

Online Terms of Use for Annual Subscription

1. DEFINITIONS.

“Power Grids Competitor” means an entity whose primary business is to develop and market software, data and services for external commercial sale and distribution in direct competition with the Licensed Software.

“Authorized User” means a person or device that accesses, loads, operates, maintains or otherwise uses the Licensed Software. If more than one person utilizes the applicable Licensed Software, even at separate times on the same hardware, they are considered different Authorized Users. Authorized Users are interchangeable only in the event they are no longer employed by the Subscriber or no longer access the applicable Licensed Software.

“CPI” means at the time of escalation calculation, the percentage increase in the applicable index as set out below not seasonally adjusted, for the most recent twelve-month period ending prior to the Term expiration date.

- (i) If payment currency is US Dollars: United States Consumer Price Index for all Urban Consumers for All Items (published by the US Dept of Labor Bureau of Labor Statistics);
- (ii) If payment currency is Euros: European index of consumer prices (EICP) (published by Eurostat);
- (iii) If payment currency is another local country currency: that country’s official, published Consumer Price Index for all Urban Consumers for All Items.

“Concurrent Process” is the number of authorized simultaneous simulations of the Licensed Software at any point in time as set forth on the Subscription Order Form.

“Confidential Information” means non-public information of a party including, without limitation, the terms, conditions and pricing specified in any Subscription Order Form. Confidential Information of the Licensed Software, all software provided with the Licensed Software, the Source Code, and all algorithms, methods, techniques and processes revealed by the Source Code. Confidential Information does not include information that: (a) was in the possession of, or was rightfully known by, the recipient thereof without an obligation to maintain its confidentiality prior to receipt from disclosing party; (b) is or becomes generally known to the public without violation of these Terms of Use; (c) is obtained by the recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by receiving party without reliance in any way on the Confidential Information.

“Documentation” means the user, installation, technical, and training publications delivered by Power Grids as available in conjunction with Licensed Software.

“Licensed Software” means the English language version of the particular Power Grids Software, Third-Party Software, and/or Documentation licensed by Power Grids to Subscriber pursuant to a Subscription Order Form.

“Subscription Order Form” means a duly executed order form relating to the provision of specific Licensed Software by Power Grids to Subscriber and that expressly incorporates by reference these Terms of Use.

2. LICENSES AND RESTRICTIONS.

(a) Right to Use Licensed Software. Power Grids grants to Subscriber, during the Term (as defined herein), a limited, non-exclusive, non-transferable, non-sub licensable license to use the Licensed Software for Subscriber’s internal business purposes only (except as expressly authorized herein), solely by Authorized Users, subject to the terms and conditions of these Terms of Use.

(b) Restrictions. Except as expressly authorized herein, Subscriber shall not (i) resell, broker, redistribute, republish, transfer, sublicense, or relicense the Licensed Software or use the Licensed Software for third party transactions, service bureau use or publicly perform or publicly display the License Software; (ii) cause or permit the reverse engineering, disassembly, or de-compilation of the Licensed Software; or (iii) modify or otherwise create any derivative works of or from the Licensed Software. Subscriber will not, and will not permit any Authorized User or third party to (i) allow any access to or use of the Licensed Software by any individual other than Authorized Users or by individuals in excess of the number of Authorized Users for each Product approved on the applicable Subscription Order Form; (ii) remove, alter, or obscure any proprietary notices (including, without limitation, any copyright or trademark notices) of Power Grids or its licensors from the Licensed Software; or (iii) access, use, reproduce, display, copy or use the Licensed Software for the benefit of any person or entity other for Subscriber’s internal use. Subscriber hereby warrants that it is not a Power Grids Competitor or accessing the Licensed Software on behalf of, or at the direction of, a Power Grids Competitor. Subscriber may not, and will not permit its employees or agents to, sublicense, transfer, redistribute, resell or otherwise disclose Licensed Software to any other individual or legal entity, free of charge or for consideration,

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(c) Authorized Users; Security. Subscriber may license the Licensed Software for additional Authorized Users by ordering additional licenses at then current pricing on a Subscription Order Form. Subscriber acknowledges that it is Subscriber's duty to keep secure and hold in the strictest confidence all user identification codes and passwords pertaining to the Licensed Software (the "User IDs") and the information obtained through the Licensed Software. Accordingly, Subscriber agrees to: (i) unless otherwise agreed, prohibit the sharing of User IDs amongst Authorized Users; (ii) take all commercially reasonable measures to prevent unauthorized access to, or use of, the Licensed Software whether the same is in electronic form or hard copy, by any third party; (iii) not access and/or use the Licensed Software via mechanical, programmatic, robotic, scripted or other automated search means, other than through batch or machine-to-machine applications approved by Power Grids; (iv) ensure that each of the Authorized Users that is not an employee of Subscriber has signed a written agreement with terms at least as restrictive as those contained in Terms of Use; and (v) not use any framing techniques to frame, wrap, or enclose the Licensed Software or the information contained therein. Subscriber is liable for any breach of the terms of these Terms of Use by any Authorized Users.

3. OWNERSHIP. "Power Grids Property" means all of the following: (i) the Licensed Software (including the Documentation thereto); (ii) any deliverables and/or work product developed while providing the Licensed Software under these Terms of Use; and (iii) enhancements, modifications or derivative works to the Licensed Software. Subject only to the licenses expressly granted in these Terms of Use, as between Power Grids and Subscriber, Power Grids shall be the sole owner of all intellectual property rights in and to the Licensed Software. Power Grids may utilize all ideas, suggestions and feedback, or the like that Subscriber provides to Power Grids or otherwise makes with respect to the Licensed Software without any obligation to Subscriber. To the extent that Subscriber has or later obtains any intellectual property rights in and to the Power Grids Property, or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, Subscriber hereby disclaims such rights, and assigns and transfers such rights exclusively to Power Grids, and agrees to provide reasonable assistance to Power Grids to give effect to such assignment and to protect, enforce and maintain such rights.

4. FEES AND PAYMENT.

(a) Fees. The Subscriber shall pay to Power Grids the annual license fees in the amounts set forth on the applicable Subscription Order Form (the "**Annual Fees**"). Subscriber shall also pay any other applicable fees and pre-approved expenses specified in the Subscription Order Form. Unless otherwise noted on the Subscription Order Form, the Annual Fees shall be payable in advance and shall be nonrefundable. All Subscription Order Forms are non-cancellable. The Annual Fees, together with any expenses and other amounts due and payable under the Subscription Order Form, constitute the "**Fees**."

(b) Invoices and Payment. Power Grids will invoice Subscriber for all Fees incurred by Subscriber. Each invoice from Power Grids will state the basis for any Fees included therein. Subscriber will pay all amounts set forth on each such invoice in immediately available U.S. funds within thirty (30) days of the date of invoice. In addition to the payments required hereunder, Subscriber will be responsible and reimburse Power Grids for all sales, use, and other taxes, fees, or duties, whether federal, state, or local, however designated, that are levied or imposed by reasons of the transactions contemplated hereby (other than any taxes based on Power Grids' net income). All unpaid fees and late payments will bear interest at a rate of 18% per annum. Power Grids may immediately suspend Subscriber's access to the Licensed Software in the event of non-payment and/or late payment.

5. TERM AND TERMINATION.

(a) Term. Subscriber's subscription to the Licensed Software will commence on the Effective Date and shall remain in effect for the service term set forth in the Subscription Order Form (the "**Initial Term**"). Thereafter, Subscriber's subscription to the Licensed Software shall automatically renew or successive one (1) year terms (each, a "**Renewal Period**"), unless notice of non-renewal is given by either party no less than ninety calendar (90) days before the expiration of the Initial Period or then-current Renewal Period. Commencing with the first renewal term and for each subsequent year of the annual subscription term, the license fee shall increase by CPI. The Initial Term together with all applicable Renewal Periods shall be the "Term."

(b) Termination. In addition to any other remedy available to Power Grids under these Terms of Use, Power Grids may terminate these Terms of Use and/or Subscriber's subscription to the Licensed Software (in whole or in part) if Subscriber commits a material breach. These Terms of Use will automatically terminate in the event that either party becomes insolvent, admits its inability to pay its debts in writing, or ceases to carry on the business carried on by it. Provisions hereof relating to limits on liability, indemnification, use and protection of the Licensed Software and its

information and data, payment for the Licensed Software, audits, and disclaimers of warranties shall survive the termination of these Terms of Use.

(c) Effects of Termination. Immediately upon the effective date of the termination of these Terms of Use for any reason, all of Subscriber's rights granted hereunder will cease to exist. Subscriber will, at Power Grids' sole discretion, return to Power Grids or destroy the Licensed Software and all copies thereof and certify in writing Subscriber's compliance with such obligation.

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7. INDEMNIFICATION.

(a) Indemnification by Power Grids. Power Grids will indemnify and defend Subscriber from and against damages, losses, expenses, and costs arising as a direct result of all claims, suits or proceedings brought by any third party to the extent any such claim, suit or proceeding alleges that the Licensed Software, when used in accordance with these Terms of Use during the Term, infringe any U.S. copyrights or misappropriate any trade secrets (any such claim, suit or proceeding, a "Claim"). If the Licensed Software (or any portion thereof) become, or in Power Grids' opinion are likely to become, the subject of a Claim, then Power Grids may, at Power Grids' option and expense, either: (i) procure for Subscriber the right to continue exercising the rights licensed to Subscriber in these Terms of Use, (ii) replace or modify the Licensed Software (or portion thereof) so that the Licensed Software (or such portion thereof) become non-infringing, or (iii) terminate these Terms of Use by written notice to Subscriber and refund all current Fees actually paid by Subscriber (if any), on a prorated basis. Notwithstanding the foregoing, Power Grids will have no obligation under these Terms of Use or otherwise with respect to any Claim based upon: (A) any unauthorized use, reproduction, or distribution of the Licensed Software; (B) any access, use, reproduction, or distribution of the Licensed Software after Power Grids provides Subscriber with written notice that such access, use, reproduction or distribution has been prohibited or superseded or may be infringing on a third party's intellectual property rights; or (C) any modification of the Licensed Software by any person other than Power Grids or its licensors, suppliers, authorized agents or contractors. This Section 7(a) states Power Grids' entire liability and Subscriber's sole and exclusive remedy for infringement claims and actions.

(b) Indemnification by Subscriber. Subscriber will indemnify, defend and hold harmless Power Grids and its directors, officers and employees from and against any and all damages, liabilities, losses, fees, expenses, penalties and costs (including reasonable attorneys' fees, costs and disbursements) arising as a result of or otherwise related to all claims, suits or proceedings to the extent any such claim, suit or proceeding arises from or relates to any acts or omissions on the part of Subscriber or any Authorized User (or any person using Subscriber's User IDs) in connection with the Licensed Software. Subscriber agrees to indemnify and hold Power Grids harmless for any loss or damage suffered by Power Grids from any unauthorized disclosure by Subscriber of Third Party Data to any other party. Subscriber acknowledges that in the event Power Grids or its Third Party Licensor brings an action to enforce their respective rights under this clause, the damage to Power Grids or its Third Party Licensor for improper disclosure may be irreparable and Power Grids and its Third Party Licensor will be entitled to an appropriate injunction in addition to other remedies available at law. This Section does not apply to Subscriber's that are state or government agencies and which are exempt under applicable law.

(c) Indemnification Procedures. As a condition of the foregoing indemnification obligations, the indemnified party will (i) promptly notify the indemnifying party of any indemnifiable Claim; (ii) give the indemnifying party sole control over the defense and settlement of such Claim; and (iii) provide reasonable cooperation and assistance to the indemnifying party in conducting its defense, at the indemnifying party's expense; provided, however, that the indemnified party may participate in the defense at its expense and the indemnified party's advance written approval is required for any settlement that (A) imposes any obligation of payment on the indemnified party, (B) does not unconditionally release indemnified party, or (C) requires any binding admission made on behalf of the indemnified party.

8. LIMITATIONS ON LIABILITY. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL POWER GRIDS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST DATA, LOST PROFITS AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER ECONOMIC LOSS, ARISING FROM OR RELATING TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, IN RELATION TO THE PRODUCTS, SERVICES, CONTENT, DATABASE OR SEARCH RESULTS), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), EVEN IF POWER GRIDS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, POWER GRIDS AND SHALL NOT BE LIABLE FOR ANY DAMAGES, ARISING OUT OF OR RELATED TO (i) ANY DATA OR CONTENT CONTAINED IN OR OBTAINED THROUGH THE LICENSED SOFTWARE OR (ii) SUBSCRIBER'S USE OF THE LICENSED SOFTWARE, WHETHER SUFFERED BY SUBSCRIBER OR ANY THIRD PARTY. IF, NOTWITHSTANDING THE FORGOING, LIABILITY CAN BE IMPOSED UPON POWER GRIDS, THE TOTAL CUMULATIVE LIABILITY OF POWER GRIDS IN CONNECTION WITH THIS AGREEMENT, THE LICENSED SOFTWARE, AND ANY INFORMATION, DATA, OR CONTENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO POWER GRIDS BY SUBSCRIBER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

9. FOR U. S. GOVERNMENT END USERS. The Licensed Software was developed at private expense and is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Software with only those limited rights set forth therein.

10. EXPORT CONTROL NOTICE. Subscriber acknowledges the Licensed Software, or any part thereof, is being released or transferred to Subscriber in the United States and is therefore subject to United States export control laws. Subscriber acknowledges its exclusive obligation to ensure that its exports are in compliance with all applicable export control laws. Subscriber shall defend, indemnify, and hold Power Grids and its licensors harmless from and against any and all claims, judgments, awards, and costs (including Subscriber's noncompliance with applicable export laws with respect to the use or transfer of the Licensed Software outside the United States by Subscriber.

11. RELATIONSHIP OF THE PARTIES; PUBLICITY. Subscriber and Power Grids are independent contractors of one another. Neither party shall at any time represent that they are authorized agents or representatives of one another. Without Power Grids' prior written consent, Subscriber will not issue press releases relating to its status as a subscriber of the Licensed Software or use Power Grids' logos or trademarks in promotional materials or on its web site. Power Grids may, upon notice to Subscriber, issue press releases relating to Subscriber's status as a subscriber of the Licensed Software and display Subscriber's name in Power Grids' customer list in promotional materials and on its web site, unless Subscriber specifically requests Power Grids not to do so.

12. CHANGES TO TERMS OF USE. Subscriber agrees to comply with changes to the restricted license granted in paragraph 2 above, changes in pricing, and changes to other provisions of these Terms of Use as Power Grids shall make from time to time upon notice to Subscriber; provided, however, pricing may only be changed at the commencement of the next Renewal Period upon at least ninety (90) days advance notice. Such changes may be made from time to time by any of the following methods: online announcements, customer bulletins, emails, online "click wrap" amendments, changes to the Terms of Use, mail, facsimile, announcements in invoices, revised published price lists, or any other written notice.

13. FORCE MAJEURE. Other than for payments due, neither party will be liable to the other for any failure or delay in performance due to circumstances beyond its reasonable control including, without limitation, acts of God, labor disruption, war, terrorist threat, public health emergency, epidemic, virulent or contagious outbreak or government embargo, order, border restriction or border closure or other government action; provided that if either party is unable to perform its obligations for one of the foregoing reasons it shall give prompt written notice thereof to the other party and the time for performance, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

14. CONFIDENTIALITY. Each party may furnish the other party with Confidential Information. The parties agree that, during the Term and thereafter, each party shall not (a) directly or indirectly use, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose or cause to be disclosed, or otherwise transfer any Confidential Information of the other party to any third party (except as expressly contemplated by these Terms of Use), or (b) utilize Confidential Information for any purpose, except as expressly contemplated by these Terms of Use or authorized in writing by the other party. Subscriber will limit the disclosure of Power Grids' Confidential Information, to employees with a need-to-know and who have been advised of the confidential nature thereof, or third party consultants who are not Power Grids Competitors with a need-to-know and who have been contractually obligated to maintain such confidentiality through signature of a nondisclosure agreement acknowledging the non-disclosure obligations of this

Agreement and naming Power Grids as an intended third-party beneficiary. Subscriber shall provide copies of these agreements upon the written request of Power Grids. Subscriber shall be liable for any breach by any third party consultant of the confidentiality obligations contained herein.

15. GENERAL. Any Subscription Order Forms may be executed in counterparts and/or by facsimile, each of which shall constitute an original and both of which, together with these Terms of Use, constitute a single document and agreement. These Terms of Use and all Subscription Order Forms will be governed by the laws of England and Wales, without regard to or application of conflicts of law rules. The parties explicitly disclaim the application of the UN Convention on the Sale of Goods. If any provision of these Terms of Use is held to be unenforceable, that provision will be reformed in order to comply with the law and to the extent possible give effect to the original intent and economic impact of the original provision, and the remaining provisions will remain in full force. The failure of either party to require performance by the other party of any provision hereof will not affect the full right to require such performance at any time thereafter, nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Neither these Terms of Use, nor any Subscription Order Form, nor any rights or obligations of Subscriber under these Terms of Use or any Subscription Order Form, may be assigned, delegated or transferred by Subscriber (in whole or in part and including by sale, merger, or operation of law) without the prior written approval of Power Grids. Except as permitted herein, these Terms of Use, together with all Subscription Order Forms executed in connection with these Terms of Use, comprise the complete and exclusive statement of the agreement between the parties, and shall supersede any proposal or prior agreement, oral or written, and any other communications between the parties in relation to the subject matter hereof. This Agreement will not be modified except by a subsequently dated written amendment or exhibit signed by both parties by their duly authorized representatives. This Agreement shall control over any inconsistent provision contained in any purchase order or other documentation submitted by Subscriber in connection herewith, except for those terms accepted by Power Grids in writing.

16. THIRD PARTY BENEFICIARIES. No term of this Agreement shall be enforceable under the Contracts (Right of Third Parties) Act 1999 by any person, company or other legal entity which is not party to this agreement ("a third party") against one of the parties to this Agreement. The parties may rescind or vary this Agreement, in whole or in part without the consent of any third party.