 12 avenue de l'Arche, Immeuble, Le Colisée - Bâtiment B, 92419 Courbevoie cedex.

**31. Entire Agreement.** This EULA, together with signed Amendments, if any, incorporate the entire agreement of the parties and supersede and merge all prior oral and written agreements, discussions and understandings between the parties with respect to the subject matter hereof. The terms and conditions of this EULA and of the applicable E-ON confirmation shall apply to each order accepted or shipped by E-ON hereunder. Any additional or different terms or conditions appearing on a purchase order issued by User hereunder, even if E-ON acknowledges such terms and conditions, shall not be binding on the parties unless both parties expressly agree in a separate writing as provided under Section 31.

**32. Amendments.** Except as otherwise contemplated herein this EULA may only be amended or modified by a writing duly executed by authorized representatives of the parties, provided, however, that any additional or different terms or conditions appearing on a purchase order, even if required to be acknowledged by E-ON, shall not be binding on the parties.

**33. GOVERNING LAW.** This EULA will be governed by and construed in accordance with the substantive laws in force in the Commonwealth of Pennsylvania, and the state courts located in Chester County, Pennsylvania and the federal courts located in Philadelphia, Pennsylvania shall have exclusive jurisdiction over all disputes relating to this EULA. To the maximum extent permitted by applicable law, the parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods, as amended, and the provisions of the Uniform Computer Information Transactions Act, as they may have been or hereafter may be in effect in any jurisdiction, shall not apply to this EULA.

**34. Arbitration.** In the event of any dispute, controversy or claim between the parties arising under this EULA, the parties shall submit to binding arbitration before a single arbitrator in Philadelphia, Pennsylvania in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding on the parties, and the judgment upon the award rendered by the arbitrator shall be enforceable in any court of competent jurisdiction. Each party shall bear its own attorney's fees, costs, and expenses incurred in such arbitration.

**35. Independent Contractor.** E-ON's relationship with User for all purposes hereunder shall be that of an independent contractor and nothing herein shall be construed as creating, at any time, an employer and employee relationship between the parties.

**36. Change of Ownership.** User shall provide E-ON with sixty (60) days advance written notice of any changes in its ownership or location.

**37. Headings.** The headings in this EULA are intended solely for convenience of reference and shall not affect the meaning or interpretation of this EULA.

**38. SEVERABILITY.** The provisions of this EULA shall be deemed to be separable and the invalidity of any provision hereof shall not affect the validity of the remainder of this EULA.

**39. Force Majeure.** E-ON shall not be liable for failure to fulfill the terms of this EULA due to fire, strike, war, government regulations, acts of God, labor disturbances, acts of terrorism or other causes which are unavoidable and beyond its control.

**40. Waiver.** The failure of either party to insist upon any of its rights under this EULA upon one or more occasions, or to exercise any of its rights, shall not be

deemed a waiver of such rights on any subsequent occasions.

41. **Marketing.** User hereby grants permission to E-ON the right to use User's individual or company name and logo in E-ON's list of customers provided on E-ON's website or in its marketing materials. User can revoke the license granted in this Section 41, after providing thirty (30) days written notice to E-ON.

42. **NOTICES.** Please send all notices under this EULA to E-ON Software, Sarl c/o Bentley Systems Incorporated, Attn: Legal Department, 685 Stockton Drive, Exton, PA 19341-0678.

43. **QUESTIONS.** Should User have any questions regarding this EULA, please contact in writing: E-ON Software, Sarl care of Bentley Systems, Incorporated, Legal Department, 685 Stockton Drive, Exton, PA 19341-0678.

## **ARTICLE 2: TERMS APPLICABLE TO SERVER SOFTWARE**

This Article details the installation, use and licensing of Server Software and associated CALs.

### **1. CERTAIN ADDITIONAL DEFINITIONS.**

1.1. **"Client Software"** means software that allows a Device to access or utilize Server Software (and, also where applicable to utilize certain aspects of the Software when disconnected from the Server).

1.2. **"Per Processor"** is a Server Software licensing mode where User are licensed to utilize the Server Software on one or more physical or virtual processors within a designated Server.

1.3. **"Per Server"** is a Server Software licensing mode where User are licensed to utilize the Server Software on all processors physically contained within the designated Server.

1.4. **"Per User"** or **"Per Device"** are licensing modes that require User to license a separate CAL for each unique User or Device respectively that accesses or utilizes the Server Software.

1.5. **"Server"** means any one of User's computers that can run Server Software.

1.6. **"Server Software"** means Software that provides services or functionality to User's Server(s).

1.7. **"Server/CAL"** is a licensing mode where the maximum number of Users (or Devices, if applicable) which may access or utilize the Server Software at a given interval is less than or equal to the number of CALs that User have acquired and designated for use exclusively with that Server Software.

### **2. LICENSING MODES.**

2.1. **Servers.** E-ON licenses Server Software on a Server/CAL basis with either Device or User CALs and/or on a Per Processor basis. Server Software may be limited, even in Server/CAL licensing mode, as to the total number of Devices and/or Users that may access a designated Server Software. *Unless explicitly specified in the documentation accompanying the Server Software, the default licensing mode for all Server Software is Server/CAL with User CALs.*

2.2. **CALs.** CALs are licensed by E-ON on a per Server, per Device or per User basis. A User CAL permits one User (using any Device) to access or use the Server Software. A Device CAL permits one Device to access or use the Server Software.

3. **GRANT OF LICENSE FOR SOFTWARE IN SERVER/CAL MODE.** As and for so long as User comply with all of the terms of this EULA E-ON grants User the following rights:

#### **3.1. Installation and Use.**

(a) **Server Software.** User may install and use one copy of the Server Software for Production Use on a single Server. User may also use the documentation that accompanies the Server Software for internal, non-commercial reference purposes only.

(b) **Client Software.** User may install and use the Client Software on the aggregate total number of Devices to which User have dedicated a CAL for such usage.

(c) **CALs.** A separate CAL is required for each User or Device that accesses or uses Server Software on any of User's Servers. A CAL grants a User (using any Device) or a Device the right to access or otherwise utilize the Server Software User have deployed on User's Server. The maximum number of Users or Devices that may access or use Server Software installed on a particular Server at a given interval equals the number of CALs (of either type) that User acquire and designate for use *exclusively* with that Server. CALs cannot be pooled among internal Users or

Devices and are tied to one Server Software installation.

(d) **Passive Fail-Over Server.** If the Server Software is used in a clustered environment, User may use the Server Software on a temporary basis on a Server that is employed only and exclusively for fail-over support.

4. **GRANT OF LICENSE FOR SERVER SOFTWARE IN PER SERVER MODE.** As and for so long as User comply with all of the terms of this EULA, E-ON grants User the following rights:

#### **4.1. Installation and Use**

(a) **Server Software.** User may install and use one copy of the Server Software for Production Use on a single Server. User may also use the documentation that accompanies the Server Software for internal, non-commercial reference purposes only. In Per Server licensing mode, the E-ON default is that User may use the Server Software on all processors physically contained within that one Server. If the Server Software is licensed in Per Processor mode, User may only use the Software on the authorized and licensed number of processors (physical or virtual) within that Server.

(b) **Client Software.** In Per Server licensing mode, unless E-ON licenses the Server Software with a limitation on the maximum number of Devices or Users that may access it, User may install the Client Software on any Device in support of any number of Users so long as the Client Software is being used only in conjunction with the Server Software.

(c) **CALs.** In Per Server licensing mode, unless E-ON licenses the Server Software with a limitation on the maximum number of Users or Devices that may access it, an unlimited number of Users or Devices may access and use the Server Software. CALs are not required for individual Users or Devices in the Per Server licensing mode.

(d) **Passive Fail-Over Server.** If the Server Software is used in a clustered environment, User may use the Server Software on a temporary basis on a Server that is employed only and exclusively for fail-over support.

## **ARTICLE 3 – TERMS APPLICABLE TO TEST SOFTWARE**

THIS EULA, TOGETHER WITH ANY APPLICABLE NON-DISCLOSURE AGREEMENT APPEARING OR REFERENCED ON OR IN THE FILES DELIVERED DURING INSTALLATION REPRESENT THE ENTIRE SET OF TERMS AND CONDITIONS GOVERNING USER'S USE OF THE TEST SOFTWARE AND DOCUMENTATION, AND SUPERSEDE ANY OTHER PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES.

### **1. Limited Rights For Testing Only.**

(a) The Test Software has been designed and developed by E-ON, either alone or together with other third parties, and this license is made on behalf of all parties who contributed to the Test Software and Documentation. Subject to the terms and provisions set forth, Evaluator is willing to accept delivery of the Test Software for the purpose of using and evaluating the same. E-ON is willing to permit the Evaluator to use and to evaluate the Test Software under the terms and conditions of this EULA in order to obtain Evaluator information to such Test Software which may be helpful to E-ON in making any improvements, enhancements or modifications with respect thereto. The Test Software may be used only on a single computer owned, leased or otherwise controlled by User. User may not use the Test Software on any other platform, including, but not limited to, servers, except as expressly provided herein. The Test Software is "in use" on a computer when it is loaded into temporary memory (i.e., RAM) or installed into permanent memory (e.g. hard disk, CD-ROM or other storage device) of that computer. If the Test Software is designed to provide services or functionality to servers, the Test Software shall be used on a single server owned, leased or otherwise controlled by Evaluator.

(b) Upon User's acceptance of the EULA by clicking "I accept" or by downloading the Test Software, E-ON does hereby grant Evaluator at no charge a non-exclusive, non-transferable right to use the Test Software for evaluation purposes only. This right shall terminate on the date E-ON determines in its sole discretion which E-ON no longer has a need for Evaluator information from the Evaluator regarding the Test Software; or E-ON has learned that the terms of this EULA have been breached by Evaluator.

2. **Evaluation and Reports.** Evaluator shall provide E-ON with reports concerning its opinion and evaluation of the Test Software. Evaluator shall consult with representatives of E-ON from time-to-time concerning the performance of the Test Software. Evaluator agrees that right, title and interest to any reports, feedback or

suggestions relating to the Test Software or any inventions relating to an improvement, modification or enhancement of the Test Software conceived in, or made as a result of, Evaluator's performance of this EULA shall become the exclusive property of E-ON and that E-ON may disclose and use such information for any purposes whatsoever, entirely without obligation of any kind to Evaluator.

### 3. Confidential and Proprietary Information and Data.

(a) Evaluator acknowledges that the Test Software consists of software which is proprietary and confidential to E-ON or its licensors; and all rights, title and interest therein or thereto, including, without limitation, all patents, copyrights, trademarks and trade secrets are proprietary and confidential to E-ON or its licensors and shall remain vested therein. Therefore, Evaluator shall not disclose, directly or indirectly, or take any other action which would result in the unauthorized disclosure of any confidential or proprietary data whatsoever, including, but not limited to, reproduction of data furnished to Evaluator by E-ON.

(b) The release of confidential information to Evaluator does not constitute a commercialization of the Test Software, but rather is a release for testing purposes ONLY. Evaluator shall not disclose to any third party the terms of this EULA nor the results of any Evaluator evaluation hereunder except with the written consent of E-ON. Evaluator shall, upon E-ON's request, certify in writing as to the return or destruction of all such confidential information.

(c) For purposes of this EULA, "**Confidential and Proprietary Information**" shall include, but not be limited to, the Test Software, including its functionality, performance, business purpose, specifications, Documentation, and the like, test results obtained by Evaluator through use of the Test Software, any material data relating to use of the Test Software by Evaluator, including, but not limited to defects, deficiencies, errors, omissions, work-arounds, features, enhancements, updates, upgrades, and other information typically relating to unreleased version(s) of computer programs, and any and all information, either written or oral, relating to the Test Software, including plans, business and financial information, which may, from time-to-time, be disclosed by E-ON to Evaluator during the term of this EULA. It is understood by both parties that ANY information provided by E-ON during the term to Evaluator relating to the Test Software is E-ON's Confidential and Proprietary Information.

(d) The parties shall use such Confidential and Proprietary Information only for the purpose set forth in Section 1 above. Evaluator shall make no other use of the Confidential and Proprietary Information, in whole or in part, without the specific prior written consent of E-ON. Accordingly, Evaluator agrees not to make any commercial use of Confidential and Proprietary Information, and Evaluator shall not translate, copy, disassemble, reverse engineer, or decompile any Test Software, nor shall Evaluator make copies or translations of any Documentation. Furthermore, Evaluator will not make any pre-release reports or give pre-release interviews concerning the Test Software or the Confidential and Proprietary Information without E-ON's prior written consent.

(e) Evaluator shall maintain E-ON's Confidential and Proprietary Information in strict confidence, shall limit internal disclosure of Confidential and Proprietary Information to employees having a legitimate need to know, and shall exercise the same degree of care in protecting E-ON's Confidential and Proprietary Information as it exercises in protecting its own confidential and proprietary information. Evaluator may make copies of the Test Software only to the extent necessary for the purpose of this EULA, provided that Evaluator shall also reproduce and include E-ON's trade secret, copyright, or other intellectual property rights notices on each such copy and include the legend "Test Software –Do Not Copy or Distribute."

(f) Any other related materials supplied by E-ON, including Documentation, may not be reproduced in any manner by Evaluator. The original and all copies of Confidential and Proprietary Information shall remain the property of E-ON and shall be returned to E-ON upon demand.

### 4. Disclaimer of Warranty.

(a) Evaluator acknowledges that the Test Software has not been completely tested and will contain defects or deficiencies which cannot or may not be corrected. Evaluator further acknowledges that use of the Test Software may involve the transmission, upload, download, translation or transfer of its data to a server or computer platform outside of Evaluator's control, and some errors in the data may occur while transferring, transmitting or translating data while using the Test Software. E-ON cautions Evaluator to determine for itself the suitability of the use of the Test Software for any purpose. E-ON further cautions Evaluator not to use the Test Software in a Production environment.

(b) Evaluator acknowledges that E-ON has no express or implied obligation to announce or to introduce the Test Software or any similar or compatible Software.

Evaluator acknowledges that all use, testing, research and development performed by it pursuant to this EULA are done entirely at its own risk. **ACCORDINGLY, E-ON MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE USE OR PERFORMANCE OF THE TEST SOFTWARE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

(c) EVALUATOR ACCEPTS THE TEST SOFTWARE IN "AS-IS" CONDITION, AND E-ON SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF E-ON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 5. Consequences of Breach.

(a) Evaluator acknowledges that:

i. Irreparable injury and damage to E-ON will result from unauthorized disclosure of the Test Software, Confidential Information and Proprietary Information gleaned by Evaluator through use of the Test Software, and from uses of the Test Software other than as contemplated herein;

ii. Monetary damages may not be sufficient remedy for unauthorized disclosure of the Test Software;

iii. E-ON shall be entitled, without waiving any additional rights or remedies available to it at law, in equity, or by statute, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction; and

(b) Evaluator's breach of this EULA shall result in immediate termination of this EULA and may be cause for exclusion in other E-ON sponsored Test Software programs, among other remedies available to E-ON at law or equity.