

**CLOUD SERVICES AGREEMENT**  
**(Web Version January 8, 2020)**

ANSYS and Customer shall execute an Order Form referencing and incorporating by reference this Cloud Services Agreement (“Agreement”) in each instance in which Customer uses the Services. By signing an Order Form, each party has caused this Agreement to be executed by its duly authorized representatives and agrees to be bound by the terms and conditions of this Agreement.

**1. DEFINITIONS**

- A. "Affiliate" of a company means any entity directly or indirectly controlling, controlled by, or under common control of such company.
- B. "Channel Partner" means ANSYS' Affiliates or other business entities that are authorized by ANSYS to distribute, support, or both distribute and support the Services. Any Support obligations of ANSYS under this Agreement may be delegated to a Channel Partner at ANSYS' discretion
- C. "Application(s)" means the software product(s) listed on the Order Form including, without limitation, all corrections, updates, modifications, releases, versions, and enhancements to such software that may be generally released by ANSYS without additional charge.
- D. "Contract User(s)" means an individual or entity, not a regular employee of Customer, who is engaged to perform services for Customer.
- E. "Customer" means the entity identified on the Order Form, including its Affiliates.
- F. "Customer Content" means all electronic content or information submitted by Customer to the Application in connection with the Services.
- G. "Documentation" means ANSYS' then current on-line help, guides and manuals (as may be updated by ANSYS from time to time) published by ANSYS and made available by ANSYS for the Services. Documentation may include minimum hardware, software and internet connection requirements for use of the Services (as may be updated by ANSYS from time to time).
- H. "Effective Date" means the date specified in the Quotation referenced on the Order Form as the start date for the Services.
- I. "Fees" means the fees paid for the Services as specified in the Order Form.
- J. "Named User" means an employee or Contract User of the Customer or its Affiliate who has been authorized by Customer to access the Services and who is identifiable as a unique user by his or her e-mail address.
- K. "Order Form" means the ordering documents for Customer's purchases of Services from ANSYS that are executed from time to time.
- L. "Services" means the right to access the Application(s) in accordance with the terms of this Agreement.
- M. "Subscription Fees" means the fees specified in Quotation referenced on the Order Form for the Services.
- N. "Subscription Term" means the time period Customer is authorized to utilize the Services as specified in Quotation referenced on the Order Form, as such time period may be extended pursuant to the terms of this Agreement. The Services may automatically deactivate and become non-operational at the end of the Subscription Term for the applicable Services, and Customer shall not be entitled to access such Services unless the Subscription Term is renewed.
- O. "Support" means the services described in Section 10(a) below, which will be provided to Customer.

**2. GRANT**

- (a) Subject to the terms and conditions of this Agreement, ANSYS hereby grants to Customer a non-exclusive and nontransferable license to, during any Subscription Term, (a) access and to use the Services via the internet, and (b) use the Documentation provided by ANSYS in connection with Customer's use of the Services. Customer agrees that its purchase of license(s) for the Application(s) is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by ANSYS with respect to future functionality or features. The Services may only be accessed by Named Users. Named Users may reasonably be changed by Customer during the Subscription Term for a Service provided that such change does not result in Customer exceeding the authorized number of Named Users specified in the Quotation.
- (b) Customer is responsible for ensuring that Contract Users (i) access the Services only to perform services for Customer and (ii) agree to and comply with the terms of this Agreement. Customer is responsible for the use of the Services by all Contract Users. Customer will access the Services only for Customer's own internal business purposes and will not make all or any part of any Services available to any third person other than Contract Users. Customer will not use the Application(s) to compare the performance, features or other components of the

Application(s) to other software programs or otherwise engage in benchmarking activities. Nothing contained herein will be deemed to convey to Customer any title, ownership, copyright or any other intellectual property rights in or related to Application(s), and ANSYS reserves all rights in and to the Application(s) which are not expressly granted in writing by ANSYS to Customer.

- (c) CUSTOMER ACCEPTS AND AGREES THAT THE SERVICES REQUIRE AN INTERNET CONNECTION AND THAT CUSTOMER SHALL HAVE SOLE RESPONSIBILITY FOR HAVING AN INTERNET CONNECTION FOR THE PURPOSE OF UTILIZING THE SERVICES.
- (d) Certain Services (or components thereof) and all Customer Content that is stored in the database account included as part of same, may (at ANSYS' option) be hosted in Microsoft Azure Cloud Services data centers ("Azure Hosted Components"). The Azure Hosted Components shall be hosted in the geographic region (North America, Europe or Asia) in which the customer is located or to which it is nearest. The parties hereby agree that solely with regard to the Azure Hosted Components, the privacy and security controls and procedures implemented by ANSYS shall be superseded by the privacy and security controls and procedures employed by Microsoft with regard to Azure CloudServices (See Microsoft Azure Trust Center at <https://www.microsoft.com/en-us/trustcenter/CloudServices/Azure> ).
- (e) Certain Services, including, but not limited to, user log-in information (e.g. User IDs and passwords) may (at ANSYS' option) be stored and utilize Microsoft Active Directory B2C ("Microsoft Active Directory"). The parties hereby agree that solely with regard to Services utilizing Microsoft Active Directory, the privacy and security controls and procedures implemented by ANSYS shall be superseded by the privacy and security controls and procedures employed by Microsoft with respect to the Microsoft Active Directory. (see SLA for Azure Active Directory B2C at [https://azure.microsoft.com/en-us/support/legal/sla/active-directory-b2c/v1\\_0/](https://azure.microsoft.com/en-us/support/legal/sla/active-directory-b2c/v1_0/)).
- (f) Solely to the extent that ANSYS directly stores any Customer Content or user log-in information, ANSYS will (i) use commercially reasonable efforts to routinely backup all Customer Content; and (ii) not use Customer Content (except as more fully set forth below). Solely to the extent that ANSYS has access to Customer's log-in information, ANSYS will (i) use industry standard security measures to maintain Customer's authorized users' login information and (ii) not use log-in information (except as more fully set forth below) for any purpose other than to improve the operation of the Services and to provide Support services.
- (g) ANSYS may access Customer's account and Customer Content as necessary to identify or resolve technical problems or respond to complaints about the Services. ANSYS will use commercially reasonable efforts to maintain the confidentiality of Customer Content.

### **3. CUSTOMER RESPONSIBILITIES**

- (a) Customer will not (and will not attempt to nor allow any third party to or attempt to): (i) adapt, alter, amend, modify, reverse engineer, decompile, disassemble or decode the whole or any part of the Application(s) or translate the whole or any part of the Application(s) into another language; (ii) license, sublicense, sell, resell, rent, lease, transfer, distribute, use the Services for commercial time-sharing, or otherwise commercially exploit the Services; (iii) create derivative works based on the Services; (iv) frame or mirror any content forming part of the Services, other than on Customer's own intranets and for its own internal business purposes; (v) access the Services in order to build a competitive product or service, or copy any ideas, features, functions or graphics of the Services; and (vi) Customer shall not remove any title, trademark, copyright and/or restricted rights notices or labels from the Services or Documentation. All of the restrictions in this Section 3 are for the benefit of ANSYS, its subsidiaries, affiliates and its third-party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf. Nothing contained herein will be deemed to convey to Customer any title, ownership, copyright or any other intellectual property rights in or related to Application(s), and ANSYS reserves all rights in and to the Application(s) which are not expressly granted in writing by ANSYS to Customer.
- (b) Customer shall use the Services for lawful purposes only. Customer shall not upload or otherwise transmit through the Services any material which violates or infringes in any way upon the rights of others, which is unlawful, which encourages conduct that would constitute a criminal offense, gives rise to civil liability or otherwise violates any law. Customer shall be solely responsible for the Customer Content. Any conduct by Customer that in ANSYS' discretion restricts or inhibits any other ANSYS customer from using or enjoying the Services is expressly prohibited. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify ANSYS promptly of any such unauthorized access or use. Customer shall be responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for access to and use of the Services and all charges related thereto. Customer, and not ANSYS, shall bear the risk of loss arising from any unauthorized or fraudulent usage of Services provided hereunder to Customer.
- (c) Customer acknowledges and agrees that the Application(s) are subject to U.S. laws governing the export and/or re-export of Application(s) including, but not limited to, the Export Administration Regulations, regulations promulgating financial transaction restrictions administered by the Office of Foreign Asset Controls of the U.S.

Department of the Treasury, the International Emergency Economic Powers Act, the United States Export Administration Act, the United States Trading with the Enemy Act, and all regulations, orders and licenses issued thereunder (collectively the "Export Laws"). Customer warrants that it is and will remain in compliance with all such Export Laws with respect to the Application(s) and acknowledges that Export Laws may change over time. Customer additionally warrants that it has not been, and is not currently, debarred, suspended, prohibited or impaired from exporting, re-exporting, receiving, purchasing, procuring, or otherwise obtaining any product, commodity, or technical data regulated by any agency of the government of the United States. In particular, Customer hereby gives assurance that unless notice is given to ANSYS, and prior authorization is obtained as required by the Export Laws, Customer will not knowingly re-export, directly or indirectly, any Applications or any technical data transferred by ANSYS to Customer to any destination or person or entity in violation of the Export Laws or this Agreement.

#### **4. TERM AND TERMINATION**

- (a) The term of this Agreement commences on the Effective Date and continues until all Subscription Terms expire or are otherwise terminated. Customer may use and access the Services during the Subscription Term. Unless otherwise specified in an Order Form, Subscription Terms will automatically renew for the same period of time as the prior Subscription Term at the then-current Subscription Fee in effect at the time of renewal (provided that the Subscription Term may be extended or shortened by mutual agreement in order to make the term coterminous with the term of other Subscription Terms) unless either party gives prior written notice of their intent not to renew the applicable Subscription Term at least prior to the end of the then-current Subscription Term. Customer's failure to issue a purchase order to ANSYS before the expiration of the Subscription Term shall be considered "prior written notice" of Customer's intent not to renew the Services.
- (b) ANSYS may terminate this Agreement and any Services if Customer fails to pay the then-current renewal fees by the due date for such payment. In the event Services are terminated prior to the end of the Subscription Term, no refund will be due to Customer for any portion of the prepaid Fees. ANSYS may suspend the Services, or may immediately terminate this Agreement and any Services covered by this Agreement upon any of the following:
  - (i) Customer materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days of notice of such breach, provided that ANSYS may terminate this Agreement upon written notice for any material breach by Customer that is not capable of being cured;
  - (ii) Customer ceases to do business for any reason;
  - (iii) Customer has a receiver or administrator appointed over all or part of its assets;
  - (iv) Customer becomes subject to any bankruptcy, insolvency, reorganization, liquidation or other similar proceedings, which proceedings are not dismissed within fifteen (15) days thereafter;
  - (v) the transfer of a majority of Customer's assets or outstanding voting securities (including, without limitation, by way of merger of Customer with or into any other person or entity), or the sale of Customer's business, or any other transaction or series of related transactions in which the security holders of Customer immediately prior to such transaction(s) do not hold at least a majority of the outstanding voting securities of Customer immediately after the transaction(s); or
  - (vi) any other attempted assignment of this Agreement by Customer without prior written approval by ANSYS.
- (c) Customer may terminate this Agreement at any time with 30 days prior written notice if ANSYS commits a material breach of this Agreement that, (if it is capable of being cured) is not cured within thirty (30) days from written notice to ANSYS. In such event, Customer will be entitled to a refund of any prepaid Fees in a prorated amount based on the remaining days in the Subscription Term.
- (d) Unless expressly otherwise set forth in the Order Form, in the event of a termination of this Agreement by ANSYS pursuant to Section 4(b) above, then Customer shall immediately pay to ANSYS, as liquidated damages and not as a penalty, a one-time Services early termination fee equal to the amount of Fees still owed by Customer for the remaining portion of the Subscription Term.
- (e) Upon any expiration or termination of this Agreement, and upon expiration of the Subscription Term for any Services if the term is not renewed in accordance with Section 4(a), the rights and licenses granted hereunder will automatically terminate, and Customer may not continue to use the Services. ANSYS will have no liability for any costs, losses, damages, or liabilities arising out of or related to any termination of this Agreement. Upon expiration or termination of this Agreement, ANSYS will provide to the Customer access to the Customer Content for a period 30 days after termination or expiration for the sole purpose of enabling Customer to copy any such Customer Content, and ANSYS will have no other further obligation to maintain or provide access to Customer Content. Upon the termination of this Agreement for any reason, Customer shall, at Customer's sole cost and expense, immediately cease using the Services. Termination of this Agreement shall not limit ANSYS from pursuing any other remedies available to it, including injunctive relief.

#### **5. PAYMENT**

Customer agrees to pay the Fees in accordance with the amounts and payment terms specified in the Order Form. If Customer does not pay within such time period, ANSYS or its Affiliates (as applicable) additionally may charge Customer interest in an amount equal to 1.5% per month of the unpaid balance. Fees are exclusive of all value added taxes, sales taxes, use taxes, and any similar taxes. Customer will pay all taxes associated with the Services, exclusive of any tax based on the income of ANSYS. If claiming a tax exemption, Customer must provide a valid tax exemption certificate.

## **6. CONFIDENTIAL INFORMATION**

- (a) Customer hereby acknowledges that the Application(s) and the Services embody confidential and proprietary information, including trade secrets, owned by ANSYS or its Affiliates or suppliers (the "Program Confidential Information").
- (b) Excluding the Application(s) and the Program Confidential Information, the parties agree that any other information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") under this Agreement that is marked or identified as confidential or given the nature of the information or circumstances surrounding disclosure should reasonably be understood to be confidential ("Other Confidential Information") and, together with the Program Confidential Information, ("Confidential Information") will remain the property of the Disclosing Party. Any information relating to ANSYS' or its Affiliates', technology suppliers', or Channel Partner's or to Licensee's or its Affiliates' business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information even if not explicitly marked or identified. The Receiving Party will protect the Confidential Information from disclosure to others using no less than a reasonable degree of care. The Receiving Party agrees that it will not (i) use the Disclosing Party's Confidential Information in any way, for its own account or the account of any third party, except for the exercise of its rights and performance of its obligations under this Agreement, or (ii) disclose any such Confidential Information to any party, other than furnishing such Confidential Information to (a) its employees, Affiliates, Channel Partners and consultants who are required to have access to such Confidential Information in connection with the exercise of its rights and performance of its obligations under this Agreement; and (b) professional advisers and, in the case of Licensor, technology suppliers (solely for support purposes); provided that such employees, Affiliates, consultants, Channel Partners, professional advisers and technology suppliers are bound to protect the Confidential Information from unauthorized use and disclosure consistent with these terms.
- (c) The obligations of Section 6(b) will not extend to any information that the Receiving Party can demonstrate with competent evidence:
  - (i) is or becomes publicly known through no fault of the Receiving Party;
  - (ii) was possessed by the Receiving Party free of any obligation of confidentiality prior to receipt from the Disclosing Party;
  - (iii) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information;
  - (iv) is rightfully obtained by the Receiving Party from third parties authorized to make such disclosure without restriction; or
  - (iv) is identified as no longer confidential by the Disclosing Party.
- (d) The Receiving Party may disclose Confidential Information to the extent required by law, regulation or court order, provided that (i) the Receiving Party makes reasonable efforts to notify Disclosing Party in writing prior to disclosing the Confidential Information and takes reasonable steps to obtain protective treatment of the Confidential Information; and (ii) any information so disclosed shall continue to be treated as Confidential Information between the Receiving Party and Disclosing Party.
- (e) Receiving Party has the burden of proving the exceptions in Section 6(c) above.
- (f) The obligations of the parties respecting Other Confidential Information will survive for a period of three (3) years from the date of the first disclosure of such Other Confidential Information.
- (g) If the parties have separately entered into a confidentiality agreement regarding the exchange of Other Confidential Information in connection with this Agreement, then the terms of that separate confidentiality agreement will govern the disclosure and use of Other Confidential Information between the parties and not this Section 6. Any existing confidentiality agreements between the parties will remain in full force and effect and will not be varied by the terms of this Section 6.

## **7. WARRANTIES; LIMITATION OF REMEDY**

- (a) ANSYS warrants during the Subscription Term that the Services will be free of material defects and will function in substantial conformance to its Documentation when used in the operating environment for which it is intended and in accordance with its Documentation, provided that any non-conformity caused by changes by Microsoft to

- either the Azure CloudServices or Azure Active Directory B2C shall not be covered this warranty to the extent such change does not materially diminish Customer's use of the Services. ANSYS does not make any representations or warranties that the functions performed by the Services will meet Customer's requirements, that the operation of the Services will be uninterrupted or error free, or that all defects in the Services will be corrected.
- (b) ANSYS, its Affiliates, Channel Partners and suppliers do not warrant the accuracy or the applicability of the results obtained from the use of the Services or the Documentation. No other documents or oral conversations, statements or representations will be offered by Customer as evidence to explain, expand, alter, add to or invalidate the express warranties set forth above.
  - (c) The warranties set forth herein are the sole warranties provided to Customer and extend only to Customer itself. ANSYS, its Affiliates, Channel Partners and suppliers will not be responsible for any breach of warranty caused by (i) modifications (or attempted modifications) to the Services made by or on behalf of Customer, whether authorized or unauthorized, (ii) any combination of the Services with any other software, excluding any operating systems for which the Services are licensed to be used, or (iii) any unauthorized use of the Services.
  - (d) THE EXPRESS WARRANTY SET FORTH IN SECTION 7(a) OF THIS AGREEMENT IS IN LIEU OF, AND ANSYS, ITS AFFILIATES, CHANNEL PARTNERS AND SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SERVICES OR ANY PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (whether or not ANSYS, its Affiliates, Channel Partners and/or its technology suppliers know, have reason to know, have been advised of, or are otherwise in fact aware of any such purpose), whether alleged to arise by law, by reason of custom or usage in the trade, or by course of dealing. In addition, ANSYS, its Affiliates, Channel Partners and technology suppliers expressly disclaim any warranty or representation to any person other than Customer with respect to the Services or any part thereof.
  - (e) Customer's sole and exclusive remedy and ANSYS' entire liability for any breach of the warranties set forth above shall be as follows: at ANSYS' option, ANSYS will have thirty (30) days after written notice to use commercially reasonable efforts to deliver a correction that resolves the problem or shall refund to the Customer any prepaid Fees in a prorated amount based on the remaining days in the Subscription Term, and all remaining obligations under it, shall be terminated.
  - (f) Customer represents and warrants that its use of the Customer Content, as such may be modified from time-to-time, in each instance will not in any way violate any law or constitute an infringement or other violation of any copyright, trade secret, trade dress, trademark, patent, invention, mask work, proprietary information, nondisclosure and/or other right of any third party. Customer represents and warrants that it will not send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs, interfere with or disrupt the integrity or performance of the Services or the data contained therein, or attempt to gain unauthorized access to the Services or related systems or networks.

## **8. INDEMNIFICATION**

- (a) ANSYS will defend at its expense any claim, suit or proceeding (each, a "Claim") brought against Customer by any third party to the extent such Claim asserts that the use of the Services infringes or misappropriates the third party's patent, copyright, trade secret or trademark ("Infringement Claim"). ANSYS will pay all costs and damages finally awarded against Customer by a court of competent jurisdiction or any settlement amounts finally agreed to by ANSYS as a result of any such Infringement Claim; provided, however, that 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 such Infringement Claim, with counsel of ANSYS' own choosing (provided that Customer will have the right to reasonably participate, at its own expense, in the defense of any such Infringement Claim); and (iii) gives assistance and full cooperation for the defense of same. ANSYS may, at its option, as a way of remedying any Infringement Claim or potential Infringement Claim, (i) replace or modify the Services so as to avoid infringement, (ii) procure the right for Customer to continue the use of the Services, or (iii) if neither (i) nor (ii) are commercially feasible, terminate any access to the Services and/or this Agreement, in which event ANSYS will refund to Customer a pro rata portion of the amounts paid for such Services.
- (b) The foregoing indemnity will not apply to any Claim based upon or arising from (i) use of the Services in a manner for which they were not designed or not in accordance with the Documentation, (ii) any combination of the Services with any other software, excluding any operating systems for which the Services are licensed to be used, or (iii) Customer's continued use of the Services subsequent to receipt of notice of any claimed infringement. This Section 8 represents the sole and exclusive remedy of 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) by ANSYS or by its operation, use or receipt of the Services prior to termination.

**9. LIMITATION OF LIABILITY**

- (a) **SUBJECT TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANSYS, ITS AFFILIATES, CHANNEL PARTNERS AND TECHNOLOGY SUPPLIERS WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OR LOSSES.** Except for ANSYS' obligations set forth in Section 8(a) and ANSYS' material breach of Section 6, in no event will ANSYS', its Affiliates', Channel Partners' and technology suppliers' aggregate liability to Customer exceed the Fees paid by Customer during the preceding twelve (12) months for the particular Services as to which the liability relates. Customer acknowledges that given all the circumstances, the limits on ANSYS' liability are reasonable because of, among other things, the likelihood that without those limitations the amount of damages awardable to Customer for a breach by ANSYS or Channel Partner of this Agreement may be disproportionately greater than the Fees paid or payable for the applicable Services. For the avoidance of doubt, Customer is entirely responsible for keeping full back up copies of its Customer Content in accordance with best industry practice. The foregoing limitations of liability apply regardless of whether the parties have been advised of the likelihood of such damages or losses and regardless of the theory of liability.
- (b) Each of ANSYS' its Affiliates', Channel Partners' and technology suppliers may rely upon and enforce the exclusions and restrictions of liability in this Section 9 in that entity's own name and for that entity's own benefit against Customer and its Affiliates solely as it relates to liability arising against such parties under this Agreement.
- (c) Notwithstanding anything to the contrary in this Agreement, neither party limits its liability (if any) to the other party for any matter which it would be illegal for that party to exclude or to attempt to exclude its liability, but nothing in this clause confers any right or remedy upon the other party to which it would not otherwise be entitled.
- (d) The Services, through use of the Applications, provide access to a mathematical analysis tool intended to assist Customer in Customer's development and design processes and requires considerable skill and judgment for its correct use and for the interpretation of the computed results. The Services are not intended to be nor are they a substitute for rigorous and comprehensive prototype or other testing by Customer of products prior to production and sale.

**10. SUPPORT AND SERVICE LEVEL TERMS**

- (a) Support of the Applications and the Services will consist of web-based forum support and, as needed, telephone, e-mail or web-based support respecting the use of the Applications and Services. Support for the use of Applications will be provided during normal business hours to the locations specified in the Order Form. If no locations are specified in the Order Form, then Support for use of the Applications will be provided during non-holiday work days from 9 a.m. to 5 p.m. U.S. Eastern Time.
- (b) Customer will have access to Support for the Services 24/7.
- (c) Customer will also have access to Emergency Support 24/7. Emergency Support means the provision of Support by ANSYS or its designee solely for the purpose of addressing a request to stop running solver jobs that the Customer is unable to stop using the interfaces available to the Customer, provided that ANSYS shall not provide Emergency Support for situations in which the Customer is unable to stop running solver jobs due to a problem from Customer's infrastructure or operational issues (including, but not limited to, loss of Internet access from the Customer's site and loss of user login / passwords.)
- (d) Except as ANSYS may otherwise provide the communications related to Support requests will be done in English.
- (e) ANSYS will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms set forth in Section 13.

**11. MISCELLANEOUS**

- (a) All notices required in this Agreement will be given in writing to all parties and delivered by registered air mail, international air courier, facsimile, or mutually agreed equivalent. Notices will be effective when received as indicated on the facsimile, registered mail or other mutually agreeable delivery receipt. All notices will be given by one party to the other using the contact information indicated on the Order Form, unless a change thereof previously has been given in writing to the party giving the notice.
- (b) Customer will not assign this Agreement or any Order Form to any third party by operation of law, or in bankruptcy, or otherwise without prior written consent of ANSYS. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns and permitted transferees.

- (c) The provisions of Sections 3, 4(d), 4(e), 5, 6, 7(d), 7(e), 7(f), 8, 9, and 11 will survive termination of this Agreement or any Service under any Order Form.
- (d) This Agreement may be executed in any number of counterparts (including digitally electronically scanned and e-mailed PDF copies, faxed copies and any similarly signed and electronically transmitted copies), each of which will be deemed to be an original and all of which will constitute together one and the same agreement.
- (e) The rights and obligations of the parties hereto will 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.
- (f) The parties hereto consent 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 this Agreement.
- (g) If any provision of this Agreement will be invalid, such provision will be ineffective only to the extent of such invalidity without invalidating the remainder of this Agreement.
- (h) Any failure of any party to enforce any of the provisions of this Agreement will not be construed as a waiver of such right of the party thereafter to enforce each and every such provision.
- (i) This Agreement, the Order Form and any exhibits, appendices or amendments that incorporate this Agreement by reference, constitute the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Except as specifically provided herein, this Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of the parties. Unless otherwise specified, or except to the extent expressly specified in the Order Form, the terms and conditions contained in this Agreement will take precedence over any conflicting provisions contained in any appendix or exhibit. No purchase order, procurement agreement or any other standardized business forms issued by Customer, and even if such purchase order, procurement agreement or other standardized business forms provides that it takes precedence over any other agreement between the parties, shall be effective to contradict, modify, or delete from the terms of this Agreement or any Order Form in any manner whatsoever. Any acknowledgment, written or oral, of any such purchase order, procurement agreement or standardized business form is not recognized as a subsequent writing and will not act as acceptance of such terms.
- (j) The parties have required that this Agreement and all documents relating thereto be drawn up in English.

## 12. DATA ANALYTICS

Customer is aware that as part of ANSYS' Services and Applications improvement process ANSYS may obtain feedback from the Services and Applications regarding the hardware profile and operating system of Customer's users, amount of time Services and/or Applications are used, file sizes created in connection with the Services, internal errors that are arising with respect to the Services and/or Applications and the regions of functionality of the Applications that Customer is using.

## 13. SERVICE LEVEL TERMS

### (a) Availability.

(i.) **Formula.** ANSYS will use commercially reasonable efforts to make the Services, subject to the exceptions listed below, be available 90% of the time during each calendar month during the Subscription Term (referred to herein as the "**Availability Commitment**"). The availability of the Services for a given month will be calculated according to the following formula (referred to herein as the "**Availability**"):

Where: Total minutes in the month = TMM

Total minutes in the month the Services are unavailable = TMU

And:  $((TMM - TMU) \times 100) / TMM$

(ii.) For purposes of this calculation, the Services will be deemed to be unavailable (referred to herein as "**Unavailable**") only if the Services do not respond to HTTP requests issued by ANSYS' monitoring software. Further, the Services will not be deemed Unavailable for any downtime or outages that result from the exceptions set forth in Section 2 below. Customer acknowledges that ANSYS' system logs, records and data will provide the basis for the calculations and determinations; provided, that Customer reserves the right to dispute such information in good faith and provide alternative information based on its own logs, records and data.

### (b) Exceptions.

(i) The Services will not be considered as Unavailable (and minutes will not accrue as TMU) for any downtime or outages that result from any maintenance performed by ANSYS or Microsoft:

(aa) during ANSYS' or Microsoft's standard maintenance windows which shall be communicated to Customer from time to time (collectively referred to herein as "**Scheduled Maintenance**"); or

- (ab) during a maintenance period performed at Customer's request outside of the normally scheduled maintenance window.
- (ii.) The Services will not be considered Unavailable (and minutes will not accrue as TMU) for any downtime or outages that result from:
  - (aa) Customer's information content or application programming, acts or omissions of Customer or its agents;
  - (ab) Force Majeure events as set forth in the Agreement; or
  - (ac) failures of the Internet backbone itself and the network by which Customer connects to the Internet backbone or any other network unavailability.
- (c) **Remedies.**
  - (i.) In the event during the Subscription Term that ANSYS does not meet the Availability Commitment, as Customer's sole and exclusive remedy for such failure, Customer shall be entitled to a pro-rated credit equal to one (1) day for each day that it is Unavailable beyond the Availability Commitment (including any fractional amounts, e.g. if the Services are Unavailable for 1.2 days beyond the 90% Availability Commitment, then Customer is entitled to receive a pro-rated credit of 2 days ).