

Cadence – Access and Use

Terms and Conditions

Please read the following licence agreement carefully before accessing and using the Software.

INTRODUCTION

1.1. Acceptance of Terms and Conditions.

This agreement, any guidelines or instructions issued by us and any policies or guidelines referred to within this agreement, constitute the terms on which we offer you access to the software and/or provide services. By accessing the Software or continuing to use the Software you agree to these terms and conditions as amended by us from time to time.

1.2. Amendment of Terms and Conditions. The terms and conditions may be amended by us at any time without notice to you. Amendments will be effective and binding immediately once notified directly. You are responsible for ensuring that you comply with the latest terms and conditions.

2. DEFINITIONS

2.1. Definitions. In this agreement, unless context requires otherwise:

Authorised User means you.

Business Day means any day other than a Saturday, Sunday or statutory public holiday in Wellington, New Zealand, or any country in which Techtonics is operating and supporting the Software.

Commencement Date means the date you first agree to the terms of this agreement as set out in clause 1.1.

Confidential Information means the terms of this agreement and any information of the disclosing party which is disclosed to, or accessed by, the receiving party, and relates to the disclosing party's business, know-how, finances, customers, suppliers, processes, technology products and services, prices, ideas and technologies, whether or not such information is expressly identified as being confidential when it is disclosed to the receiving party, or is in a material form.

Demonstration Data means a library of information preloaded into a database and available to a user of the Cadence software for training and demonstration purposes.

Expiry Date means the date your access to the software and services will terminate as notified to you by Techtonics.

Good Industry Practice means, in relation to a particular activity, the exercise of a degree of skill, care and diligence which would reasonably be expected from a skilled and experienced person engaged in the same activity, under the same or similar circumstances.

Improvements means any updates, improvements, modifications or additions.

Techtonics, we, us or our are references to Techtonics Group Limited and/or its directors, employees, parent companies, subsidiaries, and permitted assigns.

Inputs means all information provided by an authorised user in relation to their use of the software.

Intellectual Property means all patents, trademarks, trade names, designs, domain names, trade secrets, formulations, inventions, models, plans, licences, know-how, databases, technical information, discoveries, ideas, data, research, results, reports, drawings, techniques, specifications, standards, methods, manuals, get-up, rights in computer software, copyright in works and all rights or forms of protection of a similar nature, throughout the world, whether or not registered, and (where applicable) any application to register any of these rights and includes the improvements.

Law means:

1. any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject; or
2. the common law and the law of equity as applicable to the parties from time to time; or
3. any binding court order, judgement or decree; or
4. applicable industry code, convention, policy or standard enforceable by law; or
5. any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental, legal or regulatory body having jurisdiction over a party or any of that party's assets, resources or business, in any jurisdiction in which Techtonics or you are resident.

Misuse means any use that would:

1. overburden, damage, disrupt and/or circumvent, impair, or manipulate the operation or functionality of the website or software or any servers or networks used by or associated with the website or software; or
2. circumvent any technical limitations of the website or software; and
3. includes the use of any tool to enable features or functionalities of the website or software that are otherwise disabled, inaccessible or undocumented; and
4. any form of testing, scanning, crawling, scraping, probing, robotic navigating, bulk extracting or hacking of the website or software; and
5. breaching the security of any network or server used by or associated with the website or software; and
6. identifying any security vulnerabilities of the website or software or any network or server used by or associated with the website or software; and
7. any attempt to do any of these acts.

Personal Information means any and all information about you gained by us through your use of the website, software and services, including without limitation any information on and relating to:

1. your name, address, age, telephone number or other identifying information;
2. the frequency and scope of your use of the website, software and services.

Purpose means the use of the software by you for the purpose of one or more of the following (dependent on the type of access granted): loading, processing, organising, analysing, visualising, reporting and sharing data.

Results means any outputs generated by your use of the website, software and services for the purpose. This includes but is not limited to designed projects, saved analysis (stories), dashboards and MS Powerpoint exports.

Services means any services provided by us through or in association with the software and includes the technical support.

Software means the Techtonics Cadence software application including improvements.

Technical support means the support provided by Techtonics to you by phone, email and through the embedded help function included within the software.

Technology environment means an information and communications technology infrastructure, including but not limited to software, hardware, operating systems, servers, internet access, local area networks and wide area networks.

Term means the period starting from the Commencement Date and ending on the Expiry Date unless terminated earlier under clause 12.

Website means the website approved by Techtonics for accessing the Cadence software and advised to you from time to time.

You and yours are, where context dictates, references to you the individual or, in the case of a company, you and your directors, employees, parent companies, subsidiaries, and permitted assigns.

2.2. Interpretation. In this agreement, unless the context indicates otherwise:

1. headings are for convenience only and do not affect this agreement's interpretation;
2. references to a party include that party's successors and permitted assignees;
3. each defined expression has the meaning corresponding to that definition throughout this agreement;
4. references to persons include individuals, companies, corporations, partnerships, firms and other entities;
5. references to the singular include the plural and vice-versa;
6. references to a gender include the other genders;
7. the use of the terms "includes" or "including" does not imply any limitations.

3. GRANT OF LICENCE

3.1. Licence. We grant you a non-exclusive, non-transferable licence to access and use the software in object code form through the website during the term for the purpose and in accordance with the terms of this agreement.

4. YOUR USE OBLIGATIONS AND RIGHTS

4.1. Use Guidelines. You must use the website, software and services in a manner that is acceptable to us (in our sole discretion) and comply with any rules or guidelines as to the access and use of the website and software issued by us from time to time.

4.2. Specific Guidelines. Without limiting the generality of clause 4.1, you must:

1. comply with all procedures and security measures associated with access to the software and the website as set out in our security and privacy policies and as advised to you by Techtonics
2. comply with all applicable local and international law when using the website, software and services;
3. not use the website, software or services for any objectionable (in our sole discretion), fraudulent, illegal or unlawful activity or purpose or any activity that violates any rights of any third party;
4. not engage in any false, misleading or deceptive acts or practices involving the website, software or services or your identity, agency or affiliation with any person or entity;
5. not misuse the website or software;
6. not copy, modify, make derivative works of, disassemble, de-compile, derive the source code, or reverse engineer the software or attempt to do so.

4.3. Technology Environment. You will be solely responsible for acquiring and maintaining a technology environment suitable to access and use the website, software and services.

4.4. Use Limitations. You must ensure that use of the website, software and services complies with any restrictions by Techtonics from time to time, including any restrictions to the number of times you access the website, software and services and/or the volume of risk management related products produced by you.

4.5. Demonstration Data. As part of your access to the software, you may have access to demonstration data and you are free to edit copies of this data for your organisational purposes. This demonstration data is deemed Confidential Information as described in Clause 8.

5. OUR OBLIGATIONS

5.1. Good Industry Practice. We will provide services and access to the website and software in accordance with good industry practice.

5.2. Data Security and Privacy. We will comply with our obligations under our Techtonics Data Security and Privacy Policies

5.3. Technical Support. We will use our best endeavours to respond to a request for technical support within one (1) Business Day.

6. INTELLECTUAL PROPERTY

6.1. Ownership. You acknowledge and agree that we are the owner of:

1. all Intellectual Property (IP) in and related to the website, software and services;
2. all IP in any improvements to the website, software and services which are developed or created by any party under or in connection with this agreement; and
3. all new IP relating to the website, software and services which is developed or created by any party under or in connection with this agreement.

6.2. No Contest. You will not, at any time, directly or indirectly challenge or contest our right and title to, and interest in, any IP in or relating to the website, software or services including in any new IP or any Improvements.

6.3. Your Rights. We do not claim ownership rights, IP rights or any other interest in any inputs or risk management related products produced by you.

7. PERSONAL INFORMATION AND DATA SECURITY AND PRIVACY

7.1. Data Collation and Use. You understand and agree that we collect and may store personal information, technical data and related information about your use of the website, software and services in accordance with the terms of Techtonics Data Security and Privacy Policies.

7.2. Right to Use. You understand and agree that we may use your personal information, technical data and related information about your use of the website, software and services to provide services and access to the website and software, to improve the website, software and in accordance with the terms of the Techtonics Data Security and Privacy Policies.

8. CONFIDENTIAL INFORMATION

8.1. Confidentiality Obligation. Subject to clause 8.2 the receiving party will keep confidential, and will not disclose to any other person, the confidential information of the disclosing party.

8.2. Exceptions. Notwithstanding clause 8.1, the receiving party may disclose the confidential information of the other party to another person if:

1. the disclosure is authorised in writing by the disclosing party;
2. the disclosure is required by law;
3. the confidential information already is, or becomes, public knowledge, other than as a result of a breach of this agreement; or
4. the disclosure is made to the receiving party's officers, employees or professional advisers, to the extent required for the receiving party to obtain the benefits of, and perform its obligations under, this agreement.

9. WARRANTY AND DISCLAIMERS

9.1. Own Risk. You use the website, software and services entirely at your own risk. Access to the website, software and services are provided by us on an 'as is' basis.

9.2. Exclusions. To the maximum extent permitted by law, we expressly exclude all other warranties, express or implied, in relation to the website, software and services.

10. LIMITATION OF LIABILITY

10.1. To the maximum extent permitted by law, Techtonics will not be liable to you (whether in contract, tort, equity or otherwise) for any loss of any kind arising out of or in connection with this agreement, regardless of the cause of such loss or whether the you have been advised of the possibility of such loss.

11. INDEMNITY

11.1. You agree to fully indemnify us and hold us harmless from and against any and all claims, suits, actions, proceedings or loss incurred, suffered or brought against us in respect of or in connection with:

1. your access to and use of the website, software and services;
2. any party that has gained access to the website, software or services through your deliberate or negligent actions or omissions.

12. SUSPENSION AND TERMINATION

12.1. Suspension. We may, without notice and for any reason, suspend your access to the website, software and services.

12.2. Termination by Us. We may, without notice and for any reason, terminate your access to the website, software and services.

12.3. Consequences of Termination. On termination:

1. We will immediately stop providing services and revoke your access to the software;
2. We will remove or delete any inputs or risk management related products produced by you without maintaining a backup.

12.4. Continuing Obligations. The termination of the agreement will not affect either party's rights or remedies in respect of any breach of this agreement by the other party, where that breach occurred before the termination of this agreement.

12.5. Surviving Clauses. The provisions of clauses 6, 8, 9, 10, 11 and this clause 12 and any other provisions of this agreement which are required to give effect to those clauses will remain in full force.

13. GENERAL

13.1. Assignment. You may not transfer your rights and obligations under these terms and conditions without written authorisation from us. We may assign or transfer our rights and obligations to any third party.

13.2. Entire Agreement. These terms and conditions:

1. record the entire agreement and understanding of the parties in relation to the subject matter of this agreement; and
2. supersede and cancel all previous understandings or agreements (whether written, oral or both) between the parties relating to that subject matter.

13.3. Law and Jurisdiction. The operation of these terms and conditions and the provision of services is governed by, and construed in accordance with, New Zealand law regardless of your country of origin or where you accessed the website, software or services. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the New Zealand courts in connection with these terms and conditions.

13.4. Rights and Remedies. The rights, powers and remedies in these terms and conditions are cumulative and are in addition to any rights, powers or remedies provided at law or in equity, unless specifically stated otherwise. Each party may pursue any remedy that it is entitled to pursue by law.

13.5. Severability. If any provision of this agreement is held to be illegal, invalid or unenforceable, then (to the maximum extent permitted by law):

1. that provision will be severed from this agreement; and
2. this will not affect the validity or enforceability of the other provisions of this agreement.

13.6. Variation. We may vary this agreement without notice to you as set out in clause 1.2. You may not vary this agreement.

13.7. Waiver. A party will not be deemed to have waived any provision of these terms and conditions unless that waiver is in writing and signed by that party. Any such waiver will not be, or deemed to be, a waiver of any other right under these terms and conditions. Any failure or delay by a party to enforce any provision of these terms and conditions will not be considered to be a waiver of that provision.