

End User License Agreement

READ THIS LICENSE AGREEMENT CAREFULLY. THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU, THE END USER, AND MAK TECHNOLOGIES, INC. GOVERNING THE USE OF THE LICENSED SOFTWARE DEFINED BELOW. DOWNLOADING THE SOFTWARE INDICATES YOUR ACCEPTANCE OF THIS AGREEMENT. THIS AGREEMENT SHALL ALSO BE BINDING ON ANY SUBSEQUENT, AUTHORIZED LICENSEE. IF YOU DO NOT WISH TO AGREE TO THE TERMS OF THIS AGREEMENT, IF YOU HAVE ANY QUESTIONS CONCERNING THIS AGREEMENT, CONTACT MAK TECHNOLOGIES, INC., 10 FAWCETT STREET, SUITE 204, CAMBRIDGE, MA 02138, OR CALL (617) 876-8085.

Definitions

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1. **Agreement:** This End User License Agreement (EULA).
2. **Breach:** Any violation of the terms and conditions of this Agreement by the Licensee.
3. **Confidential Information:** Licensor's and Licensor's partners' proprietary information, including but not limited to inventions, designs, processes, software code, and documentation.
4. **Derivative Content:** Any model or content that Licensee creates by modifying, copying, or using data from the **Graphical Content** in any way.
5. **Executable:** A file that performs a specific function or a series of functions when run or executed on a computer system.
6. **Example Applications:** The unmodified example applications distributed with the Licensed Software.
7. **Graphical Content:** 2D and 3D graphical content included with the Licensed Software including but not limited to 3D models, icons, motion capture and animation files, material classification data, terrain source data, and sample terrain databases.
8. **Invoice:** The document accompanying this Agreement specifying the number of copies of the Licensed Software and the associated license fees.
9. **License Fee:** The amount payable by the Licensee to the Licensor as set forth in the Invoice.
10. **Licensee:** The end user or entity using the Licensed Software under the terms of this Agreement.
11. **Licensed Software:** The computer software provided by Licensor, including its accompanying documentation, updates, upgrades, and any other related materials.
12. **Licensor:** MAK Technologies, Inc., the entity providing the Licensed Software.
13. **Network or Multi-User System:** A computer network where multiple users may access the Licensed Software, though only one user may use or have access to the Licensed Software at any one time per license purchased.
14. **Proprietary Rights:** The rights held by the Licensor and its partners in the Licensed Software, including but not limited to copyrights and trade secrets.
15. **Single Terminal:** A single computer or workstation where the Licensed Software is installed and used.
16. **Trade Control Laws:** U.S. export control laws and economic sanctions laws and regulations, including but not limited to ITAR, EAR, and regulations administered by OFAC.
17. **Worldwide:** Any country, individual, or organization NOT prohibited by export laws, trade control laws or otherwise barred in this agreement.

1. Grant of License: Licensor hereby grants to Licensee a fully paid-up, perpetual, **Worldwide**, non-exclusive license to use one copy of the **Licensed Software** enclosed herein, unless a greater number of copies is specified in the **Invoice**. Such license, with respect to each such copy, shall include the right to use the **Licensed Software** on a **Single Terminal**. If **Licensee** uses the **Licensed Software** on a network, multi-user system, or virtual machine then the **Licensed Software** may be installed on any number of computers, but for each copy of the **Licensed Software** purchased, no more than one user may use or have access to the **Licensed Software** at any one time.

Such license, with respect to each such copy, shall include the right to use the **Licensed Software** as or within a single software executable. In the case of a user who wishes to run multiple software executables simultaneously, whether on one computer or many, the user must purchase an individual license for each executable to be run simultaneously. The only exception is that the unmodified **Example Applications** that are distributed with the **Licensed Software** may be run on a computer that is already running an application that uses the **Licensed Software**.

2. Restrictions: **Licensee** shall not reverse engineer, decompile, or disassemble the **Licensed Software**. Additionally, the following actions are impermissible, whether done directly or indirectly, wholly or partially:

- a) Any attempt to derive the source code of the **Licensed Software**, except as permitted by law and with prior notice to the **Licensor** to allow **Licensor** to address the need for interoperability or compatibility without reverse engineering.
- b) Any disturbance of notices regarding intellectual property or other proprietary rights.

3. License Fee: **Licensee** shall pay to **Licensor** the amount set forth in the Invoice upon the terms thereof.

Except as provided in Paragraph 1 with respect to **Example Applications**, an additional license fee shall be payable for each additional software executable with which the **Licensed Software** is used, irrespective of whether such additional executable utilizes a copy of the **Licensed Software** provided by **Licensor** or copied by **Licensee** from the original copy provided upon execution of this **Agreement**.

Any use by **Licensee** of an additional copy of the **Licensed Software** without compliance with the terms of this Paragraph 3 shall be deemed an unauthorized copying which is not licensed pursuant to the terms of this **Agreement**. In the event the **Licensee** fails to make any such payments, all licenses and other rights granted thereunder shall be automatically revoked.

4. Proprietary Rights: **Licensee** acknowledges that the **Licensed Software** is the sole and exclusive property of **Licensor** and **Licensor's** partners, and that, other than the license granted hereby, no proprietary rights, including copyrights, in the **Licensed Software** are transferred to **Licensee**.

5. Breach: In the event of any breach by the **Licensee** of the terms of this **Agreement**, including without limitation any unauthorized reproduction, modification or enhancement, distribution, sale, lease or sublicense of the **Licensed Software**, the license granted pursuant to this **Agreement** may, at the option of the **Licensor**, be revoked upon ten days written notice given by **Licensor** to **Licensee**; provided, however, that such revocation shall not take effect if **Licensee** shall have cured such breach prior to the end of such ten-day notice period; and further provided, however, that such revocation shall not apply to any product units incorporating the **Licensed Software** which **Licensee** shall have sold and delivered prior to the date of termination.

6. Warranties: MAK Technologies warrants that commencing from the date of delivery to **Licensee** and continuing for a period of 30 days, the **Licensed Software** substantially conforms to its published specifications.

Restrictions. This warranty does not apply if the **Licensed Software** (a) has been altered, except by MAK Technologies, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by MAK Technologies, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is licensed, for beta, evaluation, testing or demonstration purposes for which MAK Technologies does not receive a payment of purchase price or license fee. The foregoing warranty does not apply to the **Example Applications**. Any implied warranties on the **Licensed Software** are limited to one year, unless such limitations are precluded by the law.

Except for the warranty set forth in the first sentence of this paragraph 6, **Licensor** disclaims all other warranties, express or implied, with respect to the **Licensed Software** (including the accompanying documentation) and the **Example Applications**, including but not limited to implied warranties of merchantability and fitness for a particular purpose. **Licensee** agrees that any damages for breach of warranty shall be limited to the amount paid by **Licensee** as a license fee hereunder. In addition, **Licensor** reserves the right to refund such license fee to **Licensee**, as **Licensee's** sole and exclusive remedies for any claim of breach hereunder. In no event shall **Licensor** be liable for any special, consequential, incidental or indirect damages (including without limitation damages for loss of business profits, business interruption, loss of business information or data, loss of goodwill or other pecuniary loss) or for any damages arising out of the use of or inability to use the **Licensed Software**, even if **Licensor** has been advised of the possibility of such damages; provided, that such limitation of liability for consequential or incidental damages may not be enforceable in all jurisdictions. The foregoing applies notwithstanding the failure of essential purpose of any contractual remedy.

7. Reservation of Rights: All rights not expressly granted hereby are reserved to **Licensor**.

8. Governing Law and Jurisdiction: This **Agreement** shall be governed in accordance with the laws of Massachusetts. This contract is made in Massachusetts. Licensee hereby submits to the jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States Federal District Court for the District of Massachusetts.

9. U.S. Government Restricted Rights: The **Licensed Software** and documentation are provided with Restricted Rights. Use, modification, reproduction, release, performance, display or disclosure by the Government are governed by DFARS 252.227.7202-3, Rights in Computer Software and Computer Software Documentation, and by subparagraphs (c)(1) and (c)(2) of the Commercial Computer Software - Restricted Rights at 48 CFR.52.227-19, as applicable.

10. Export Restrictions: General - **Licensee** shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations. This includes, but is not limited to, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Export Control Reform Act of 2018; the Export Administration Regulations, 15 C.F.R. 730-774; and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, "Trade Control Laws"). In addition, **Licensee** must adhere to restrictions pertaining to the Restricted Party Lists. This includes the Specially Designated Nationals List administered by the Office of Foreign Assets Control (OFAC), the Denied Parties List, Unverified List, or Entity List maintained by the Bureau of Industry and Security (BIS), including the Military End User (MEU) List focusing on entities in China, Russia, and Venezuela. Also included are the List of Statutorily Debarred Parties maintained by the Directorate of Defense Trade Controls (DDTC), and the consolidated list of asset freeze targets designated by the United Nations (UN), European Union (EU), and United Kingdom (UK).

Licensee shall not export, re-export, transfer, disclose, or otherwise provide physical or electronic access to the **Licensed Software**, or any other items controlled under the Trade Control Laws, to any person or entity unless such transfer is expressly permitted by a U.S. Government license or other authorization, or is in compliance with

applicable laws and regulations. This obligation includes ensuring that no items are provided to individuals or entities on the Restricted Party Lists. Furthermore, **Licensee** shall not use the **Licensed Software** for any military application or other end use prohibited by applicable Trade Control Laws. The **Licensee** agrees that it will not export or re-export any **Licensed Software** to the People’s Republic of China or Russia. The **Licensee** agrees that it will not export to any location or entity prohibited by the Sanctioned Destinations List maintained by the Bureau of Industry and Security (BIS). **Licensee** also acknowledges that neither they nor any parent, subsidiary, affiliate, or employee are included on any of the Restricted Party Lists.

EAR99 Software - Furthermore, in the case of items classified under EAR99, **Licensee** shall remain vigilant and comply with all applicable provisions of the Trade Control Laws, particularly regarding transactions with sanctioned or embargoed countries, entities, and individuals. This includes, but is not limited to, adhering to the prohibitions and restrictions on exports, re-exports, and transfers to countries subject to U.S. sanctions, as enforced by the Office of Foreign Assets Control (OFAC). **Licensee** acknowledges their responsibility to remain informed about and compliant with these restrictions, even when dealing with **Licensed Software** that is controlled under EAR99 classification.

Export-Controlled Software - When the terms of the Agreement and/or Order require access to or possession of Technical Data controlled under the ITAR or Technology at an Anti-Terrorism level or higher under the EAR, or the equivalent level of controls under applicable and governing non-U.S. Trade Control Laws, **Licensee** shall create and follow a Technology Control Plan (“TCP”) that, at a minimum, incorporates the following elements: (i) facility security; (ii) global trade compliance training program; (iii) information technology security; (iv) record keeping requirements; (v) denied party screening; and (vi) personnel oversight (including oversight of Personnel who are non-U.S. persons and/or dual/third country nationals, and visitor management). **Licensee** shall make a signed copy of the TCP available to **Licensors** within 30 days of request.

11. Transfer Restrictions: **Licensee** may transfer the **Licensed Software** and its related licenses to an end-user, provided that the **Licensee** informs the end-user of all the terms and provisions of this license and provided that the end-user will remain bound thereby. In addition, if **Licensee** has been issued a license key by **Licensors** and wishes to transfer this entire license to a new system, then **Licensee** must, as a condition of such transfer, complete **Licensors**’ system transfer form. In such event, the transferee will be bound by all the terms and provisions of this license, and **Licensee** will transfer to the transferee all copies of the **Licensed Software**, including documentation. Except as set forth in this Paragraph 11, **Licensee** may not wholly or partially transfer or assign any rights or delegate any obligations under this license.

12. CONFIDENTIAL INFORMATION

12.1 Confidential Information: **Licensee** acknowledges that the **Licensed Software** comprises and contains **Licensors**’ and **Licensors**’ partners’ confidential and proprietary inventions, products, designs and ideas (including computer software), functionality, concepts, processes, internal structure, external elements, user interfaces, technology and documentation. **Confidential Information** excludes information that (i) is already lawfully known to **Licensee**, if such information was not received from **Licensors**, (ii) was developed independently by **Licensee** without reference to **Licensors**’ **Confidential Information** or (iii) is generally known to the public through no fault of **Licensee**.

12.2 Non-Disclosure: **Licensee** acknowledges that **Confidential Information** is confidential, proprietary and/or trade secret information of **Licensors**. **Licensee** shall not use **Confidential Information** for any purpose and shall not disclose **Confidential Information** to anyone other than its employees and contractors who legitimately need access to it and who have signed confidentiality agreements comparable in scope to this section. **Licensee** shall

notify each of its employees and contractors who are given access to **Confidential Information** that they have an obligation not to disclose such **Confidential Information** and shall take such steps as are reasonably necessary to ensure compliance with this obligation. **Licensee** shall safeguard **Confidential Information** with reasonable security means at least equivalent to measures that it uses to safeguard its own proprietary information. **Licensee** shall store **Confidential Information** in a safe and secure location.

12.3 Breach of Confidentiality Obligations: **Licensee** hereby acknowledges that unauthorized disclosure or use of **Confidential Information** may cause immediate and irreparable harm to **Licensor** for which it would not have an adequate remedy at law. Accordingly, **Licensor** shall be entitled to preliminary and final injunctive relief to enforce this **Agreement** in case of any actual or threatened breach, in addition to other rights and remedies that may be available to **Licensor**.

13. Graphical Content: **Licensee** acknowledges that **Graphical Content** is valuable intellectual property that is owned by MAK or its licensors ("Third Party Content Providers"). **Licensee** agrees that **Graphical Content** may be used only in conjunction with the **Licensed Software**. **Licensee** agrees that it will not use the **Graphical Content** separately from the **Licensed Software**. **Licensee** further agrees that it will not distribute the **Graphical Content** to any third party, except in conjunction with the **Licensed Software** as part of a transfer under the terms of Section 11.

Licensee agrees that use and distribution of **Derivative Content** is subject to the same restrictions as the **Graphical Content**.

If **Licensee** requests or receives from MAK any unencrypted versions of **Graphical Content** that are not normally distributed with the **Licensed Software** ("**Unencrypted Content**"), **Licensee** agrees not to distribute the **Unencrypted Content** (or unencrypted **Derivative Content** that is derived from **Unencrypted Content**) to any third party under any circumstances – whether in conjunction with the **Licensed Software** or not. **Licensee** may distribute **Derivative Content** derived from **Unencrypted Content** in re-encrypted form, only in conjunction with the **Licensed Software** as part of a transfer under the terms of Section 11.

Except as specifically set forth in this Section 13, all the provisions hereof relating to **Licensed Software** will also apply to **Graphical Content**. **Licensee** agrees that each **Third Party Content Provider** shall be a Third Party Beneficiary of this **Agreement** entitled to enforce the provisions hereof with respect to the **Graphical Content** owned by such **Third Party Content Provider** (but for no other purpose). **Licensor** makes no warranty, express or implied, with respect to any **Third Party Content Provider's** content. In the case of Interactive Data Visualization, Inc. ("IDV") as a Third Party Content Provider, the additional provisions set forth in Appendix A are incorporated herein with respect to all Graphical Content provided by IDV.

Appendix A – IDV’s SpeedTree License Provisions

- Licensee will comply with all requirements imposed upon Licensor by third party service providers and licensors, including, without limitation, Interactive Data Visualization, Inc. (“IDV”).
- Licensee acknowledges and agrees that it is not a third party beneficiary of any agreements between Licensor and its third party service providers and licensors, including, without limitation, IDV.
- Licensee acknowledges and agrees that IDV is and shall be a third party beneficiary of this Agreement.
- Licensee acknowledges and agrees that no claim, action, or demand shall lie against IDV with respect to any loss, cost, liability, damages, or expense arising out of or related to this Agreement or the IDV SpeedTree Software. For purposes of clarity, Licensee shall not file any suit or bring any cause of action against IDV with respect to this Agreement or the IDV SpeedTree Software.
- Licensee acknowledges that IDV has not made any warranties to Licensee with respect to the IDV SpeedTree Software, that IDV expressly disclaims implied warranties of merchantability or fitness for a particular purpose, and that IDV has no obligation to honor any warranties that Licensor may provide to Licensee in this Agreement or otherwise.
- IDV retains any and all right, title, interest, and intellectual property rights in and to the IDV SpeedTree Software, including any results and/or proceeds created by Licensee using the IDV SpeedTree Software that may be embedded in the Licensed Software, and no title to such IDV SpeedTree Software, including any results and/or proceeds, is transferred to the Licensee or any third party through this Agreement or otherwise.
- Neither Licensee nor any of its agents or consultants shall assign, sublicense, transfer, reproduce, copy, modify, disassemble, decompile, or otherwise reverse engineer any portion of the IDV SpeedTree Software; provided, however, that Licensee may make results and/or proceeds available, at no charge or fee (i.e., Licensee may not charge a license or other fee for such results and/or proceeds), to other properly licensed end users of the Licensed Software including the IDV SpeedTree Software as part of a “map editor.”
- Licensee shall adhere to all applicable laws, regulations and rules relating to the export of technical data and shall not export or re-export any technical data, any products received from Licensor, or the direct product of such technical data to any proscribed country listed in such applicable laws, regulations and rules unless properly authorized.