

# FlexSim

## Software License Agreement

***Last Updated: November 4, 2024***

This Software License Agreement (this “**Agreement**”) is between You (as defined below) and FlexSim Software Products, Inc., a Utah corporation (“**FlexSim**”). In this Agreement, the capitalized term “**Software**” means the FlexSim Simulation Software or derivatives thereof, any APIs, Benefits, Updates, or Upgrades, along with any of its installers, utility programs, modules, libraries, components, or accompanying assets (e.g., Documentation, files, images, 3D shapes, etc.). Additional capitalized terms are defined in these Terms, including in Section 30 (Definitions) below.

THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION THAT, AS FURTHER SET FORTH IN SECTION 27 BELOW, REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR ANY OTHER COURT PROCEEDINGS, OR CLASS ACTIONS OF ANY KIND.

BY ACCESSING OR USING THE SOFTWARE, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT.

IF YOU ARE AN INDIVIDUAL ACCESSING OR USING THE SERVICES ON BEHALF OF, OR FOR THE BENEFIT OF, ANY CORPORATION, PARTNERSHIP, OR OTHER ENTITY WITH WHICH YOU ARE ASSOCIATED (AN “**ORGANIZATION**”), THEN YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF YOURSELF AND SUCH ORGANIZATION, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ORGANIZATION TO THIS AGREEMENT.

References to “**You**” and “**Your**” in this Agreement will refer to both the individual using the Software and to any such Organization.

### 1. **Acceptance**

By accepting this Agreement during your account registration or subscription process, or by accessing or using the Software, you confirm your acceptance of this Agreement and other applicable Terms and your agreement to be a party to this binding contract. If you do not agree to these Terms, you must not access or use the Software.

### 2. **Your Account**

You are responsible for anyone who obtains, accesses, or uses the Software through You or Your account (including Your Authorized Users) and their compliance with these Terms as though each of them is You. In certain cases, Your Authorized Users may be required to set up individual accounts or agree to applicable terms in order to obtain, access, or use the Software, but You remain responsible. You also agree to secure and not share user IDs or passwords (except with authorized account administrators). If You suspect unauthorized use of Your account, please contact Your FlexSim account manager.

Subject to compliance with these Terms, FlexSim may, during the Offering Term, make the Software available to You through Your account or other electronic means. FlexSim will not be liable for any losses or other liability incurred by You or others due to inadvertently sending Your account information to an incorrect address. You may be required to log into Your account or provide FlexSim additional information to activate, access, or use a service.

### 3. **Your Own Work**

You will retain Your ownership rights to files, designs, models, data sets, images, documents or similar material created by You (or Your Authorized Users) and submitted or uploaded to the Software by You (or Your Authorized Users).

### 4. **Offering Term**

The Software may be offered for a perpetual term or on a subscription basis for a fixed, limited time period (the

“**Offering Term**”). The length of the Offering Term will be indicated in the Offering Identification.

Certain subscriptions may renew automatically. If you would like to cancel any automatic renewal, please contact Your FlexSim account manager.

## 5. **Changes to Terms**

To the maximum extent permitted by applicable law, FlexSim reserves the right from time to time to (and You acknowledge that FlexSim may) modify these Terms. FlexSim will endeavor to notify You of any changes to these Terms (“**Terms Modification Notice**”), including by posting to this site. It is your responsibility to regularly check this site for updates, including Terms Modification Notices.

Except as otherwise expressly set forth in these Terms, if any modification to the Terms has a material adverse effect on You and You do not agree to the modification, You may reject the modification by notifying FlexSim of the rejection within 30 days of the Terms Modification Notice. If You reject a modification under these circumstances, (a) Your access to and use of the Software affected by the modification will continue to be governed by the terms in effect immediately before the modification (except to the extent the modification was made for security, privacy, or legal compliance reasons, in which case the modification will be effective immediately) until the earlier of (i) the end of the applicable Offering Term, or (ii) 180 days after the Terms Modification Notice; and (b) Your rights to the Software, including any related subscription Benefits, will then terminate. If You are obtaining the Software on a subscription basis, in the event of such a termination by You, FlexSim will refund the prorated portion of any prepaid fees applicable to the remaining Offering Term of Your subscription for the Software after the effective date of termination. In any event, if any subscription is renewed or extended, it will be under the then-current Terms. Notices by You or FlexSim will be provided as set forth below, except that You may also provide Your notice of rejection via email (within the 30-day period described above) to Your FlexSim account manager, or in any other manner specified in the Terms Modification Notice.

Notwithstanding the forgoing, if the Offering Types and Benefits or other policies include different terms or procedures for modification thereof, modification may, at FlexSim’s option, be handled as described therein.

You acknowledge that Your commitments with respect to the Software and subscription Benefits are not contingent on delivery of future features or functionality (or oral or written statements about future features or functionality).

## 6. **Rights to Software**

Subject to Your compliance with these Terms and all payment obligations, including any taxes and other fees, FlexSim grants to You a non-exclusive right to use the Software (and permit Your Authorized Users to use the Software) solely (a) during the Offering Term, (b) in accordance with any applicable Documentation, and, if You are obtaining the Software on a subscription basis, (c) within the scope of Your subscription, including as applicable the permitted number, Offering Type, Territory and other attributes specified for the type and level that You selected when subscribing for the Software. If your Offering Identification does not specify those attributes, the Software will have the attributes of a Trial Version.

Any Software (including any Benefits, Updates or Upgrades) that FlexSim makes available or delivers to You is licensed, not sold.

## 7. **Use Restrictions**

Except as expressly authorized by these Terms, or as otherwise expressly permitted in writing by FlexSim, You will not:

- reproduce, modify, adapt, translate, port, or create derivative works of all or any portion of any Software, except as expressly permitted by applicable law notwithstanding a contractual prohibition to the contrary;
- sublicense, transfer, distribute, transmit, sell, lease, rent, loan, or otherwise make available all or any portion or functionality of any Software to a third party (whether on a service bureau basis or otherwise);
- access or attempt to access the Software by any means other than the interface FlexSim provides or authorizes,

- or circumvent technological measures intended to control access to the Software;
- allow the Software to be accessed, via remote connection or otherwise, by any person or entity external to the Licensee, regardless of whether such access is through the Software's interfaces or through the transfer of views, events, results, or other data from the Software through any intermediate program, protocol, or interface;
- engage in any decompiling, disassembling, or other reverse engineering, or otherwise attempt to discover, learn, or study the structure or organization, underlying algorithms or other internals, protocols, data structures or other externals, or the source code of the Software, except as expressly permitted under applicable law;
- use the Software in any way that is against the law or to create or propagate malware; or
- use the Software except as expressly permitted in these Terms.

## 8. **FlexSim Proprietary Rights**

You acknowledge and agree that FlexSim and its licensors and suppliers will have ownership of and all rights with respect to (a) the Software, Documentation, and other information or material made available to You by FlexSim, including any copies of the foregoing, (b) any materials or other information based on, derived from, or otherwise using any of the foregoing (including Metrics), and (c) all rights under trade secrets, copyrights, trademarks, patents, and any other intellectual property or proprietary rights relating to any of the foregoing. The structure and organization, the underlying algorithms and other internals, the protocols, data structures and other externals, and the source code of the Software constitute FlexSim Confidential Information, and You will not disclose such information to third parties, or use such information for any purpose other than as required for ordinary-course access to and use of the Software as set forth in these Terms, without FlexSim's prior written consent.

FlexSim may make available or provide access to other confidential and proprietary information (either marked as such or understood to be such under the circumstances) to enable Your access or use of the Software, and any such information will be deemed to be FlexSim Confidential Information.

You have only the rights expressly granted to You under these Terms. All rights not expressly granted are reserved by FlexSim and its licensors and suppliers; FlexSim and its licensors and suppliers expressly disclaim (and You agree not to assert) any other rights.

You will not take any action, or authorize, encourage, or assist any third party to take any action, inconsistent with this Section 8.

## 9. **Limitations on Use**

- The Software is a Tool.** The Software is a tool and is intended only to assist You with Your design, analysis, simulation, estimation, testing and other activities and is not a substitute for Your professional judgment or Your own independent design, analysis, simulation, estimation, testing, or other activities, including, for example, those with respect to product stress, safety and utility. You acknowledge that the Software may not have been designed or tested for Your specific use, and the Software and Output may not achieve the results You desire within Your constraints. It is Your responsibility to (a) determine whether the use of the Software is appropriate for Your purposes, (b) determine the appropriate use for the Software, and (c) select the Software and other computer programs and materials, in each case to help achieve Your intended results or Output. You acknowledge that as between You and FlexSim, You are solely responsible for (i) Your (including Your Authorized Users') use of the Software and any results produced by the Software, including any Output, and (ii) establishing the adequacy of independent procedures for testing the reliability, safety, accuracy, completeness, compliance with applicable legal requirements and industry standards, and other characteristics of any Output, including insights, recommendations, and all items designed with the assistance of the Software. FlexSim will not be responsible or liable in any manner whatsoever for the results obtained through use of the Software, including any Output.
- The Software is Not Designed for Sensitive Personal Data.** The data storage functionality associated

with Software is NOT suitable for the storage of Social Security numbers, credit or debit card numbers, financial account numbers, driver’s license numbers, medical information, or health insurance information; data about personal characteristics or other personal data, such as race or ethnic origin, religion or philosophical beliefs, political affiliation or opinions, genetic or biometric data, sexual orientation, or trade union membership; or other information that may expose, or pose a risk of harm to, an individual if improperly disclosed or used (collectively, “**Sensitive Personal Data**”). Except as expressly required by FlexSim (for example, a credit card number used to purchase a subscription), You will not upload or otherwise make available to FlexSim any Sensitive Personal Data, including any files containing Sensitive Personal Data, in connection with Your use of any Software.

- c. **Acceptable Use of Software.** You will access and use (and permit access to and use of) Software only in compliance with the FlexSim Acceptable Use Policy (<https://flexs.im/acceptable-use>), the Use Restrictions in Section 7, and all applicable laws.

## 10. Trial Versions

FlexSim may make available or deliver Software (or features of Software) described as “not for resale,” “free,” “evaluation,” “trial,” “pre-release,” “beta,” or another similar designation (collectively, “**Trial Versions**”). Except as expressly set forth in the Documentation for the Trial Version, (a) you may access or use the Trial Version only for a period of 30 days from download or receipt, (b) Your use will be limited to non-commercial evaluation purposes, (c) the use of a Trial Version will be only by You as an individual or, if You are an entity, by one named employee, and (d) the Trial Version may only be used within the Territory where You acquired the Software.

Notwithstanding any other provisions in these Terms, (i) FlexSim makes no commitments with respect to Trial Versions, including any commitment to continue any Trial Version or to convert any Trial Version into Software; (ii) FlexSim constantly conducts research to improve our products and services and makes no commitment that such research will be commercially released in an offering; and (iii) Trial Versions may contain code that is not fully tested, including errors and faults that may cause total data loss or system failure. Subscriptions to Trial Versions do not include subscription Benefits, and FlexSim reserves the right, without any further notice, to end any Trial Versions at any time.

## 11. Global Use Rights

You and Your Authorized Users may access and use the Software globally, subject to the table below. Global use rights are determined by the Territory in which You purchased a license to the Software or as otherwise noted in this section.

For certain countries and regions, the Territory is further defined in Section 29 of this Software License Agreement. Nothing in this section shall permit You or Your Authorized Users to share access (via license key or otherwise) unless permitted to do so as indicated in Your Offering Identification.

<b>Global Use rights for the Software</b>	
<b>Territory</b>	<b>Global Use rights</b>
Approved Country	You (including Your Authorized Users) may access and use the Software worldwide.
Non-Approved Country	You (including Your Authorized Users) may access and use the Software in the Territory, in any other Non-Approved Country, and, if the Authorized User is a resident of a Non-Approved Country, in an Approved Country when traveling there for work for no more than

	90 days in a 12-month period.
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For purposes of this section only, (a) “**Approved Country**” means a country or jurisdiction listed on the Approved Country List located here: <https://www.autodesk.com/company/legal-notices-trademarks/access-use/subscription-offerings>; and “**Non-Approved Country**” means any country or jurisdiction that is not listed on the Approved Country List.

## 12. Use of Your Content.

In order for You to access or use the Software, or for FlexSim to provide You with certain services, You may wish to upload or otherwise share Your Content. FlexSim personnel will not use Your Content except (a) at Your request, or with Your consent; (b) in connection with providing, improving, or developing any products or services (including maintaining, securing, updating, or otherwise modifying products or services); or (c) in connection with legal obligations, enforcement, investigations, or proceedings. FlexSim may block or remove Your Content for any reason, including non-compliance with these Terms. When You provide or make accessible Your Content, You authorize FlexSim and its affiliates and designees to use, reproduce, modify, distribute and make available Your Content in connection with the Software and the other activities contemplated by these Terms.

You are responsible for ensuring that (i) Your Content and its use with any Software comply with all applicable laws and regulations and these Terms, (ii) Your Content will not infringe or misappropriate any intellectual property or proprietary rights of any person, and (iii) You secure backup copies of Your Content at all times. You acknowledge that online services may suffer disruptions or outages, and You may not be able to retrieve Your Content as a result.

You will indemnify and hold harmless (and, at FlexSim’s request, defend) FlexSim and its affiliates against any and all losses, liabilities, expenses (including reasonable attorneys’ fees) suffered or incurred by FlexSim or its affiliates by reason of any claim, suit or proceeding arising out of or relating to (1) Your Content; (2) Your (including Your Authorized Users’) use of the Software, including any Output or other results produced by such use; and (3) Your (including Your Authorized Users’) breach of these Terms (including any Additional Agreement or other applicable terms).

## 13. Feedback

If You provide FlexSim with ideas for improvement, suggestions, or other feedback (collectively, “**Feedback**”), You hereby grant to FlexSim and its affiliates a non-exclusive, transferable, irrevocable, worldwide, royalty-free license (with rights to sublicense) to make, use, sell, offer to sell, reproduce, modify, distribute, make available, publicly display and perform, disclose and otherwise exploit the Feedback and any product or service using the Feedback.

## 14. Privacy Policy

FlexSim’s collection, use, and disclosure of personal information of or relating to You is set forth in FlexSim’s Privacy Policy (<https://flexsim.com/privacy>) (the “**FlexSim Privacy Policy**”), which will be effective through the point in time that such policy is updated (the “**Transition Date**”). As of the Transition Date, FlexSim’s collection, use, and disclosure of personal information of or relating to You will be set forth in the Autodesk Privacy Statement (<https://www.autodesk.com/company/legal-notices-trademarks/privacy-statement>) (the “**Autodesk Privacy Statement**,” including the **Autodesk Children’s Privacy Statement**, where applicable), at which point the website hosting the FlexSim Privacy Policy will redirect users to the Autodesk Privacy Statement. Autodesk may in its sole discretion set the Transition Date to be earlier or later based on a commercially reasonable privacy and data security integration plan for FlexSim. You acknowledge that You have read and understand that the collection, use, and disclosure of Your personal information is set forth in the FlexSim Privacy Policy and the Autodesk Privacy Statement, each as applicable during the term of this Agreement, or, if You are obtaining the Software on a subscription basis, during the subscription term.

## 15. Online Communication

The Software has the ability to communicate online to display dynamic content, to submit analytics and telemetry

reports, and to check for updates. View, enable, or disable these options from the Software's main menu, under File > Global Preferences > Dynamic Content.

- a. **Dynamic content:** Announcements, notifications, promotions, tutorials, documentation, videos, sample models, and other materials and information as FlexSim deems appropriate may be displayed in the Software. This feature is enabled by default.
- b. **Analytics and telemetry:** To help us improve the Software, You may allow FlexSim to receive bug reports or information about Software feature use, along with system information to help us know what kind of operating systems and hardware are used for the Software. This feature is disabled by default. Models, modules, libraries, objects, and other data created by You using the Software are your intellectual property owned exclusively by You and are never sent to FlexSim as part of analytics and telemetry.
- c. **Updates:** Check for, download, and install updates from FlexSim, including patches, bugfixes, and feature releases. This feature is enabled by default.

## 16. Confidentiality

You or FlexSim and/or each party's respective affiliates (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party and/or the other party's affiliates (as the "**Receiving Party**") in connection with these Terms. The Receiving Party will use the same degree of care as to the Disclosing Party's Confidential Information that it uses to protect its own confidential information of like kind (but in no event less than reasonable care) and will (a) use the Confidential Information of the Disclosing Party only in connection with the Software, and (b) except as otherwise authorized by the Disclosing Party in writing, limit access to the Confidential Information of the Disclosing Party to those of its employees, consultants, contractors, service providers, professional advisors and other individuals who need such access for purposes related to Offerings and who are subject to confidentiality obligations with the Receiving Party no less stringent than those in these Terms. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so. The Receiving Party will give the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and take reasonable steps to limit such disclosure. FlexSim and/or its affiliates may also disclose Your Confidential Information to comply with any governmental or regulatory body request (including subpoenas or court orders), as part of a legal proceeding involving FlexSim, or at Your request. If disclosure is made at Your request, You may be responsible for the costs of compiling and providing access to Your Confidential Information.

## 17. Software Support

FlexSim recommends always using the latest Software version to take advantage of improvements and bug fixes that make Your simulations more stable, more powerful, and easier to build. If You must use an older version, knowing whether support is available for an older version will help You make informed decisions about when to upgrade.

The Software is developed for use with contemporaneous hardware, operating systems, and drivers. Among other reasons, as third parties phase out these technologies, FlexSim must discontinue support for Software versions developed for use with those technologies. In addition, as usage of older versions decreases, FlexSim must devote its resources to more recent Software versions to best serve the majority of our customers who stay current on Software maintenance and updates.

FlexSim will maintain license key infrastructure necessary for a given Software version, and will provide technical support for that version for licensed users under current maintenance, until that Software version is no longer supported, which is generally when a previous Software version is four (4) or more versions prior to the current release, subject to FlexSim's ability to continue to provide and support any such previous version.

After a Software version is no longer supported, that version may continue to work on the computer where it is installed and licensed, but it is no longer eligible for technical support and FlexSim cannot guarantee that license key infrastructure will remain in place to move the key to another computer.

Contact Your FlexSim account manager for information on renewing maintenance and upgrading to the latest version

of the Software.

## 18. **Software Updates**

FlexSim may make available or deliver Updates or Upgrades to the Software. You will promptly install any mandatory Updates.

FlexSim reserves the right from time to time to (a) modify, discontinue, or substitute the Software (including any Benefits, features, functionality, or supporting services related to the Software), or (b) add or modify license keys, authorizations, or other means of controlling or measuring access to or use of the Software. FlexSim will endeavor to notify You of any major changes to the Software in the applicable release notes or other Documentation for the Software.

The Software may cause Your computers or other devices to automatically connect to the internet (intermittently or on a regular basis)—for example, to validate the proper use of the Software, provide You with access to services (including third-party services), or download and install Updates or Upgrades, all without further notice to You. You and Your Authorized Users agree to such connection and to validation of the Software to the automatic downloading and installation of Updates and Upgrades.

You may not be able to adjust Your Update or Upgrade settings for the Software, including which automatic Updates or Upgrades are required for operation or security of the Software.

## 19. **FlexSim APIs**

In connection with the Software, you may have access to standard application programming interfaces, software development kits, tools, libraries, scripts, sample source code and similar developer material (collectively, “**APIs**”). Unless otherwise specified in the Documentation, You may use the APIs only (a) for the Software for which you have a subscription and for which the APIs are provided, (b) during the Offering Term, (c) in accordance with the Documentation specific to the APIs, and (d) to develop applications, services, modules, or components solely for Your internal business use.

## 20. **Third-Party Components**

The Software incorporates software, libraries, and other materials developed by others (“**Third-Party Materials**”) which are redistributed according to license agreements. License terms, notices, and acknowledgements, if any, for these third-party components are listed both within the Software and at <https://flexs.im/third-party> (“**Third-Party Terms**”).

If there are no Third-Party Terms, Your use will be (a) subject to the same terms as the Software, (b) solely in connection with Your use of such Software, and (c) limited to the Term. You take sole responsibility for determining, obtaining and complying with all Third-Party Terms. FlexSim will have no responsibility for, and makes no representations or warranties regarding, (i) any Third-Party Material or Your use of Third-Party Material, and (ii) any Third-Party Terms or Your compliance with such Third- Party Terms.

## 21. **Collaboration and Sharing of Your Content**

The Software may permit You to collaborate with others, including sharing or publishing Your Content. If You choose to share or publish Your Content, others may be able to use, sell, reproduce, modify, distribute, make available, display, transmit and communicate Your Content, and suspending or terminating access will not delete or inhibit access to any of Your Content that was earlier shared or published. If You do not want others to have any such access or any of those rights, do not use the sharing, publishing, or other collaboration features of the Software and set Your permissions accordingly. Keep in mind that forums and galleries may be public, and submissions are generally public.

The Software may feature links to Third-Party Materials. Such links are provided as a convenience to You. FlexSim does not monitor or control what such third parties will do with Your Content. You are responsible for ensuring the appropriate level of access to Your Content by any third party. If You authorize any of Your Content to be shared with any third party, FlexSim may make Your Content available to such third party; FlexSim will, however, have no responsibility or liability for the actions of such third party.

## 22. **Limited Warranty**

- a. This Limited Warranty applies starting from the date on which the Software is made available to You and for 90 days thereafter, or, if the Offering Term is shorter, such shorter period (“**Warranty Period**”).
- b. This Limited Warranty does not apply to any Software that has been altered, damaged, abused, misapplied, reached end-of-life, or used other than in accordance with these Terms.
- c. FlexSim warrants that the Software will provide the general features and functions described in the end-user Documentation for the Software. FlexSim does not warrant that the Software is error-free or that the Software will operate without interruption.
- d. FlexSim’s entire obligation and liability, and Your sole and exclusive remedy, for FlexSim’s breach of this Limited Warranty will be for FlexSim, at its option, (a) to reasonably attempt to remedy the breach or (b) to refund the amounts received for the Software and terminate access to the Software. You will bring any warranty claim for the Software within its applicable Warranty Period, and any warranty claims You bring after such Warranty Period will be excluded.

## 23. **Disclaimer**

EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 22 (LIMITED WARRANTY) ABOVE, AND ANY EXPRESS WARRANTIES SET FORTH AS SUCH IN ANY ADDITIONAL AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (a) THE SOFTWARE (INCLUDING ANY RELATED SOFTWARE, CLOUD SERVICE, DOCUMENTATION, APIS, OR OTHER MATERIALS) IS PROVIDED “AS IS,” “WITH ALL FAULTS,” AND WITHOUT WARRANTY OR CONDITION OF ANY KIND AND (b) FLEXSIM, ITS AFFILIATES, AND THEIR LICENSORS AND SUPPLIERS MAKE, AND YOU RECEIVE, NO WARRANTIES, REPRESENTATIONS, CONDITIONS, OR COMMITMENTS OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SOFTWARE OR ANY OUTPUT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON- INFRINGEMENT, OR QUIET ENJOYMENT, ANY WARRANTIES OR CONDITIONS IMPLIED BY STATUTE, OR ANY WARRANTIES OR CONDITIONS BASED ON A COURSE OF DEALING, USAGE OF TRADE OR INDUSTRY STANDARDS. Any statements by FlexSim, its affiliates, or their third party agents, representatives, or service providers about the Software (including any statements about their functionality or performance) or Output, or other communications with You (including any insights, recommendations, guidance, assessments, projections, estimates or opinions), that are not contained in these Terms (including any Additional Agreement) are for information purposes only and do not constitute a warranty, representation, condition, or other commitment. Without limiting the generality of the foregoing, FlexSim, its affiliates, and their licensors and suppliers do not warrant or otherwise commit that (i) the Software or Output, or Your access thereto or use thereof, will be available, uninterrupted, timely, error-free, secure, accurate, reliable, or complete, (ii) the Software will meet any particular performance, availability or service-level criteria, (iii) Your Content will not be lost or damaged, or (iv) errors or defects will be corrected or any particular support requests will be resolved to meet Your needs or expectations. Also, for clarity, (1) any reference to “unlimited” access, use, storage, or otherwise with respect to the Software is subject to the technical limitations of the Software, and (2) some Software or functionality may not be available in all locations (including the Territory) or languages.

## 24. **Limitations on Liability**

NEITHER FLEXSIM, ITS AFFILIATES, NOR ANY OF THEIR LICENSORS OR SUPPLIERS WILL HAVE ANY LIABILITY (DIRECTLY OR INDIRECTLY) FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES; LOSS OF PROFITS OR REVENUE; BUSINESS INTERRUPTION OR LOSS OF USE; COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR OTHER COVER; FAILURE OF, OR DEFECTS IN, THE OUTPUT; LOSS, CORRUPTION, OR DELETION OF (OR FAILURE TO DELETE) DATA OR YOUR CONTENT; OR DAMAGES RESULTING FROM FORCE MAJEURE.

THE AGGREGATE LIABILITY OF FLEXSIM, ITS AFFILIATES, AND THEIR LICENSORS AND SUPPLIERS

WITH RESPECT TO THE SOFTWARE OR OUTPUT THEREOF WILL IN NO EVENT EXCEED THE GREATER OF (a) THE AMOUNT PAID OR PAYABLE BY YOU FOR THE SOFTWARE IN THE ONE-YEAR PERIOD BEFORE THE EVENTS OR CIRCUMSTANCES GIVING RISE TO THE LIABILITY FIRST OCCURRED, OR (b) US\$1000.

YOU ACKNOWLEDGE AND AGREE THAT THE DISCLAIMERS AND LIMITATIONS OF LIABILITY IN THESE TERMS CONSTITUTE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN YOU AND FLEXSIM, AND THAT FLEXSIM WOULD NOT HAVE PROVIDED THE SOFTWARE TO YOU WITHOUT YOUR AGREEMENT TO EACH OF THESE TERMS. THE LIMITATIONS ON LIABILITY IN THESE TERMS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW TO ANY DAMAGES OR OTHER LIABILITY, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), INDEMNIFICATION, RECOURSE, STATUTE, OR OTHERWISE, AND EVEN IF FLEXSIM HAS BEEN ADVISED OF THE POSSIBILITY OF THE LIABILITY OR THE LIABILITY IS OTHERWISE FORESEEABLE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES IN THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

NOTHING IN THESE TERMS RESTRICTS OR EXCLUDES FLEXSIM'S LIABILITY FOR (i) DEATH OR PERSONAL INJURY CAUSED BY FLEXSIM'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR (ii) YOUR DAMAGES OR LOSSES CAUSED BY FLEXSIM'S FRAUD. ALSO, FLEXSIM DOES NOT SEEK TO LIMIT YOUR WARRANTIES, YOUR OTHER RIGHTS AND REMEDIES, OR THE LIABILITY OF FLEXSIM FOR DAMAGES OR LOSSES TO THE EXTENT THE LIMITS ARE NOT PERMITTED BY APPLICABLE LAW (SUCH AS STATUTORY WARRANTIES, CONDITIONS, REMEDIES, OR LIABILITIES THAT CANNOT BE EXCLUDED BY APPLICABLE LAW). THESE TERMS GIVE YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION, INCLUDING LEGAL RIGHTS DESCRIBED IN SECTION 29 (COUNTRY/JURISDICTION-SPECIFIC TERMS) BELOW.

## 25. **Indemnity**

Subject to these Terms, FlexSim will defend You against any claim brought against You by a third party alleging that the Software infringes such third party's patent, copyright, trademark, or trade secret rights ("**IP Claim**"), and FlexSim will pay damages finally awarded against You (or any settlement amount agreed to in writing by FlexSim) as a result of the IP Claim, provided You (a) promptly notify FlexSim of the IP Claim, (b) give FlexSim sole control of the defense and settlement of the IP Claim, and (c) promptly provide FlexSim with any assistance and cooperation requested by FlexSim in connection with the defense and settlement. These defense and payment obligations do not apply if (i) the IP Claim arises from, or is based on, the use or combination of the Software with any software, hardware, data, material, or service not provided by FlexSim, (ii) the IP Claim covers any method or process not fully embodied in the Software, (iii) there is available an Update or Upgrade that avoids the infringement alleged in the IP Claim, or (iv) You have been in breach of these Terms. If FlexSim receives information about an infringement claim related to the Software, FlexSim may, in its discretion, (1) modify or replace the Software, (2) obtain a license for Your continued use of the Software, and/or (3) terminate Your access to the Software and, if You are obtaining the Software on a subscription basis, refund any prepaid fees covering the remainder of the Offering Term of the terminated subscription. This Section 25 states FlexSim's sole obligations and Your exclusive remedy for any infringement of any third-party intellectual property rights.

## 26. **Term, Termination, Suspension**

These Terms become effective on the first date accepted in accordance with Section 1 (Acceptance) above and continue in effect indefinitely unless terminated in accordance with the provisions of these Terms, including this Section 26.

- a. **Your Right to Terminate.** You may terminate Your subscriptions and these Terms if FlexSim is in material breach of these Terms and fails to cure such breach within 30 days after written notice of the breach.
- b. **FlexSim's Right to Terminate or Suspend.** FlexSim may disable or suspend Your access to and use of the Software, or terminate these Terms and Your account, if (a) You have no current paid

subscriptions; (b) You have failed to timely pay any amounts (including fees and taxes) owing to FlexSim; (c) You (including any of Your Authorized Users) are otherwise in material breach of these Terms and fail to cure such breach within 30 days after written notice of the breach; or (c) You become subject to bankruptcy or insolvency proceedings, become insolvent, make an arrangement with or affecting Your creditors (including an assignment for the benefit of creditor) or commence a process of liquidation. These Terms will automatically terminate without further notice or action by FlexSim if You go into liquidation. FlexSim may also immediately disable or suspend Your access to and use of the Software and Your Content if FlexSim believes in good faith that Your (or Your Authorized Users') conduct or failure to act, or Your Content, may (i) pose a security risk, constitute illegal activity, or otherwise adversely impact the Software, systems, or other users, (ii) constitute or enable tampering with, removing, disabling or otherwise limiting the effectiveness of any technical protections, or (iii) subject FlexSim or its suppliers, resellers, distributors, users, or any similar third parties, to liability.

- c. **Effect of Termination of Subscription.** Upon expiration or termination of a subscription to the Software for any reason, Your rights with respect to the Software, including any related software license, Cloud Service access, and Benefits, will end. At that time, You will stop all access to and use of the Software and uninstall any and all copies of materials related to the Software (including any related software, Documentation, APIs, or other material from FlexSim). In addition, at FlexSim's request, You will destroy any such copies or return them to FlexSim or the party from which You acquired the Software. You will retain proof that You returned or destroyed all such copies. In connection with the expiration or termination of a subscription, (a) as a convenience to You for some Cloud Services, FlexSim may provide You with a brief period (for example, 30 days) in which You may retrieve Your Content after expiration or termination of the Cloud Services, if You are in compliance with these Terms and pay the applicable fees, if any (for example, FlexSim's then-current professional services fees for any assistance FlexSim provides), and (b) otherwise, FlexSim may delete, without notice, any or all of Your Content, including backup and other copies thereof.
- d. **Effect of Termination of Terms or Account.** Upon any termination of these Terms for any reason, (a) Your account and Your subscriptions, including those of Your Authorized Users, will immediately terminate, and (b) the effects described above with respect to expiration or termination of a subscription will apply to all subscriptions attached to Your account. Your payment obligations, Your responsibility for anyone who obtains, accesses, or uses the Software through You or Your account (including Your Authorized Users) (including the responsibility described in Section 2 (Your Account)), and the following sections of this Agreement will survive termination for any reason: Section 3 (Your Own Work); Section 5 (Changes to Terms); Section 8 (FlexSim Proprietary Rights); Section 9 (Limitations on Use); Section 12 (Use of Your Content); Section 13 (Feedback); Section 16 (Confidentiality); Section 20 (Use of Third-Party Material and Offerings); Section 23 (Disclaimer); Section 24 (Limitations on Liability); Section 26.c (Effect of Termination of Subscription); this Section 26.d; Section 27 (Governing Law and Dispute Resolution); Section 28 (Miscellaneous); Section 29 (Country/Jurisdiction- Specific Terms); and Section 30 (Definitions).

## 27. **Governing Law and Dispute Resolution**

- a. **General.** Depending on where Your principal place of business is (or, if You are an individual, where You are resident), the governing law for these Terms, including any rights, obligations and claims of the parties, will be as specified below. Similarly, any dispute or claim arising out of or relating to these Terms, including the breach, performance, termination, enforcement, interpretation, or validity of these Terms (and whether under contract, tort, including strict liability, competition law, or otherwise), and including the determination of the scope or applicability of the dispute resolution provisions of these Terms, will be finally determined under the law, in the location and by the dispute resolution process specified below (except as may be specified in Section 29 (Country/Jurisdiction-Specific Terms)).

<b>Your principal place of business (or, if You are an individual, the place of Your residency)</b>	<b>Governing law is:</b>	<b>Exclusive jurisdiction/forum for dispute resolution:</b>
United States and Canada	(i) State of California, and (ii) to the extent controlling, federal laws of the United States	Arbitration administered by ADR Services, Inc. (“ <b>ADR Services</b> ”), pursuant to Section 27.b below and (to the extent not inconsistent with such section) in accordance with the arbitration rules of ADR Services as in effect when the notice of arbitration is submitted. The seat of the arbitration will be San Francisco.
Mainland China, Hong Kong, and Macau	Singapore	Arbitration administered by the Singapore International Arbitration Centre (“ <b>SIAC</b> ”) in accordance with the Arbitration Rules of the SIAC as in effect when the notice of arbitration is submitted. The seat of the arbitration will be Singapore.
Asia, Oceania, and the Asia-Pacific region, other than Mainland China, Hong Kong, and Macau	Singapore	Courts of Singapore
Europe, the Middle East, and Africa	Ireland	Courts of Ireland
Worldwide (unless in a country or region described above), including Mexico, South America, Central America, Caribbean region, and Antarctica	(i) State of California, and (ii) to the extent controlling, federal laws of the United States	(i) United States District Court for the Northern District of California in San Francisco, or (ii) courts of the State of California, County of San Francisco.

b. **Binding Arbitration and Dispute Resolution for United States and Canada.** If Your principal place of business (or, if You are an individual, Your residence) is in the United States or Canada, the following informal dispute resolution and binding arbitration provisions apply to You:

i. **Informal Dispute Resolution and Binding Arbitration.** FlexSim seeks to resolve any claim or dispute (“**Claim**”) informally. If You or FlexSim have a Claim arising out of or relating to the Software or these Terms, You and FlexSim will first seek to resolve the Claim informally by providing notice of the Claim in the manner described below for Notices and cooperating with the other party to try to address the matter amicably. If the Claim is not resolved through informal dispute resolution within 30 days after receipt of the notice of a Claim, either party may proceed with formal dispute resolution. **YOU AND FLEXSIM AGREE TO BINDING INDIVIDUAL ARBITRATION OF ANY CLAIM ARISING OUT OF OR RELATING TO THE SOFTWARE OR THESE TERMS AND WAIVE ANY RIGHT TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY.** The United States Federal

Arbitration Act, including its procedural provisions, and not state law, governs the interpretation and enforcement of this dispute-resolution provision. Arbitration will be conducted by ADR Services pursuant to its rules and as set forth in this Section 27. To commence arbitration, a party must send a written demand for arbitration that describes the Claim and request for relief with the details required by the ADR Services rules (“**Demand**”). Any Demand from You to FlexSim must be sent to FlexSim Software Products, Inc., The Landmark @ One Market, Suite 400, San Francisco, California 94105 USA. A copy of any Demand from You to FlexSim must also be sent to our parent company, Autodesk, Inc., The Landmark @ One Market, Suite 400, San Francisco, California 94105 USA, Attention: Chief Legal Officer. Any Demand from FlexSim to You must be sent to the address You provided during the informal dispute-resolution process described above or, if no address was provided, sent as described in Section 28.j (Notices) below.

- ii. **Fees for Binding Arbitration.** Payment of all arbitrator fees will be governed by the ADR Services rules, except to the extent that any fees (including attorneys’ fees) and costs paid by either party are reallocated upon order of the arbitrator following a determination that (1) You or FlexSim breached any of the provisions of this Section 27, (2) the substance of Your or FlexSim’s Claim or the relief sought by You or FlexSim was frivolous or brought for an improper purpose, or (3) reallocation is otherwise permitted under applicable law. If FlexSim brings a Claim against You, FlexSim will pay all ADR Services fees associated with the Claim. If You bring a Claim against FlexSim, You and FlexSim will split those fees evenly. Further, if the arbitrator determines that You are unable to pay any part of those ADR Services fees, FlexSim will pay them for You.
  - iii. **Mass Filings.** If You bring a Claim against FlexSim that is similar to the Claims of at least 24 other customers or users, or if You and at least 24 other customers or users with Claims against FlexSim are represented by the same lawyers or by lawyers who are coordinating with each other (in either case, a “**Mass Filing**”), you and FlexSim agree to the following protocol: ADR Services will randomly assign sequential numbers to each of the Claims included in a Mass Filing, after which the Claims numbered 1-10 will be designated the “**Initial Test Cases**” and will proceed to arbitration. The filing fees will be paid only for the Initial Test Cases; for all other Claims, the filing fees (together with any arbitrator consideration of the other Claims) will be held in abeyance, and neither You nor FlexSim will be required to pay any such filing fees. The arbitrator will render a final award for the Initial Test Cases within 180 days after the initial pre-hearing conference, unless such period is extended by the arbitrator. Thereafter, the results of the Initial Test Cases will be given to a mediator, and such mediator and the parties will have 90 days from the mediator’s appointment (the “**Mediation Period**”) to agree on a resolution or substantive methodology for resolving the remaining Claims. If the parties are unable to resolve the remaining Claims during the Mediation Period, either party may choose to opt out of the binding arbitration process and proceed in court with the remaining Claims. Notice of any opt-out must be provided in writing within 60 days after the close of the Mediation Period. Absent notice of an opt-out, the remaining Claims will be arbitrated individually in the order determined by the sequential numbers assigned to the Claims in the Mass Filing. Filing fees for each Claim will be due upon commencement of the arbitration of such Claim.
  - iv. **Determination of Arbitrability, Enforcement of Rights.** The arbitrator will have the right to determine the arbitrability of any Claim. Notwithstanding the foregoing arbitration provision, each party may enforce its, or its licensors’, patent, copyright, or trademark rights in any court of competent jurisdiction.
- c. **Waiver of Class or Consolidated Actions.** All Claims arising out of, or relating to, the Software or these Terms must be arbitrated or litigated on an individual basis and not on a class basis. Claims of more than one customer or user cannot be arbitrated or litigated jointly or consolidated with those of any other customer or user.

- d. **Injunctive and Other Equitable Relief.** Notwithstanding any other provisions of these Terms, if a Claim is subject to resolution in the specified court or courts under Section 27 a. above, FlexSim may apply for injunctive relief and other equitable remedies (or their equivalent) in any jurisdiction or forum, including any available court. If a Claim is subject to arbitration, either party may apply to a court of competent jurisdiction for interim measures necessary to preserve the parties' rights, including pre-arbitration attachments or injunctions, and any such request will not be deemed incompatible with, or a waiver of, the agreement to arbitrate.

28. **Miscellaneous**

a. **Assignment**

You may not assign or otherwise transfer these Terms or Your rights or obligations under these Terms (whether by operation of law or otherwise) without FlexSim's prior written consent, and FlexSim may terminate these Terms (including Your rights under these Terms) if You are acquired by, or come to be controlled by, any other person or entity (whether by acquisition of shares, merger, or other transaction) without such written consent of FlexSim. FlexSim may assign or otherwise transfer these Terms (without Your consent or notice to You) as part of a reorganization, merger, sale of assets or other transaction that involves all or a portion of the Software or related business.

b. **Export**

When You obtain, access or use the Software, You will comply with the export control and international trade laws and regulations of the United States and of any other country whose laws apply to You or Your Content. You will not access or use the Software from within a U.S. sanctioned location or if You appear on any U.S. government restricted parties list. You will obtain U.S. government and any other required authorization before You obtain, access or use, or allow any person or entity to obtain, access or use, the Software for a U.S.-restricted end use. Restricted end uses include work on nuclear, chemical or biological weapons or on missile systems capable of delivering them. You may not upload or otherwise provide FlexSim with any content or materials (including Your Content) that constitute classified information or that are subject to the International Traffic in Arms Regulations ("ITAR") or its foreign counterparts. You may not upload or otherwise provide FlexSim with any content or materials that cannot legally be transferred from Your location to the United States or from the United States to Your location. You are solely responsible for compliance with all export control requirements applicable to Your Content and You may not use the Software to make Your Content or any other content or materials available to any country, entity or other party that cannot legally receive them under U.S. and other applicable law. FlexSim reserves the right to suspend or terminate Your Software for failure to comply with requests for additional export control related assurances or if FlexSim determines in its sole discretion that sanctions and/or export control related laws and regulations restrict the provision of products, services and/or other financial benefit.

c. **Government**

This Section 28.c applies if You are a United States federal or other Governmental Entity. The Software is "commercial computer software" as defined at 48 C.F.R. § 2.101 and 48 C.F.R. § 252.227-7014(a)(1) and as the term is used in 48 C.F.R. §§ 12.212 and 227.7202, and, where services, are "commercial services" as defined in 48 C.F.R. § 2.101. The Software and related Documentation is provided to You and your Authorized Users, for use by You or on Your behalf, subject to these Terms and with only those rights as are granted to all other FlexSim customers and their Authorized Users pursuant to these Terms. These Terms apply to Governmental Entity customers and Authorized Users except to the limited extent You are prohibited by the laws of Your jurisdiction from accepting any provisions of these Terms. If and to the extent any provision of these Terms is so prohibited, such provision will be deemed modified only to the extent reasonably necessary to conform to applicable law but to give maximum effect to the provision as written.

d. **Language of Terms, Interpretation**

The English language version of these Terms will be the version used when interpreting or construing these Terms, and any notices or other communications in connection with these Terms will be provided in the English language. Any reference in these Terms to "days" are to calendar days unless otherwise specified. The words "including" and "for example" or "e.g.," and words of similar import, are not limiting or exclusive and will be deemed followed by "without

limitation,” whether or not such language is included. Section and other headings are for ease of reference only and are not to be used to interpret the meaning of any provision. Any rights and remedies provided for in these Terms are cumulative and are in addition to, and not in lieu of, any other rights and remedies available under applicable law.

e. **Entire Agreement, No Waiver**

These Terms, including any Additional Agreement (which are incorporated by reference in these Terms) constitute the entire agreement between You and FlexSim (and merge and supersede any prior or contemporaneous agreements, discussions, communications, representations, warranties, advertising or understandings) with respect to the subject matter hereof. Any access to or use of the Software is expressly conditioned on the application of these Terms, and any other terms are expressly rejected.

If there is any conflict between this Agreement and any Additional Agreement, the Additional Agreement will control in relation to its subject matter to the extent set forth in the Additional Agreement.

Failure to enforce or exercise any provision of these Terms is not a waiver of such provision, unless such waiver is specified in writing and signed by the party against which the waiver is asserted.

f. **Severability**

If and to the extent any provision of these Terms is held unenforceable under applicable law, (a) such provision will be deemed modified to the extent reasonably necessary to conform to applicable law but to give maximum effect to the intent of the parties set forth in these Terms, and (b) such provision will be ineffective only as to the jurisdiction in which it is held unenforceable without affecting enforceability in any other jurisdiction.

g. **Return for Refund**

For a limited period, if You (a) object to any of these Terms, (b) object to any FlexSim terms of purchase or auto-renewal applicable to the purchase or renewal, or (c) are dissatisfied (for any reason) with the Software, You may return the Software and may qualify for a refund under the Return Policy (<https://flexs.im/return-policy>).

h. **Verification of Compliance**

FlexSim reserves the right to verify Your compliance with these Terms and may, at its discretion, do so by providing you with a report regarding Your noncompliant use of the Software and/or by conducting a remote or on-site audit (any such action, a “**Verification**”). If a remote or on-site audit is required, FlexSim or its representative will provide You electronic written notification. You must use a FlexSim- approved tool to gather information from all devices accessing the Software and obtain any necessary access and consent from Your Authorized Users. Within 15 calendar days of audit notification, You must submit Your audit results to the notifying party. Audit results must include machine IDs, serial numbers, FlexSim IDs, NT/Windows username, device ID and other information relating to the Software. If, through a Verification, FlexSim determines You are in violation of these Terms, You must immediately purchase new Software at least equal to the total of the value of the identified noncompliance and FlexSim’s reasonable costs to complete the Verification. Failure to comply with this Section 28.h is a material breach of these Terms. FlexSim reserves the right to suspend and/or terminate Your access to the Software as set forth in Section 26 (Term, Termination, Suspension) above, as well as to seek any other remedies available at law or in equity as set forth in Section 27 (Governing Law and Dispute Resolution) above.

i. **Force Majeure**

Neither party will be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including acts of God, earthquake, fire, pandemic, flood, sanctions, embargoes, strikes, lockouts or other labor disturbances, civil unrest, unavailability or delay of suppliers or licensors, riots, terrorist or other malicious or criminal acts, war, failure or interruption of the internet or third party internet connections or infrastructure, power failures, acts or orders of civil and government authorities and severe weather (“Force Majeure”). The affected party will give the other party prompt written notice (when possible) of the failure to perform and use its reasonable efforts to limit the resulting delay in its performance.

j. **Notices**

Any notices by You to FlexSim will be sent by postal mail or delivery service to FlexSim Software Products, Inc., The Landmark @ One Market, Suite 400, San Francisco, California 94105 USA. A copy of any notice from You to FlexSim must also be sent to our parent company, Autodesk, Inc., The Landmark @ One Market, Ste. 400, San Francisco, CA 94105 USA, Attention: Chief Legal Officer. Such notices will be effective when received.

Except as otherwise expressly stated in these Terms (including any Additional Agreement), any notices by FlexSim to You will be provided (a) by email to the registered email address associated with Your account, (b) by posting to Your account, (c) by posting within the Software (for example, through an in- Software notification function or sign-in notification), (d) by postal mail or delivery service to the address associated with Your account, or (e) in any other manner deemed reasonable by FlexSim that involves specific notification to You. Notices from FlexSim to You will, (i) in the case of notices by email, be effective one day after being sent and (ii) in the case of other notices, five days after being posted or sent. You hereby agree to service of process being effected on You by registered mail sent to Your last address known by FlexSim if so permitted by applicable law.

29. **Country/Jurisdiction Specific Terms**

Notwithstanding the other provisions of these Terms, if Your principal place of business is in (or, if You are an individual, You are a resident of) a country or jurisdiction identified below, the terms set forth below for such country or jurisdiction will apply to You:

a. **United Kingdom; Member States of the European Union and European Economic Area**

- i. If You acquired Your subscription in a Member State of the European Union or the European Free Trade Association, the applicable “Territory” for such subscription is all the countries of the European Union and the European Free Trade Association.
- ii. If Your principal place of business is in (or, if You are an individual, You are resident of) a Member State of the European Union or the European Economic Area and there are any court proceedings in a Member State between You and a third party relating to the use of the Software, (i) You will inform FlexSim promptly in writing of such court proceedings, and (ii) You will not serve FlexSim with a third party notice regarding such proceedings unless FlexSim requests in writing that You do so.
- iii. Nothing in these Terms will exclude or restrict (i) FlexSim’s liability for death or personal injury caused by FlexSim’s negligence or willful misconduct, (ii) other damages caused to You by FlexSim’s fraud, willful misconduct or gross negligence, (iii) if applicable, FlexSim’s strict liability for defects of products under applicable statutory law of a Member State of the European Union or the European Economic Area (e.g., the German Product Liability Act), or (iv) any other liability that cannot be excluded or restricted under applicable law.
- iv. The following provisions also apply if You are a consumer and are a resident of either the United Kingdom or a country that is a Member State of the European Union or the European Economic Area. These provisions will control in case of a conflict with other provisions of these Terms.
  - (1) **Governing Law and Jurisdiction.** If you are a consumer resident of the United Kingdom, these Terms are governed by English law. If you are a consumer resident of a country that is a Member State of the European Union or European Economic Area, these Terms are governed by Irish law. Nothing in these Terms will deprive You of the protections granted to You by the law of the country where you reside that cannot be derogated from by contract pursuant to the law of such country. FlexSim may bring a claim with respect to the Software against You only in the courts of the country where You reside, and You have the right to bring a claim with respect to the Software against FlexSim either in the courts of Ireland or in the courts of the country where You reside.

In any case, You and FlexSim have the right to bring a counterclaim in the court in which, in accordance with this provision, the original claim is pending.

- (2) **Assignment.** If FlexSim assigns or otherwise transfers these Terms, FlexSim will notify you of such transfer in advance and ensure that such transfer does not prejudice Your rights under these Terms. You may terminate these Terms (including any subscriptions hereunder) within thirty (30) days of receipt of such notice of transfer, and, if a resident of the United Kingdom, receive a refund for the prorated portion of any prepaid fees applicable to the remaining Offering Term of Your affected subscriptions. If You wish to assign or otherwise transfer these Terms (and your rights and obligations under these Terms) to another entity, You must deliver written notice to FlexSim requesting consent to such transfer. FlexSim's consent to such transfer is subject to (1) Your demonstration that the transferee will comply with these Terms, (2) Your agreement to remain responsible for the transferee's compliance, (3) Your agreement to no longer access or use the Software subject to these Terms, and (4) any other conditions deemed reasonable by FlexSim.
- (3) **Changes to Terms.** If FlexSim modifies any of these Terms (whether needed to comply with applicable law or regulation, or for justified commercial, technical, security or operational reasons), FlexSim will provide reasonable notice of such modifications to You in advance of their effective date.

  - (i) If You are a consumer resident of a Member State of the European Union or the European Economic Area, You may reject any such modifications (except those required by law or regulation) by providing notice of rejection via email (within 30 days of the effective date) to Your FlexSim account manager, or in any other manner, specified in the notice of modification. If you do not provide notice of rejection within such time period, You are deemed to have consented to any noticed modifications, unless Your explicit consent is required under the laws applying to You.
  - (ii) If You are a consumer resident of the United Kingdom and do not agree with such modifications, You may terminate these Terms before the noticed effective date and receive a refund for the prorated portion of any prepaid fees applicable to the remaining Offering Term of Your affected subscriptions.
- (4) **Changes to the Software.** You acknowledge that FlexSim may change (including suspend or withdraw) the Software from time to time, including when needed to comply with applicable law or regulation, for justified commercial, technical, security, or operational reasons, or to make any improvements to Your access to and use of the Software. For existing subscriptions, any such changes will be made without additional cost to You, and FlexSim will provide reasonable advanced notice of any such changes, in a clear and comprehensible manner, where required under applicable law. If You do not agree with such changes, You may terminate your subscription to the Software within 30 days of the later of (1) Your receipt of the notice of Software change or (2) the effective date of the change, and You will receive a pro-rata refund for the unused Offering Term.
- (5) **Liability of FlexSim.** Notwithstanding Section 24 (Limitations on Liability) above and Section 28.e (Entire Agreement, No Waiver) above, such sections will not exclude FlexSim's liability to You for: (1) misrepresentations in voluntary statements about the Software made by FlexSim to You that You rely on in purchasing the Software; (2) failure to provide pre-contract information regarding the Software that FlexSim is required by the law of the country where You reside to provide to You before purchasing the Software; (3) if applicable, FlexSim's breach of implied terms that cannot be excluded or restricted under English law (including implied terms relating to satisfactory quality of, fitness for a particular purpose of, conformance to pre-

contractual information relating to, or FlexSim's right to supply, digital content); or (4) if applicable, consequential or indirect losses that cannot be excluded or restricted under English law.

- (6) **Statutory Warranties.** You may have statutory warranty rights under the law applying to You that cannot be excluded or restricted by agreement between You and FlexSim in advance. Such warranty rights will remain unaffected by these Terms. FlexSim offers or makes no further implied or statutory warranties or conditions regarding the Software, and explicitly disclaims all implied warranties and conditions to the maximum extent permitted by applicable law.
  - (7) **Consumer Right of Withdrawal.** Under applicable law, consumer residents of a Member State of the European Union or the European Economic Area have a statutory right to withdraw from their subscription to the Software within 14 days of its purchase. How this right may apply is explained in [Consumer Right of Withdrawal Information](#). Please note that Your more favorable rights of return for refund that FlexSim voluntarily grants You under Section 28.g (Return for Refund) above are not affected by this statutory right of withdrawal.
- v. **Contact Us.** You may contact FlexSim by calling (+1) (801) 224-6914, emailing sales@flexsim.com, or writing to FlexSim Software Products, Inc., The Landmark @ One Market, Suite 400, San Francisco, California 94105 USA.
  - vi. In addition, notwithstanding any limitations on Territory in these Terms, these Terms do not limit cross-border access or use (such as access or use in one Member State of the European Union of Software purchased in another Member State of the European Union) that is expressly authorized by applicable law.

**b. Australia**

These Terms form a contract between You and FlexSim, which governs Your access to, and use of, the Software. However, You may have Additional Agreements with local FlexSim affiliates, subsidiaries, or their resellers, distributors, or similar third parties for the purchase of the Software. The following provisions apply to such purchases by Australian consumers:

- i. Please use the address and contact details set out on your quote, invoice or other Offering Identification, or contact FlexSim Software Products, Inc., The Landmark @ One Market, Suite 400, San Francisco, California 94105 USA (phone: (+1) (801) 224-6914; email: sales@flexsim.com), to make a claim under the warranty provided in Section 22 (Limited Warranty) above. Please have details of the Software, serial number, place of purchase, details of the defect and Your return contact details prior to contacting us. The warranty provided in Section 22 (Limited Warranty) above is in addition to other rights and remedies you have at law.
- ii. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled: (i) to cancel your service contract with us; and (ii) to a refund for the unused portion, or to compensation for its reduced value.
- iii. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done, you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

- iv. FlexSim will not be responsible for user error and may refer any such issues to a supporting reseller, distributor or similar third party, if any. You may be required to return the Software to the address we provide to You at the time, at Your own cost.
- v. DESPITE ANYTHING ELSE IN THESE TERMS, IF THE SOFTWARE IS SUBJECT TO THE MANDATORY WARRANTIES OR GUARANTEES OF THE COMPETITION AND CONSUMER ACT (CTH) OR OTHER APPLICABLE LAW IN AUSTRALIA (THE “LAW”), AND SUCH LAW PERMITS FLEXSIM TO LIMIT ITS LIABILITY FOR BREACH OF THESE WARRANTIES OR CONDITIONS, THEN FLEXSIM’S LIABILITY FOR BREACH OF ANY SUCH WARRANTY OR GUARANTEE WILL BE LIMITED, AT FLEXSIM’S OPTION, TO THE REPAIR, REPLACEMENT OR REPERFORMANCE (OR THE COST OF DOING SO) OF THE RELEVANT OFFERING.

c. **Mainland China, Hong Kong, and Macau**

If You acquired the Software in mainland China, the “Territory” is Mainland China. Likewise, if You acquired the Software in Hong Kong, the “Territory” is Hong Kong; and if You acquired the Software in Macau, the “Territory” is Macau.

30. **Definitions**

- a. **“Additional Agreement”** means any agreement that expressly supplements or amends the Terms (for example, an enterprise business agreement).
- b. **“Authorized Users”** or **“Your Authorized Users”** means (a) You (if You are an individual) and (b) identified individuals (such as Your individual employees, consultants and contractors and other individuals accessing and using the Software) to whom You have provided access to the Software. You will be responsible for providing notice to, and obtaining agreement from, any such Authorized Users regarding the application of this Agreement to their access to and use of the Software prior to their access and use.
- c. **“Benefits”** means any benefits made available to You or Your Authorized Users by FlexSim. Benefits may include access to Updates and Upgrades, rights to previous versions, additional Software or Cloud Services, pre-release versions, global use rights, technical support, training, webinars, forums, events, galleries, newsletters and usage data. Benefits may also include account benefits such as single sign-on and management of Your profile, security settings, linked accounts and preferences.
- d. **“Cloud Service”** means a web- or cloud-based service made available by FlexSim, whether or not provided as part of a subscription and whether or not provided for a fee. Cloud Services may include software as a service (SaaS) and remote storage or processing of data.
- e. **“Confidential Information”** means information not generally known to the public that is (a) made available or disclosed by the disclosing party to the receiving party in writing and (b) designated by the disclosing party in writing as Confidential. Nonetheless, Confidential Information does not include (i) any information that (1) becomes generally known to the public without breach of any obligation owed to the disclosing party; (2) was known to the receiving party before receipt from the disclosing party without breach of any obligation (and without a duty of confidentiality) owed to the disclosing party; (3) is received from a third party without breach of any obligation (and without a duty of confidentiality) owed to the disclosing party; or (4) was independently developed by the receiving party; (ii) any of Your Content that You send to, or allow to be accessed by, a third party through the Software; or (iii) any Feedback. FlexSim Confidential Information in any event includes the non-public aspects of (A) the Software and any related product plans, technology and other technical information and (B) business negotiations.
- f. **“Customer Information Form”** means a form completed by or on behalf of You and submitted to FlexSim (or to a reseller, distributor, or other third party), directly or indirectly, in connection with

Your account, a subscription or the Software.

- g. “**Documentation**” means the then-current end-user documentation (including online, printed, or other documentation) and any technical or legal requirements for the Software.
- h. “**Governmental Entity**” means any nation or government, including the United States federal government, any state, municipality, or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, or judicial body pertaining to government, and any employee or official thereof.
- i. “**Metrics**” means data and other information regarding access to and use of the Software (including Your access and use). Metrics includes information regarding usage of features, functions, storage and indexes and information regarding usage, volume, type, storage and processing of Your Content (but not Your Content itself). If Metrics includes any personal data, treatment of such personal data will be pursuant to the FlexSim Privacy Policy or the Autodesk Privacy Statement, as applicable.
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