Software License Agreement

NOTICE TO USER: PLEASE READ THIS AGREEMENT CAREFULLY. BY COPYING, INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, IN PARTICULAR THE LIMITATIONS ON: USE CONTAINED IN SECTION 2; TRANSFERABILITY IN SECTION 4; WARRANTY IN SECTIONS 6 AND 7; LIABILITY IN SECTION 8; AND SPECIFIC PROVISIONS AND EXCEPTIONS IN SECTION 13. YOU AGREE THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED: FOR EXAMPLE, IF APPLICABLE, YOUR EMPLOYER. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE SOFTWARE.

You may have another written agreement directly with FTI (e.g., a volume license agreement) that supplements or supersedes all or portions of this agreement.

FTI and its suppliers own all intellectual property in the Software. The Software is licensed, not sold. FTI permits you to copy, download, install, use, or otherwise benefit from the functionality or intellectual property of the Software only in accordance with the terms of this agreement. Use of some third party materials and services included in or accessed through the Software may be subject to other terms and conditions typically found in a separate license agreement, terms of use or 'Read Me' file located within or near such materials and services.

THE SOFTWARE MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED COPYING. THE ACTIVATION TECHNOLOGY MAY PREVENT YOUR USE OF THE SOFTWARE IF YOU DO NOT FOLLOW THE ACTIVATION PROCESS DESCRIBED IN THE SOFTWARE AND INCLUDED FILES. VISIT http://www.forming.com FOR ADDITIONAL INFORMATION ABOUT PRODUCT ACTIVATION.

1. Definitions.

"FTI" means Forming Technologies, a division of Hexagon Manufacturing Intelligence Canada Limited, an Ontario, Canada corporation;

"Computer" means a computer device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions;
“Confidential Information” means (i) the FTI Software and the techniques, concepts, and ideas, used, embodied, or expressed in the FTI Software including program structure, sequence, and organization, interfaces and computer related know-how, and (ii) Support Materials, except any part which (i) is or becomes publicly available through no act or fault of the Customer, (ii) was or is rightfully learned by the Customer from a source other than FTI, before being received from FTI, or (iii) becomes independently available to the Customer as a matter of right from a third party; “Designated Computer” means the computer that has attached a Security Key; or for which the Host ID number has been provided to FTI. In the case of a server license, the software may only be used at the same physical location as the server;

“Designated Purposes” means unrestricted use by the Designated User;

“Designated Users” means the Customer, or any employee of the Customer;

“Included Files” means the Help File included with downloaded software, including access to the Online User Manual provided therein;

"Internal Network" means a private, proprietary network resource accessible only by employees and individual contractors (i.e., temporary employees) of a specific corporation or similar business entity. Internal Network does not include the Internet or any other network community open to the public, such as membership or subscription driven groups, associations and similar organizations;

"Permitted Number" means one (1) unless otherwise indicated under a valid license (e.g., volume license) granted by FTI;

"Software" means (a) all of the information with which this agreement is provided, in machine readable object code form, including but not limited to (i) FTI or third party software files and other computer information; (ii) sample and stock photographs, images, sounds, clips and other artistic works bundled with FTI software and not obtained from FTI or another party through a separate service ("Content Files"); and (iii) related explanatory written materials and files ("Included Files"); and (b) any modified versions and copies of, and upgrades, updates and additions to, such information, provided to you by FTI at any time, to the extent not provided under a separate agreement (collectively, "Updates"). The FTI Software does not include source code;

“Security Key” means a device or software key supplied or authorized in writing by FTI which when attached to a computer enables the computer to execute the computer programs of the FTI Software;
“Server License” means a license granted to a user for installation of the Software on the Permitted Number of servers, whereby any and all use of such licensed Software shall occur in the same physical location as the server;

“Support Materials” means any documentation, manuals, brochures, and other materials and any updates thereto related to the FTI Software supplied to the Customer;

2. Software License.

If you obtained the Software from FTI or one of its authorized licensees and as long as you comply with the terms of this agreement, FTI grants you a personal, non-transferable, non-assignable, and nonexclusive license to use the Software in the manner and for the purposes described herein, as further set forth below. See Section 14 for specific provisions related to certain components.

2.1 General Use. Includes the right to (i) install and use one copy of the Software on the Designated Computer, (ii) copy any portion of the FTI Software into the Designated Computer for processing of the machine instructions, statements or data, (iii) display text and other images generated by the FTI Software during processing on the Designated Computer and (iv) make two (2) copies of the FTI Software for back-up or archival purposes. The Customer shall not have the right and agrees not to (i) copy or store the FTI Software on any computer other than the Designated Computer, (ii) use the FTI Software for any purpose other than the Designated Purpose, or (iii) use or permit access to the FTI Software by anyone other than Designated Users. Customer shall use the Software solely for Customer's own internal data processing purposes.

2.2 Node locked (standalone) licenses are licensed for use only from the specific machine to which they are licensed. Remotely accessing software licensed with a node locked license is forbidden under the terms of this license agreement.

2.3 Server Deployment. You may install the Permitted Number of copies of the Software on the Permitted Number of Computer file server(s) within your Internal Network for the purpose of downloading and installing the Software on up to the Permitted Number of Computers within the same Internal Network; or

2.4 Server Use. You may install the Permitted Number of copies of the Software on the Permitted Number of Computer file server(s) within your Internal Network only for use of the Software initiated by an individual through commands, data or instructions (e.g., scripts) from a Computer within the same Internal Network. The total number of users (not the concurrent number of users) permitted to use the
Software on such Computer file server(s) may not exceed the Permitted Number. No other network use is permitted, including, but not limited to use of the Software, either directly or through commands, data or instructions, (i) from or to a Computer not part of your Internal Network, (ii) for enabling Internet or web hosted services, (iii) by any user not licensed to use the Software under a valid license from FTI, (iv) as a component of a system, workf1ow or service accessible by more than the Permitted Number of users, or (v) for operations not initiated by an individual user (e.g., high-volume automated server processing of wire feed content); and

2.5 Portable or Home Computer Use. Designated Users agree not to use the Software on any computer other than the Designated Computer, and in the case of a Server License, all Designated Users agree not to use the Software in any location other than the physical location of the licensed server.

2.6 Customer may install on a virtual machine ("VM"), the Software and accompanying license management software (Flexlm server), subject to the following restrictions: (i) the VM shall be implemented on a physical machine located at the Installation Site address identified herein; (ii) Customer shall not cause or allow the host-ID, host name or MAC address for the VM to be duplicated or used for any other virtual or physical machine inside or outside the network; (iii) Customer shall not use or access the VM in a manner that would exceed the number or scope of license(s) granted; and (iv) upon FTI's request, Customer will promptly provide FTI with additional information relating to usage of the Software and the VM. All other restrictions apply, including without limitation, the geographical access limitations of the applicable license type.

2.7 License Fee. The Customer agrees to pay FTI the License Fee on the date due. The Customer also agrees to pay any taxes resulting from or arising under this Agreement, exclusive of taxes based on FTI's net income. The Customer shall pay these taxes forthwith to FTI upon demand.

2.8 The Customer and FTI agree that the License Fee does not include and FTI has no obligation to provide the Customer with installation, loading and technical set-up of the program. Customer support will be limited to basic training, telephone and hot line support and software maintenance during the initial term. Thereafter, such services may be contracted for separately.


The Software and any authorized copies made are the intellectual property of and are owned by FTI and its suppliers. The structure, organization and code of the Software are the valuable trade secrets and Confidential Information of FTI and its suppliers. The Software is protected by law, including but not limited to the copyright laws of Canada and other countries, and by international treaty provisions.
Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by FTI and its suppliers.

4. Restrictions.

4.1 Notices. You may not copy the Software except as set forth in Section 2 and 13. Any permitted copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software.

4.2 No Modifications. Except as permitted in Section 13, you may not modify, adapt or translate the Software. You may not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted under applicable law.

4.3 No Unbundling. The Software may include various applications, utilities and components, may support multiple platforms and languages and may be provided to you on multiple media or in multiple copies. Nonetheless, the Software is designed and provided to you as a single product to be used as a single product on Computers as permitted by Sections 2 and 14. You are not required to use all component parts of the Software, but you may not unbundle the component parts of the Software for use on different Computers. You may not unbundle or repackage the Software for distribution, transfer or resale. See Section 13 for specific exceptions to this Section.

4.4 NO TRANSFER. YOU MAY NOT, WITHOUT PRIOR WRITTEN CONSENT FROM FTI, RENT, LEASE, SELL, SUBLICENSE, ASSIGN OR TRANSFER YOUR RIGHTS IN THE SOFTWARE, OR AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL OR LEGAL ENTITY'S COMPUTER.

5. Updates.

If the Software is an upgrade or update to a previous version of FTI software, you must possess a valid license to such previous version in order to use such upgrade or update. After you install such update or upgrade, you may continue to use any such previous version in accordance with its end-user license agreement only if (a) the upgrade or update and all previous versions are installed on the same device, (b) the previous versions or copies thereof are not transferred to another party or device unless all copies of the update or upgrade are also transferred to such party or device and (c) you acknowledge that any obligation FTI may have to support the previous version(s) may be ended upon the availability of the upgrade or update. No other use of the previous version(s) is permitted after installation of an update or upgrade. Upgrades and updates may be licensed to you by FTI with additional or different terms.
6. LIMITED WARRANTY.

Except as may be otherwise provided in Section 14, FTI warrants to the individual or entity that first purchases a license for the Software for use pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Included Files for the thirty (30) day period following receipt of the Software when used on the recommended operating system and hardware configuration, and in accordance with the instructions set forth in the Support Materials. The warranty herein does not cover any media which has been subjected to damage or abuse by the Customer or which has been altered or changed in any way by the Customer. FTI is not responsible for problems which occur as a result of the use of the FTI Software in conjunction with software or hardware not supplied by FTI or for any incompatibility between the FTI Software and the software or hardware of a third person. Non-substantial variation of performance from the Included Files does not establish a warranty right. THIS LIMITED WARRANTY DOES NOT APPLY TO PATCHES, PRE-RELEASE (BETA), TRYOUT, STARTER, EVALUATION, PRODUCT SAMPLER, OR NOT FOR RESALE (NFR) COPIES OF SOFTWARE, OR WEBSITES, ONLINE SERVICES OR CD SERVICES (See Section 14). All warranty claims must be made, along with proof of purchase, to the FTI Customer Support Department within such thirty (30) day period. If the Software does not perform substantially in accordance with the Included Files, the entire liability of FTI and its affiliates and your exclusive remedy will be limited to either, at FTI's option, replacement of the Software or refund of the License Fee specified above, provided the Customer delivers to FTI the FTI Software and Support Materials supplied to the Customer pursuant to this Agreement and notifies FTI of its intention to terminate this Agreement effective immediately. THE LIMITED WARRANTY SET FORTH IN THIS SECTION GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE ADDITIONAL RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. For further warranty information, please see the jurisdiction specific provisions at the end of this agreement, if any, or contact the FTI Customer Support Department.

6.1 The Customer is solely responsible for (i) the suitability of the FTI Software to meet the Customer's requirements, (ii) the suitability and overall effectiveness and efficiency of the Designated Computer upon which the FTI Software is to operate, (iii) the provision of all data and all data entry, (iv) assuring the existence of adequate back-up plans to accommodate any failure of the Designated Computer or the FTI Software, and (v) the accuracy and reliability of any report, output, or data prepared by or with the assistance of the FTI Software.

7. DISCLAIMER. THE FOREGOING LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY FTI AND ITS AFFILIATES AND STATES THE SOLE AND EXCLUSIVE REMEDIES FOR FTI, ITS AFFILIATES OR SUPPLIERS' BREACH OF WARRANTY. EXCEPT FOR THE FOREGOING LIMITED WARRANTY AND ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, FTI AND ITS AFFILIATES AND SUPPLIERS PROVIDE THE SOFTWARE AND ACCESS TO ANY WEBSITES AND ONLINE SERVICES AS-IS
AND WITH ALL FAULTS AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The provisions of Sections 7 and Section 8 will survive the termination of this agreement, howsoever caused, but this will not imply or create any continued right to use the Software after termination of this Agreement.

7.1 FTI EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED NOT CONTAINED HEREIN, INCLUDING REPRESENTATIONS, WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE. FTI CANNOT AND DOES NOT WARRANT THAT THE FTI SOFTWARE WILL OPERATE WITHOUT INTERRUPTIONS, THAT IT WILL BE ERROR-FREE OR THAT THE RESULTS OBTAINED FROM THE USE OF THE FTI SOFTWARE WILL BE ACCURATE, RELIABLE OR CURRENT. THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS.

8. LIMITATION OF LIABILITY. EXCEPT FOR THE EXCLUSIVE REMEDY SET FORTH ABOVE AND AS OTHERWISE PROVIDED IN SECTION 14, IN NO EVENT WILL FTI OR ITS AFFILIATES OR SUPPLIERS BE LIABLE TO YOU FOR ANY LOSS, DAMAGES, CLAIMS OR COSTS WHATSOEVER INCLUDING ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, COMMERCIAL, ECONOMIC, SPECIAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGE, EVEN IF AN FTI REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. THE CUSTOMER AND FTI AGREE THAT IN NO EVENT SHALL FTI'S LIABILITY TO THE CUSTOMER EXCEED THE LOWER OF (I) THE AMOUNT PAID BY THE CUSTOMER TO FTI PURSUANT TO THE TERMS OF THIS AGREEMENT AND (II) THE LICENSE FEE SPECIFIED IN SECTION 2.5 ABOVE.

8.1 THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. FTI'S AGGREGATE LIABILITY AND THAT OF ITS AFFILIATES AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY. THIS LIMITATION WILL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT. THE LIMITATIONS AND EXCLUSIONS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND, OR ACTION BY THE CUSTOMER, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL THEORY AND SHALL SURVIVE A FUNDAMENTAL BREACH OR BREACHES AND/OR FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT, OR OF ANY REMEDY CONTAINED HEREIN. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUED. TO THE EXTENT ANY APPLICABLE LAW LIMITS THE SCOPE OF THIS SECTION 8.1, THIS AGREEMENT SHALL BE INTERPRETED TO CONFORM TO SUCH LAW IN A MANNER THAT LIMITS FTI'S LIABILITY TO THE FULLEST EXTENT ALLOWED BY LAW.
8.2 Customer acknowledges that the Software along with the documentation, maintenance and any services provided hereunder are only an aid in Customer's development of Customer's products and is not intended as a substitute for sound engineering judgment. FTI will not be liable in any manner whatsoever for the data output obtained through use of the Software. Customer shall, at its own expense, indemnify, defend and hold FTI harmless from and against any claim(s) brought against FTI by a third party arising out of, or related to, Customer's use of the data output obtained from use of the Software.

9. Governing Law. This agreement shall be governed by and construed in accordance with the substantive laws of the Province of Ontario and the laws of Canada applicable therein. For the purpose of all legal proceedings this Agreement shall be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario shall have jurisdiction to entertain any action arising under this Agreement. The Customer hereby attorns to the jurisdiction of the courts of the Province of Ontario and agrees that it will not commence or institute any action, claim, or proceeding in any court other than a court of the Province of Ontario. This agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

10. General Provisions. If any part of this agreement is found void and unenforceable, it will not affect the validity of the balance of this agreement, which will remain valid and enforceable according to its terms. This agreement will not prejudice the statutory rights of any party dealing as a consumer. This agreement may only be modified by a writing signed by an authorized officer of FTI. The English version of this agreement will be the version used when interpreting or construing this agreement. This is the entire agreement between FTI and you relating to the Software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software.

11. Term and Termination.

11.1 Subject to Section 6, the license to Use the FTI Software granted herein is effective on the date of installation of the software.

11.2 FTI may terminate this Agreement by notice in writing to the Customer if any of the following occur (i) the FTI Software delivered to the Customer or any copy or partial copy therefore is used by the Customer or any third person in any manner not expressly authorized by Section 2, (ii) the FTI Software is used by any person other than a Designated User, (iii) the Customer fails to pay any amount due and payable to FTI; (iv) the Customer permanently discontinues using the FTI Software, (v) the Customer or any third person over whom the Customer has the power to control breaches any term of this
Agreement, (vi) the Customer assigns, delegates, sub-licenses, or otherwise transfers this Agreement, the FTI Software or Support Materials or any of its rights or obligations under this Agreement to any other person, (vii) the Customer gives written notice of its intention to terminate this Agreement, or (viii) the Customer becomes insolvent, executes an assignment for the benefit of creditors, ceases operations, dissolves or becomes subject to bankruptcy or receivership proceedings.

11.3 Upon the termination or expiration of the term of this Agreement (i) the Customer’s obligations under Section 4 shall survive the termination, (ii) the Customer’s rights under Section 2 shall immediately cease, and (iii) the Customer shall (a) return to FTI all copies of and media bearing the FTI Software and Support Materials, (b) erase any copy of the FTI Software copied onto the Designated Computer for installation purposes, (c) erase all backup and archival copies of the FTI Software and (d) certify in writing to FTI within ten (10) days of the termination of this Agreement that all copies of the FTI Software and Support Materials have been returned to FTI or have been erased.

12. Compliance with Licenses.

If you are a business, company or organization, you agree that upon request from FTI or its authorized representative you will within thirty (30) days fully document and certify that use of any and all FTI software at the time of the request is in conformity with your valid licenses from FTI.

12.1 FTI regards software piracy as the crime it is, and we view offenders accordingly. We do not tolerate the piracy of FTI software products, and we pursue (both civilly and criminally) those who do so using all legal means available, including public and private surveillance resources. As part of these efforts, FTI utilizes data monitoring and scouring technologies to obtain and transmit data on users of illegal copies of our software. This data collection is not performed on users of legally licensed software from FTI and its authorized distributors. If you are using an illegal copy of our software and do not consent to the collection and transmission of such data (including to the United States), cease using the illegal version and contact FTI to obtain a legally licensed copy.


This section sets forth specific provisions related to certain components of the Software as well as limited exceptions to the above terms and conditions. To the extent that any provision in this section is in conflict with any other term or condition in this agreement, this section will supersede such other term or condition.

13.1 Limited Warranty for Users Residing in Germany or Austria. If you obtained the Software in Germany or Austria, and you conduct business in such country, then Section 6 does not apply; instead,
FTI warrants that the Software provides the functionalities set forth in the files included with the product for the limited warranty period following receipt of the Software when used on the recommended hardware configuration. As used in this Section, "limited warranty period" means one (1) year. Non-substantial variation from the agreed upon functionalities will not and does not establish any warranty rights. THIS LIMITED WARRANTY DOES NOT APPLY TO SOFTWARE PROVIDED TO YOU FREE OF CHARGE, FOR EXAMPLE, UPDATES, PRE-RELEASE, TRYOUT, STARTER, PRODUCT SAMPLER AND NOT FOR RESALE (NFR) COPIES OF SOFTWARE, OR SOFTWARE THAT HAS BEEN ALTERED BY YOU, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT. To make a warranty claim, during the limited warranty period you must return, at our expense, the Software and proof of purchase to the location where you obtained it. If the functionalities of the Software vary substantially from the agreed upon functionalities, FTI is entitled --by way of re-performance and at its own discretion -- to repair or replace the Software. If this fails, you are entitled to a reduction of the purchase price (reduction) or to cancel the purchase agreement (rescission). For further warranty information, please contact the FTI Customer Support Department.

13.2 Limitation of Liability for Users Residing in Germany and Austria.

13.2.1 If you obtained the Software in Germany or Austria, and you usually reside in such country, then Section 8 does not apply. Instead, subject to the provisions in Section 13.2.2, FTI and its affiliates' statutory liability for damages will be limited as follows: (i) FTI and its affiliates will be liable only up to the amount of damages as typically foreseeable at the time of entering into the purchase agreement in respect of damages caused by a slightly negligent breach of a material contractual obligation and (ii) FTI and its affiliates will not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

13.2.2 The aforesaid limitation of liability will not apply to any mandatory statutory liability, in particular, to liability under the German Product Liability Act, liability for assuming a specific guarantee or liability for culpably caused personal injuries.

13.2.3 You are required to take all reasonable measures to avoid and reduce damages, in particular to make back-up copies of the Software and your computer data subject to the provisions of this agreement.

13.3 Pre-release Software Additional Terms. If the Software is pre-commercial release or beta software ("Prerelease Software"), then this Section applies. The Pre-release Software is a pre-release version, does not represent final product from FTI, and may contain bugs, errors and other problems that could cause system or other failures and data loss. FTI may never commercially release the Pre-release Software. You will return or destroy all copies of Pre-release Software upon request by FTI or upon FTI's commercial release of such Software. YOUR USE OF PRE-RELEASE SOFTWARE IS AT YOUR OWN RISK. SEE
SECTIONS 7 and 8 FOR WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS WHICH GOVERN PRE-RELEASE SOFTWARE.

13.4 Tryout, Product Sampler, NFR, Additional Terms. If the Software is tryout, starter, product sampler, or NFR software (“Tryout Software”), then the following Section applies. The Tryout Software may contain limited functionality and is to be used for demonstration and evaluation purposes only and not for your commercial purposes. YOUR USE OF TRYOUT SOFTWARE IS AT YOUR OWN RISK. SEE SECTIONS 7 and 8 FOR WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS WHICH GOVERN TRYOUT SOFTWARE.

13.5 Time Out Software. If the Software is a timeout version then it will cease operations after a designated period of time or number of launches following installation. The license hereunder will terminate after such period or number of launches unless extended by FTI upon your acquisition of a full retail license. ACCESS TO ANY FILES OR OUTPUT CREATED WITH SUCH SOFTWARE OR ANY PRODUCT ASSOCIATED WITH SUCH SOFTWARE IS ENTIRELY AT YOUR OWN RISK.

14. Proprietary Right Infringement

14.1 FTI will defend the Customer against a claim that the Support Materials or FTI Software used as authorized under this Agreement infringes any Canadian or United States patent, copyright, trade mark or trade secret and will indemnify the Customer against all costs, damages and legal fees finally awarded against the Customer resulting from such a claim, subject to the limitation of liability set forth in Section 8, provided that the Customer (i) notifies FTI promptly in writing of any such claim, (ii) gives FTI full information and assistance to settle and/or defend the claim, and (iii) gives FTI full authority to control the defence and/or settle any such claim and provided that the claim is not based upon the use or combination of the FTI Software with any software not supplied to the Customer by FTI, or the Customer’s modification of the FTI Software or the Support Materials. FTI shall not be liable for any costs, expenses, or damages, incurred by the Customer without FTI’s prior written authorization, or if the Customer fails to comply with conditions (i), (ii), or (iii) herein.

14.2 If the FTI Software or Support Materials become, or in FTI’s judgment is likely to become, the subject of a claim that infringes a patent, copyright, trade mark, or trade secret, or if FTI settles a claim of infringement, FTI may at its sole option and discretion (i) obtain for the Customer the right to continue using the FTI Software and Support Materials, (ii) replace or modify them to make them not infringing, or (iii) terminate this Agreement and refund to the Customer an amount equal to the License Fee paid by the Customer multiplied by an amount which is equal to the Unexpired Period of Use divided by the Term of the License. In this Section the term "Unexpired Period of Use" means the period between the date that FTI terminates this Agreement under this Section 9(2) and the end of the Term of
the License, and the term "Term of the License" means the period which is the shorter of five (5) years and the term of the license set forth above.

14.3 This section states the entire liability of FTI and the exclusive remedy of the Customer with respect to any claim of infringement or misappropriation of any industrial or intellectual property right including any patent, copyright, trade mark, or trade secret. Notwithstanding the provision of Section

14.1, FTI shall have no liability for any infringement arising from: (i) the integration or combination of the Software together with other software, materials or products not integrated or combined by FTI, if the infringement would have been avoided in the absence of such integration or combination; (ii) the use of other than a current unaltered release of the Software available from FTI, if the infringement would have been avoided by the use of the then-current release; (iii) modifications to the Software that were not authorized by FTI or were undertaken at the request of or direction of Customer; or (iv) Customer's use of the Software in a manner that does not comply with this Agreement.

15. Severability.

If any provisions of this Agreement shall for any reason be held illegal or unenforceable, such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or the enforceability of the remaining provisions of this Agreement.

16. Waiver.

This Agreement, and any of its terms, may not be waived, altered, or modified except by a written agreement executed between the Customer and FTI. No delay or failure of either party in exercising any right and no partial or single exercise of any right shall be deemed to constitute a waiver of that right or any rights under this Agreement.

17. Publicity.

The Licensee hereby grants Forming Technologies the right to use the name of the Customer in any news release, public announcement, advertisement, or other form of publicity without further notification.
18. Trademarks.

Trademarks. FTI, FormingSuite, CostOptimizer, BlankWorks, BlankNest, ProgNest, FastBlank, FastForm, and FastIncremental are the trademarks (registered or otherwise) of Hexagon Manufacturing Intelligence Canada Limited in Canada and/or other countries.

If you have any questions regarding this agreement or if you wish to request any information from FTI please use the address and contact information included with this product to contact FTI.