

SERVICE TERMS

(Web Version October 16, 2019)

Whenever ANSYS provides consulting services to the Customer, a statement of work, consulting form or proposal (each, an “SOW”) shall be executed which contains a description of the consulting services to be provided (“Services”), Customer’s payment obligations with respect to the Services, and a reference to these service terms (“Service Terms”), which shall be incorporated therein by reference. By signing said SOW, each party has caused these Service Terms to be executed by its duly authorized representatives and agrees to be bound by the terms and conditions of these Service Terms and the SOW (collectively, the “Agreement”). As used herein, ANSYS and Customer shall have the meanings set forth in the SOW.

1. Intellectual Property

1.1. As between ANSYS and the Customer, each party will retain all rights in and to the intellectual property that such party (a) had rights to prior to commencement of the Services and (b) develops or acquires outside the scope of the Services (collectively “Background IP”), including any Background IP provided to the other party or otherwise used in furtherance of any SOW.

1.2. Subject to the terms of this Section 1, reports based on Customer Confidential Information and output files created as part of the Services and identified as deliverables in the SOW (the “Customer Reports and Files”) shall be owned by Customer. Excluding the Customer Reports and Files, and as otherwise subject to the terms of this Section 1, as between ANSYS and the Customer, each party will retain all rights in and to software, materials or know-how that it generates pursuant to the Services. Notwithstanding the foregoing, the parties agree that each party will own the respective intellectual property rights in and to any improvements, modifications or derivative works of its own Background IP developed in furtherance of the Services, including improvements, modifications and derivative works based on contributions by the other party; provided that such other party shall otherwise retain ownership of all intellectual property rights in and to such contributions.

1.3. Upon payment in full of all fees and other amounts due under this Agreement, and subject to the terms of the Non-Standard Software License Agreement (“Software Terms”), which is available for review at <http://www.ansys.com/nonstandardterms.htm>, ANSYS hereby grants the Customer and its Affiliates, a non-exclusive, Paid-Up License to use the deliverables provided by ANSYS to the Customer that are expressly identified in the SOW and that are not assigned to the Customer pursuant to Section 1.2 (“Licensed Deliverable”), solely for the purpose explicitly described in the SOW. Except as otherwise expressly provided herein or in any applicable SOW, the Customer shall not have the right to license, sublicense or otherwise transfer the right to use the Licensed Deliverables without ANSYS’ prior written agreement. Any warranties and indemnities with respect to the Licensed Deliverables are solely as set forth in the Software Terms. Notwithstanding anything in this Section 1.3 or any SOW to the contrary, in no event shall any commercially-available software products of ANSYS be considered a Licensed Deliverable.

1.4. The Customer hereby grants to ANSYS a non-exclusive, royalty-free, license to use any Customer intellectual property needed by ANSYS to perform the Services or to develop any Licensed Deliverable for the sole purpose of performing the Services and/or developing any Licensed Deliverable.

1.5. To the extent Customer submits product samples, boards, prototypes or other hardware samples for testing or failure analysis Services (collectively, “Samples”), such Samples shall be retained for by ANSYS for six (6) months before being destroyed (excluding any Samples being tested for Customer in connection with any legal proceedings (“Evidentiary Samples”). For all Evidentiary Samples, and for any other Samples the Customer desires to be returned upon completion of the Services, Customer shall provide shipping account number, shipment type (overnight, ground, etc.), complete shipping address, Customer recipient information and the insured value. All shipping and handling costs for returned Samples (Evidentiary Samples or otherwise) are at Customer’s expense and Customer acknowledges and agrees that the testing or failure analysis process may inherently cause damage to or destruction of any Samples.

2. IP Infringement

2.1. ANSYS will defend at its expense, any claim, suit, or proceeding (each, a “Claim”) brought against the Customer by any third party to the extent that such Claim is based on a claim that the Services infringe or misappropriates the third party’s patent, copyright, trade secret or trademark (“Infringement Claim”). ANSYS will pay all costs and damages finally awarded against the Customer by a court of competent jurisdiction as the result of any such Infringement Claim; provided, however, that the Customer (i) promptly notifies ANSYS in writing of such Infringement Claim; (ii) promptly gives ANSYS the right to control and direct the investigation, preparation, defense and settlement of any such Infringement Claim, with counsel of ANSYS’ own choosing (provided that the Customer will have the right to reasonably participate, at its own expense, in the defense of any such Infringement Claim); and (iii) provides assistance and full cooperation to ANSYS and its counsel for the defense of the Claim. If the Services are, or in ANSYS’ opinion, may be held to infringe any third-party rights as set forth above, ANSYS

may, in its sole discretion: (a) replace or modify the Services so as to avoid infringement; (b) obtain for the Customer the right to continue to use the Services; or (c) require that the Customer returns that portion of the Services that are infringing and provide a partial refund for such infringing Services. If the non-infringing portion of the Services cannot be used by the Customer without access to that portion of the Services returned to ANSYS hereunder, ANSYS may agree to refund the complete service fee paid by the Customer for the Services, provided that the Customer returns all of the work provided by ANSYS as part of the Services.

2.2. The foregoing indemnity will not apply to any Claim based upon or arising from (i) use of the Services in combination with any third-party equipment, software, or data for which it was not intended to be used; (ii) compliance by ANSYS with any designs, testing protocols/requests or specifications of the Customer; (iii) modification of the Services other than at the direction of ANSYS; or (iv) the Customer's continued use of the Services subsequent to receipt of (a) notice of any claimed infringement or (b) notice from ANSYS of its intent to exercise rights under Section 2.1.

2.3. This Section 2 represents the sole and exclusive remedy of the Customer and the entire liability and obligation of ANSYS with respect to infringement or claims of infringement or misappropriation of any intellectual property right (including any trade secret) with respect to the Services.

2.4. The foregoing indemnity applies with respect to the Services only. With respect to any software, including, but not limited to, a Licensed Deliverable, specifically licensed by ANSYS to the Customer as part of the Services, ANSYS' indemnification obligations are as set forth in the Software Terms.

3. Confidentiality

3.1. In the event that ANSYS and the Customer have separately entered into a mutual confidentiality agreement that applies to the Services, then, excluding any Licensed Deliverable, the terms of that separate confidentiality agreement shall govern and Sections 3.1-3.5 below shall not apply. With respect to any Licensed Deliverables, the Software Terms shall solely govern.

3.2. Except as set forth in Section 5.1, any information that may be exchanged between ANSYS and the Customer pursuant to the Agreement ("Confidential Information"), is subject to the terms as set forth herein.

3.3. Confidential Information will remain the property of the party disclosing such information (the "Disclosing Party"). Information disclosed by the Disclosing Party to the other party (the "Receiving Party") shall be considered Confidential Information if it is marked or identified as confidential or given the nature of the information or circumstances surrounding disclosure should reasonably be understood to be confidential. Any reports and/or information related to or regarding the business plans, strategies, technology, research and development, current and prospective customers, bill records, and products or services of ANSYS or its affiliates or suppliers will be deemed Confidential Information even if not explicitly marked or identified. The Receiving Party will use the same degree of care as it uses to protect its own similar confidential and proprietary information, but not less than reasonable care, to protect the Disclosing Party's Confidential Information. The Receiving Party agrees that it will not (i) use the Disclosing Party's Confidential Information for its own account or the account of any third party, except for the exercise of its rights and performance of its obligations under the Agreement, or (ii) disclose any such Confidential Information to any party, other than furnishing such Confidential Information to (a) its employees, affiliates, and consultants who need to access such Confidential Information in connection with the exercise of its rights and performance of its obligations under the Agreement and (b) professional advisors, provided that such employees, consultants and professional advisors are bound by written agreements of confidentiality or, in the case of professional advisors, ethical duties respecting such Confidential Information, in accordance with the terms of this Section 3.

3.4. The obligations of confidentiality set forth in this Section 3 will not extend to any information which:

(i) was lawfully known to the Receiving Party prior to receipt from the Disclosing Party;
(ii) enters the public domain through no wrongful act or breach of this Section 3 by the Receiving Party;
(iii) is received by the Receiving Party from a third party having a legal right to disclose such information;
(iv) is developed independently by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or

(v) is required by law, regulation or court order to be disclosed, so long as the Receiving Party notifies the Disclosing Party in writing prior to disclosing the Confidential Information so that the Disclosing Party has an opportunity to seek a protective order or other appropriate remedy from the proper authority. The Receiving Party agrees to cooperate with the Disclosing Party in seeking such order or other remedy or in defining the scope of any required disclosure. For clarity, ANSYS shall not be restricted in any way, including in respect of disclosure and publication, from exercising its intellectual property rights, including in and to the Licensed Deliverables or any other software or know-how developed or used in connection with the Services, in whole or in part, or in combination with any other software or know-how.

3.5. The obligations of the parties with regard to Confidential Information will survive for a period of three (3) years from the date of the first disclosure of such Confidential Information.

4. Warranty

4.1. ANSYS warrants that the Services shall be performed with the standard of care and skill ordinarily used by other members of the engineering simulation software services profession when undertaking similar services.

4.2. Any interpretation or analyses of the Customer's data or Samples, and any recommendation based upon such interpretations or analyses, are opinions based upon inferences from measurements, testing, observations and empirical relationships and assumptions which are not infallible, and with respect to which industry professionals may differ. Accordingly, ANSYS does not warrant the accuracy, correctness or completeness of any such interpretation, analysis, testing or recommendation.

4.3. ANSYS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO OR CONCERNING ANY REPORT, DELIVERABLE, TESTING, MATERIALS, EQUIPMENT, INFORMATION, OR ANY OTHER WORK PROVIDED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES CONCERNING THEIR USE OR PERFORMANCE AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. Liability

5.1. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANSYS SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OR LOSSES.**

5.2. ANSYS will not be responsible for any use made of any report, testing results, materials, equipment, information or any other work arising from the Services, either by the Customer or any third party.

5.3. EXCLUDING ANSYS' IP INFRINGEMENT INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 2, IN NO EVENT SHALL ANSYS' LIABILITY TO THE CUSTOMER OR ANY THIRD PARTY RELATING TO THE SERVICES EXCEED THE AMOUNT PAID BY THE CUSTOMER TO ANSYS FOR THE SERVICES, REGARDLESS OF THE FORM OF THE ACTION.

5.4. The Services (including testing) are analytical and advisory in nature and are not a substitute for rigorous and comprehensive prototype testing by the Customer of products or components intended for sale or use by the Customer. The Customer has the sole and final responsibility for determining the accuracy, correctness, and suitability of the Services for any purpose, as well as full responsibility for all financial and other decisions concerning its operations.

6. Termination

6.1. Either party may terminate the Services immediately upon written notice in the event of a breach of any material term or condition of the Agreement and failure of the breaching party to remedy or commence sufficient remedial steps to cure such breach within thirty (30) days following receipt of written notice from the non-breaching party specifying the breach and outlining the requirements for remediation.

6.2. Either party may terminate the Services at any time upon thirty (30) days prior written notice in the event of: (i) termination or cessation of the business of the other party; or (ii) filing of a voluntary or involuntary bankruptcy, receivership, or similar proceeding with respect to the other party.

6.3. In the event of termination of the Agreement by either party for any reason, the Customer shall pay ANSYS for that portion of the Services that ANSYS has completed and any irrevocable commitments entered into by ANSYS up to the date of termination.

6.4. The provisions of Sections 1, 2, 3, 4, 5, 6, and 7 shall survive any termination of the Agreement.

7. Miscellaneous

7.1. The Agreement constitutes the full understanding of the parties and a complete and exclusive statement of the terms regarding the Services. In the event of any conflict between the Service Terms and the SOW, the order of precedence is as follows: (1) the Service Terms; and (2) the SOW. The Software Terms shall solely govern the use of any software licensed by ANSYS, including, but not limited to, any Licensed Deliverables, to the Customer in connection with the Services, and shall take precedence in the event of any conflict between the Software Terms and the Agreement. No modification of the Agreement or waiver of any of its terms or conditions shall have any effect unless made in writing and signed by the party to be bound.

7.2. Neither party shall assign the Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, provided that either party shall have the right to assign the Agreement to any successor by way of merger or consolidation or the acquisition of all or substantially all of the business and assets of the assigning party related to the subject matter of the Agreement and that such successor shall expressly assume all of the obligations and liabilities of the assigning party hereunder. Any assignment in violation of this subsection 7.2 shall be void. The terms and conditions of the Agreement shall be binding upon and enforceable by the successor and permanent assign of the assigning party.

7.3. In providing the Services, ANSYS shall act as independent contractor. ANSYS shall not be and shall make no representation of being an employee or agent of the Customer. ANSYS shall pay all federal, state and local taxes and withholdings which are or become due on any money paid by the Customer to ANSYS under the Agreement.

7.4. The rights and obligations of the parties hereto shall be governed by the substantive law of the Commonwealth of Pennsylvania, excluding the United Nations Convention on the International Sale of Goods and choice of law provisions. The parties hereto submit themselves to the venue and jurisdiction of the federal and state courts maintaining jurisdiction over Washington County, Pennsylvania for purposes of any legal proceedings arising under or relating to the Agreement.