TERMS AND CONDITIONS FOR HOPEX ON-PREMISES SUBSCRIPTION

IMPORTANT NOTICE! SUBSCRIPTION IS SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. THEREFORE, PLEASE SCROLL THROUGH AND READ ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT CAREFULLY BEFORE INSTALLING HOPEX. THIS IS A LEGALLY BINDING AGREMENT BETWEEN CUSTOMER AND MEGA FOR SUBSCRIPTION.
IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH COMPANY OR ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, YOU MUST NOT ACCEPT THESE TERMS AND CONDITIONS OR OTHERWISE INSTALL AND USE THE PRODUCT.

1. Definition

"Agreement" means the terms and conditions of this document and any terms and conditions included in the Order Form or any purchase order from Customer, which are not in conflict with the terms of this document.

"Party" means either Customer or MEGA as the context requires, and "Parties" means Customer and MEGA together.

"Customer" means the organization that the MEGA has registered to use the Services.

"MEGA" means the entity identified in the Order Form.

"Affiliate" means any entity that controls, is controlled by, or is under common control of the subject entity, where "control" is ownership or control (whether directly or indirectly) of at least 50% of the voting rights in the entity, or otherwise the power to govern the management and policies of the entity. An entity is an Affiliate only as long as such control continues.

"Documentation" means the help screens accessed within the Services and any printed or electronic user manuals provided to the directly or indirectly to Customer together with the Services. Documentation does not include training on the Software, or any other material licensed or sold separately, or any custom specifications provided to Customer by MEGA or any other third party.

"Order Form" or "Statement of Work" or "SoW" means (i) any document executed by the Parties which sets forth the PRODUCT and services to be provided to Customer by MEGA, the fees payable therefor and any other terms and conditions relating to such order or (ii) any purchase order raised by Customer in compliance with this Agreement and approved by MEGA. Each Order Form shall be incorporated into and become part of this Contract. For sake of clarity, Customer acknowledges and agrees that under no circumstances any general purchase term, or equivalent, set out in its purchase orders or any other Customer documentation apply to the Agreement or govern Services. Such purchase terms are only provided due to Customer IT Tool constraints.

"Product" means Hopex standard version subject to this Agreement, including Metric.

"Service(s)" means the services ordered by Customer under this Agreement. Services include Maintenance and Support Services and Additional Services.

"Additional Service(s)" means the services other than Maintenance and Support Services ordered by Customer and described in the related Order Form.

"Maintenance and Support Services" means the right granted to the Customer to be provided with any product update, including the one for fixing bugs, and access to the support via the online MEGA community to raise any question or request.

2. Contractual scope

2.1 This Agreement is governed by the following documents, exclusive of any other documentation such as general terms and conditions even when attached to any order or invoice: (i) Order Form(s), and then (ii) the terms and conditions of this document.

2.2 In the event of conflict or inconsistency among the foregoing documents, the terms and conditions set forth in orders shall prevail.

2.3 No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver or continuing waiver of such rights. If any provision of this Agreement is found to be void, invalid or unenforceable, it shall be severed from and shall not affect the remainder of this Agreement, which shall remain valid and enforceable.

3. Right to access and use Product

3.1 License. MEGA grants Customer a non-exclusive and non-transferable license to install and use Product it in conformance with this Agreement and the Documentation, for the duration set forth in the Agreement, and solely for Customer's own internal business operations. License is worldwide but subject to limitation set forth in export control regulations. License is limited to perimeter set out in order form. In the event that Customer is in excess to the perimeter set in the Order Form(s), MEGA reserves the right to collect additional fees by applying catalog prices in force the day of the regularization.

Customer may authorize its Affiliates and subcontractors to access and use the Services solely for its own needs and those of its Affiliates. Customer shall be liable for any breach by such subcontractors and Affiliates.

Customer will not use the Services as a service bureau, as an application service provider, to perform consulting or training services for any third party or in any commercial time-share arrangement.

3.2 Restrictions. Customer may not license, sublicense, sell, resell, rent, lease, loan, lend, transfer, assign, distribute or otherwise make available the Product by any means whatsoever.

Customer shall not (i) modify, adapt, decompile, disassemble, reverse engineer the Product, or (ii) create or prepare derivative works based upon the Product or any part thereof, or (iii) Customer will not remove or destroy any proprietary markings or restrictive legends placed upon or contained in the Product.

For greater certainty, MEGA may provide Customer with certain information to interoperate the Product with other Product applications; Customer will request such information and related services to MEGA in the form of a notice under this Agreement. Within a commercially reasonable period of time depending on the complexity of Customer's request, MEGA will answer in writing to Customer and, if deemed appropriate, with a proposal of professional services.

4. Delivery

MEGA will deliver Product by electronic delivery by default, or physical delivery to the address indicated by Customer on its demand. MEGA reserves the right to deliver temporary licenses until full payment of fees due.

Electronic delivery is deemed to have been completed with transfer of risk to Customer when Customer receives instructions on how to access the Product. In case of physical delivery, the delivery shall comply with FCA Incoterm 2000 published by the International Chamber of Commerce.

Implementation of the Product is under Customer's responsibility and shall have to comply with the prerequisites set forth within the Documentation. MEGA may, on Customer request, implement Product. This is subject to extended services which will be charged by MEGA.

5. Maintenance and Support Services

MEGA will provide the Maintenance and Support Services provided that subscription fees are paid in full. For greater certainty, the Maintenance and Support Services do not apply to customization such as specific developments or parametrization. If Customer requires it, it has to purchase related option or Additional Services subject to a specific pricing.

6. Obligations

Customer shall have to:
- Prevent unauthorized access to the platform and promptly notify MEGA of any unauthorized access or use;
- Use the Product only in accordance with the Documentation and this Agreement;
- Comply with all notices, policies, and instructions provided regarding your content.

7. Term and termination

7.1 This Agreement commences on the commencement date set forth in the Order Form and continues until it is terminated in accordance with the provisions of this Agreement. If not stated in the Order Form, this Agreement commences from the date of execution of the Order Form, for a 3-year term.

7.2 Except otherwise provided in the Order From, subscriptions will automatically renew for subsequent 3-year terms equal to the expiring subscription term unless either party gives the other written notice of non-renewal with a 3-month prior notice before the end of the relevant subscription term. Where a party gives such written notice then subscription shall end at the end of the current subscription term.

7.3 If a Party breaches materially or repeatedly its commitments through this Agreement, the other Party shall have the right to terminate this Agreement subject to written notification to the other Party and subject to the terms of this section. Failure by Customer to pay an invoice in due time shall be considered as a material breach.

Party must first give written formal notice to the defaulting Party to remedy the breach within a 30-calendar day period as from the first presentation of the notification. If, at the end of this time, the breach has not been remedied in its entirety, the other Party may terminate the Agreement, with immediate effect without prejudice to any damages to which it may claim.

In case of material breach, the Party may automatically terminate the Agreement by written formal notice. The termination shall take effect on the day of presentation of the notification.

7.4 Once terminated as per the above conditions, the Customer has to cease any use of the Product and uninstall it. In case of termination of the Agreement for breach of Customer, any invoice or claim becomes automatically liquid and enforceable.

8. Pricing, invoicing and payment

8.1 Fee. Subscription fees are set forth in the order forms. Under no circumstances may any fee paid under this Agreement be refunded, even in case of termination for breach. For the sake of clarity, any amount to be paid in case of breach cannot be qualified as a refunded fee.

8.2 Taxes. Fees set forth herein do not include any foreign, federal, state, or local sales, value added, use, withholding or other similar taxes, tariffs, or duties, however designated, levied against the sale, licensing, delivery or use of Services provided under this Agreement. Customer shall pay or reimburse MEGA all taxes, tariffs, or duties of whatsoever nature and whosoever imposed in connection herewith. If any payment due in respect of any invoice is subject by law to any withholding tax, the amount of fees due to MEGA shall be grossed up by an amount necessary to ensure that MEGA receives the amount stipulated in the applicable Order Form after payment of the withholding tax. By way of exception, any Fee provided by MEGA INTERNATIONAL SOFTWARE BRASIL LTDA (MEGA Affiliate located in Brazil), include taxes.

8.3 Invoicing.

8.3.1 Subscription fees are invoiced annually in advance, for the first contractual year on the date of execution of the Order Form, then on the first day of each renewal term.

8.3.2 Additional Services fees are invoiced as follows: (i) fixed price, as set forth in the related Order Form, (ii) time and materials, at the end of the month in which Services are provided.

8.3.3 Costs of mission (such as transport, hotel or restaurant) are added, and subject to the Customer's travel policy provided that Customer sends it in advance.

8.4 Payment term. Fees are payable within 30-calendar days from the date of the invoices.

8.5 Late payment. If Customer fails to pay an invoice in due time, MEGA may suspend any access to the Services by sending a notification within a 10-day period. In addition, MEGA may apply a late payment penalty which will be invoiced based on a rate equal to 10% per year prorated on a daily basis. These late penalties will be due the day after the due date. Where recovery costs incurred exceed this flat-rate amount, in particular in the event of recourse to an external recovery agency, or consulting and legal fees, Customer shall be liable, upon justification, for all recovery costs incurred by MEGA. The indemnity will be due in full even in the event of partial payment of the invoice on the due date, regardless of the duration of the delay.

9. Warranty

9.1 MEGA warrants any work product provided under Additional Services is compliant with Specifications for a 30-day period following Customer acceptance, whatever express or tacit.

9.2 Except otherwise provided by applicable laws, this is the only warranty granted by MEGA in the course of this Agreement.

9.3 If a go live is stated, go live from Customer means full acceptance of works delivered by Customer, except if Customer and MEGA expressly accept go live with reservations.

10. Anticorruption and export control

10.1 Each Party represents and warrants to the other Party as follows: (i) it is not a person under freezing measures adopted by any governmental or other authority or any trade restrictions set by any governmental or other authority; and (ii) it is not controlled by any person under freezing measures adopted by any governmental or other authority or does not act for the benefit or on behalf or at the direction of any person under freezing measures adopted by any governmental or other authority; and (iii) does not deal and undertakes not to deal with any person subject to measures adopted by any governmental or other authority; and (iv) neither Party will offer or give money or anything of value to any person, in order to obtain or retain business for the benefit of itself or the other Party under this Agreement, or to secure any other improper advantage for itself or the other Party.

10.2 The representations and warranties set forth in this clause are substantial for the performance and termination of the Agreement. Any breach of this clause shall be considered as a material breach justifying the termination of the Agreement by the other Party only upon written notice. Each Party agrees that it will indemnify, hold harmless the other Party from and against any losses (direct and indirect) arising out of or in connection with non-compliance, breach, omission or inaccuracy of the representations and warranties stipulated in this clause.

10.3 In addition to the claim for damages, the Party, which became aware of the non-compliance, breach or omission by the other Party of the representations and warranties stipulated in this clause may unilaterally terminate the Agreement upon prior written notice to the other Party.

11. Confidentiality

Each Party agrees (a) not to use or disclose to any third party the Confidential Information disclosed to it by the other Party ("Disclosing Party") for any purpose other than as contemplated by this Agreement, and (b) to protect the Disclosing Party's Confidential Information with at least the same degree of care it uses to protect its own Confidential Information, but at a minimum to use commercially reasonable efforts. The confidentiality obligations of this Agreement shall not apply to information received by a Party (the "Receiving Party") that (a) was lawfully received by the Receiving Party from a third party free of any obligation to keep it confidential; (b) is or becomes publicly available, by other than unauthorized disclosure; or (c) is required to be disclosed by law, regulation or court order; provided that, with respect to any of the foregoing exceptions, the Receiving Party will give the Disclosing Party prompt notice prior to such disclosure.

12. Intellectual Property

12.1 Intellectual Property. MEGA and/or its licensors retain all ownership and intellectual property rights to the Services provided in the course of this Agreement, including the Documentation. Upon payment of full amount on due time as set out in this Agreement, MEGA grants Customer a non-exclusive and non-transferable right to use the Product provided in the course of this Agreement.

12.2 Third Party Products. The Product may contain or be accompanied by certain third-party products, and open-source products, "Third Party Products". These Third-Party Products may be subject to specific terms and conditions that will be described in the applicable order form, if any. Such specific terms and conditions, which are binding on MEGA through the distribution agreement between MEGA and publisher of the Third-Party Product, are also binding on Customer.

MEGA does not provide any warranty for the Third-Party Products.

If MEGA is no longer authorized to implement and/or market and/or maintain a Third-Party Product, in particular due to the termination or expiration of the contract under which such rights are granted, MEGA may offer Customer another product without major loss of functionality. The customer may, at its sole discretion, accept or reject such offer.

Customer acknowledges MEGA's liability is limited to an indemnity equal to the amount of the fees paid related to the unused time, this amount being calculated on a prorated basis based on a day-to-day analysis. The indemnification obligations set forth above represent MEGA's sole and exclusive liability and Customer's exclusive remedy for any indemnity claim.

12.3 Indemnification. If Customer receives notice of any indemnity claim that its use of any part of the Product infringes any third-party intellectual property right in a patent, copyright, or trade secret, MEGA shall defend and shall indemnify and hold Customer harmless by paying any resulting costs and damages finally awarded by a court with respect to any such indemnity claim provided that Customer:

- Notifies MEGA in writing promptly upon becoming aware of the indemnity claim;
- At MEGA's request and expense, give MEGA such information and assistance as is reasonable under the circumstances, and
- Give MEGA the right to settle the indemnity claim at MEGA's sole discretion and at MEGA's expense.

If such Claim is made against Customer or if MEGA believes that such Claim is likely to be made against Customer, MEGA may, at its option and expense, obtain permission from the relevant third party for Customer to continue to use the Deliverables in question, or modify or replace the Deliverables in question with other functionally similar Deliverables. If MEGA determines, in its discretion, that neither of these alternatives is reasonably feasible, Customer agrees to return the Deliverables in question to MEGA upon written request and MEGA will refund to Customer the price paid by Customer for the creation of said Deliverables. Customer acknowledges and agrees that this provision is sufficient compensation for any Claim and that MEGA shall have no further obligation or compensation for any such Claim.

13. Liability

13.1 In no event shall MEGA be liable for any indirect damages such as but not limited to commercial or financial losses, loss of clients, damage to the image, loss of revenue, business disruption. MEGA shall not be responsible for the proper functioning of any tools or software packages provided by Customer or any third party and necessary for the proper use of the Services. MEGA's aggregate liability is limited to the amount paid by Customer during the twelve months preceding the date of Customer's claim for compensation.

13.2 Notwithstanding the foregoing, the liability cap set forth above shall not apply in the event of gross negligence or willful misconduct by MEGA, death or personal injury.

13.3 The Customer stay responsible for any costs associated with the exercise of the claim and cannot request any compensation whatsoever for the costs incurred through any litigation.

14. INSPECTION

14.1 Upon MEGA's written request, and no more than every twelve (12) months, Customer shall provide MEGA with a signed certification (a) verifying that the Product is being used pursuant to the provisions of this Agreement and (b) listing all copies and the respective locations of the Product. In addition to the foregoing, at MEGA's written request, and no more than annually, Customer will permit MEGA to review and verify Customer's deployment and use of the Product for compliance with the terms and conditions of this Agreement, at MEGA's expense. Any such review shall be scheduled at least ten (10) days in advance, shall be conducted during normal business hours at Customer's facilities, and shall not unreasonably interfere with Customer's business activities. Customer agrees to maintain all log files and provide MEGA access to such files during the review. If Customer's use of the Product is found to be greater than contracted for, Customer will be invoiced for the additional licenses and the unpaid license fees shall be payable in accordance with this Agreement. Customer also acknowledges that the Product may include password protection, anticopying subroutines or other security measures designed to monitor the usage of the Product for license management purposes.

15. Miscellaneous

15.1 Customer Reference. Customer agrees that MEGA may use Customer's name in MEGA's client list and issue a press release generally describing the Party's relationship under this Agreement. Any discount granted to Customer is subject to the acceptance of this section.

15.2 Subcontractors. MEGA may engage subcontractors to perform all or any portion of the Services. MEGA remains liable for the performance of the subcontractor in conformance with the relevant terms and conditions hereof.

15.3 Force Majeure. MEGA will have no liability to Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business by acts, events, omissions, or accidents beyond its reasonable control, including but not limited to acts of God, acts of terrorism, electrical power failure, loss of communications, fire, explosion, war, action of any governmental authority or the delay of third parties, riot, strike. Pandemics, including the Covid-19 Pandemic shall not be considered as cases of Force Majeure.

15.4 Assignment. This Agreement shall be binding on and inure to the benefit of the successors and assignees in title of the Parties to this Agreement. Neither Party may assign or otherwise transfer (in whole or in part) any rights or obligations arising under this Agreement, without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any Party may assign or transfer all or any of its rights, obligations, and liabilities under this Agreement to any of its Affiliates or to any purchaser of all or part of the business or assets of the Party or of any of its Affiliates which is not a direct competitor of the other Party. Any Party may also disclose to any assignee or transferee (or proposed assignee or transferee) such information about this Agreement (including copies of all of it or extracts from it) as is reasonably necessary in connection with any assignment or transfer or to consider such a proposed assignment or transfer, provided that it first enters into a confidentiality contract with such third parties. No such disclosure shall constitute a breach of the confidentiality provisions contained in this Agreement.

15.5 Non-poaching. Customer shall not recruit any present or future MEGA's employee. This applies regardless of the specialization of the employee. It shall also apply if the recruitment is a result of a first solicitation from employee. This provision shall apply throughout the performance of the Agreement and for a period of twelve months from the end of the Agreement. In the event of non-compliance with this provision, Customer shall pay to the MEGA a penalty equal to the gross annual salary of the employee.

15.6 Governing Law and Jurisdiction. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws as set out in Exhibit A. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of the country and state (as applicable) as set out in the column entitled "Court of Jurisdiction" in the table set out in Exhibit A over any claim or matter arising out of or in connection with this Agreement or the legal relationships established by it.

Exhibit A

If use of the Product is registered with	Governing law is	Court of Jurisdiction is
MEGA INTERNATIONAL Paris - France	France	Tribunal de Commerce de Paris In case of incompetency, Tribunal Judiciaire de Paris
MEGA INTERNATIONAL AUSTRALIA PTY LTD Rozelle NSW – Australia	NSW - Australia	NSW - Australia
MEGA Asia Software PTE. LTD Singapore	Singapore	Singapore
MEGA NA Inc Raynham (Massachusetts) USA	State of Massachusetts	State of Massachusetts
MEGA MLA, S.A. DE C.V. Mexico City – Mexico	United Mexican States	Mexico City
MEGA INTERNATIONAL SOFTWARE BRASIL LTDA São Paulo – Brazil	Brazil	Sao Paulo
MEGA International S.r.l. Milano – Italia	Italy	Milan
MEGA INTERNATIONAL LTD Leamington Spa – UK	England and Wales	London
MEGA International GmbH Berlin – Germany	Germany	Berlin
MEGA North Africa Casablanca – Morocco	Morocco	Casablanca