

## TERMS AND CONDITIONS

### Hexaly License and Services Agreement

Please read the terms and conditions of this license and services agreement carefully. By downloading or using Hexaly Optimizer ("Hexaly Optimizer" and/or the "Software") on the website [www.hexaly.com](http://www.hexaly.com) or [www.localsolver.com](http://www.localsolver.com) (the "Website"), as both terms are further defined hereunder, and/or by accepting services by the Licensor (as this term is defined hereunder), the individual and/or the corporate entity referred to in the executed Sales Proposal (the "Client") of the Licensor accepts the terms and conditions of this license and services agreement, regardless of whether a Sales Proposal has been signed.

THESE STANDARD TERMS, TOGETHER WITH ANY AMENDMENTS, ORDER FORMS, , SALES PROPOSAL, AND ANY ADDITIONAL AGREEMENTS YOU ENTER INTO WITH THE LICENSOR ("THE LICENSOR", "WE" OR "OUR") IN CONNECTION WITH A PRODUCT AND/OR SERVICE, AS DEFINED HEREUNDER, OF THE LICENSOR (COLLECTIVELY, "TERMS"), EXCLUSIVELY GOVERN YOUR ACCESS TO AND USE OF THE HEXALY SOFTWARE AND THE SERVICES. PLEASE READ THEM CAREFULLY BEFORE USING THEM.

BY ACCESSING AND/OR DOWNLOADING OUR SOFTWARE, USING AND/OR ORDERING ANY SERVICE, YOU WARRANT THAT YOU ARE AUTHORIZED TO DO SO, AND AGREE TO BE BOUND BY THESE TERMS, REGARDLESS OF WHETHER YOU HAVE CLICKED "AGREED" OR NOT. IF YOU ARE USING THE SOFTWARE ON BEHALF OF AN ORGANIZATION OR LEGAL ENTITY ("ORGANIZATION"), THEN YOU ARE AGREEING TO THESE TERMS ON BEHALF OF THAT ORGANIZATION, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT ORGANIZATION TO THESE TERMS, WHETHER OR NOT A SALES PROPOSAL HAS BEEN EXECUTED. IN THAT CASE, "YOU" AND "YOUR" REFER TO YOU AND THAT ORGANIZATION.

The Licensor and the Client are collectively referred to herein as "**Parties**" and individually as "**Party**".

#### Recitals

Hexaly Optimizer is a software that can be used online or downloaded on the Website offered by the Licensor which publishes mathematical optimization solver allowing business optimization such as but not limited to finding of vehicle routing, production scheduling, and workforce scheduling.

Hexaly Optimizer can be used through its modeling language, the Hexaly Modeler (also known as HXM or LSP), or its application programming interfaces in Python, Java, C#, or C++.

This Agreement contains the terms and conditions under which the Licensor agrees to provide to the Client a License to the Hexaly Software and the Services.

#### Definitions

The following terms, when written with a capital first letter, either in singular or plural, shall have the meanings defined in this Article.

##### **aaS**

Means an acronym for "As A Service" referring to the combined hosting and support services provided in this Agreement.

##### **Account**

Means the Client's, as defined hereunder, on-line space allowing for access to the Software.

##### **Agreement**

Means the contractual whole comprising these Standard Terms, the Appendix, and the Sales Proposal(s), excluding the Documentation.

##### **Application**

Means an application created by the Client using Hexaly Optimizer which, upon written agreement by the Licensor, it sublicenses to its customers.

**Base Components**

Means the hardware, software, cloud, and/or hosting environment as specified in the Sales Proposal that the Licensor makes available for use by Client as part of the Service.

**Beneficiary**

Means the company(ies) or entity(ies) belonging to or affiliated with the Client, referred to in the Sales Proposal and benefiting from the Services and the Software.

**Bypass**

Means a procedure or a software modification that circumvents an Error.

**Client Data**

Means all data, files, including hypertext markup language files, documents, audio and visual information, graphics, scripts, programs, applets, or servlets that Client creates, installs, uploads to or transfers in or through the Software or provides in the course of using the Service, excluding identification and other information provided by Clients relative to Users.

**Confidential Information**

Means any nonpublic data or information, oral or written, treated as confidential that is disclosed by either party (the "Disclosing Party") to the other party (the "Recipient") relative to the Disclosing Party's past, present or future research, development or business activities, including but not limited to the Software, the Services and the Agreement. Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Confidential Information shall not be deemed to include information that (i) is publicly available or in the public domain at the time disclosed, (ii) is or becomes publicly available or enters the public domain through no fault of the Disclosing Party, (iii) is already in the Recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure, with written proof of such prior possession. For avoidance of doubt, the Agreement and the information contained therein, any Documentation provided by the Licensor to Client that is not public, trade secrets, the operation of the Software or Services, or commercial information exchanged under the Agreement are Confidential Information.

**Content**

Means content material (including but not limited to text, Client-provided software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that Client makes available for use by Users and/or submits to the Licensor via the Software and/or the Services.

**Correction**

Means a software modification that resolves an Error and results in a correction operation of Hexaly Optimizer.

**Documentation**

Means the documentation included in the package downloaded by the Client from the Website. The Parties agree that the Documentation has no contractual value or legal effect but a guide as to Hexaly Optimizer.

**Electronic Communications**

Means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Service.

**Error**

Means a reproducible failure of Hexaly Optimizer to conform to its Documentation. In no event, shall the inability for Hexaly Optimizer to find a feasible solution to a Client input problem shall be considered an Error.

**Hexaly Optimizer**

Means the software used or downloaded by the Client on Website. Hexaly Optimizer was previously known as "LocalSolver". All versions of Hexaly Optimizer are covered by these terms and conditions regardless of the brand name under which they are published.

**Hexaly Cloud**

Means the feature allowing the Client to deport computations by Hexaly Optimizer to the servers of the Licensor. This feature is included for all types of licenses (see section 3.1) but limited by fair use limits, at the discretion of the Licensor.

**Hexaly Studio**

Means the website studio.hexaly.com on which the Client can develop optimization models and visualize their solutions. Computation on the studio is made through Hexaly Cloud and subject to the same fair use limits.

**License**

Means the Academic License and/or the Trial License and/or the Development License and/or the Production License and/or the Unlimited License granted by the Licensor on Hexaly Optimizer and its Documentation to the Client. The type of the License (Academic, Development, Production or Unlimited) is indicated on the Sales Proposal signed by the Client. The Client does not need to sign a Sales Proposal for a Trial License.

**License Effective Date**

Means (i) for the Academic License and Trial License, the date on which the Client downloads Hexaly Optimizer on the Website and (ii) for the Development License, Production License, and Unlimited License, the date written on the Sales Proposal.

**License Fees**

Means the fees indicated on the Sales Proposal, paid by the Client in consideration for the License to the Software and/or the provision of Services.

**License Key**

Means the key sent by the Licensor to the Client to allow the Client to use the Hexaly Optimizer according to his type of License.

**License Period**

Means the periods indicated in article 7.1 for each type of License.

**Licensor**

Means the company granting the license to the Client. It can be Hexaly SAS or Hexaly Inc. and is identified on the Sales Proposal. In absence of Sales Proposal, the Licensor is Hexaly SAS unless you downloaded the Software from the USA or Canada, in which case the licensor is Hexaly Inc..

**Licensor Domestic Courts**

Means the courts of the city where the Licensor has its registered office:

- Paris courts, France, if the Licensor is Hexaly SAS.
- State and federal courts located in New York, New York, if the Licensor is Hexaly Inc.

**Licensor Governing Laws**

Means the laws of the Licensor state/country

- French Law, if the Licensor is Hexaly SAS.
- New York law and controlling U.S. federal law, if the Licensor is Hexaly Inc.

**Licensor Interest Rates**

Means the interest applicable to late payments:

- 3 times the legal interest rate in force and a fixed sum of 40 euros as compensation for recovery costs pursuant to Article L. 441-3, al 4 and L. 441-6, al 12 of the French Commercial Code, if the Licensor is Hexaly SAS..
- The lesser of 1.5% per month or the maximum rate allowed by law, if the Licensor is Hexaly Inc.

**Licensor Regulations**

Means the applicable regulations relative to personal and confidential data:

- The French data protection law n°78-17 of 6 January 1978 where applicable, the directive 2002/58/CE of the European Parliament and of the Council of 12 July 2002, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("the General Data Protection Regulation"), if the Licensor is Hexaly SAS.
- Any United States Privacy Law, including the Californian Consumer Privacy Act on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, if the Licensor is Hexaly Inc.

**Sales Proposal**

Means the Sales Proposal issued by the Licensor and signed by the Client to order a License and/or Services acquired for valuable consideration. The Sales Proposal indicates the type of License, the License Fees, and the License Period. Even if not signed by the Client, the use and/or the payment of the License constitutes acceptance of the Sales Proposal.

**Services**

Means services provided by Hexaly as set forth in the Sales Proposal including but not limited to software as a service, maintenance and support services provided by the Licensor to the Client according to Article 5 and specified in a Sales Proposal.

**Services Days**

Means the days during which the Services will be available for the reporting of Errors, from Monday to Friday, during French working days, from 8:00 AM to 10:00 PM UTC Time ("**Services Hours**") from 2nd January to 24th December of each year.

**Software**

Means the software called Hexaly Optimizer, used or downloaded from the Website which may be integrated by our Clients in Client based and created applications, upon written agreement by the Licensor, and/or used as such, by Clients for internal purposes. Clients input data into the Software's optimization solver in order to get applicable output regarding business related issues such as vehicle routing, production scheduling, and workforce scheduling, based on the Software's innovative modeling APIs and solving algorithms.

**Standard Terms**

Means these standard terms.

**Third Party Vendors**

Means service provider outside of the Licensor

**User**

Means the individual(s) authorized by the Client or the Beneficiaries who rely on the Software and use the Services and have been supplied user identifications and passwords by Client or on Client's behalf pursuant to the applicable Sales Proposal.

Unless the context otherwise requires, the terms and definitions used in the singular form refer to the plural form and conversely.

**Article 1 - Purpose**

This Agreement sets forth the terms and conditions under which the Licensor agrees to grant to the Client the License to the Software and to perform the Services.

**Article 2 - Services**

The Licensor agrees to provide Client, the Beneficiaries, and the Users access to the Software and/or Service. If the Sales Proposal provides, Hexaly will develop a business software overlay (the "Overlay") to the Hexaly Optimizer, tailored specifically to the Client's needs and requests, as described in the Sales Proposal. This Overlay shall remain the property of Hexaly and be made available to the Client on-Premise or as Software as a Service (SaaS) over the same period as the Hexaly License, with equivalent customer support. Any other agreement between the parties regarding the Overlay must be separately agreed upon in writing and signed by both parties. Specific License and/or components of the Service to be provided to Client are as outlined in the applicable Sales Proposal and Documentation pursuant to the terms herein. The Services and the Software shall be standard, may be accessible from a remote location (provided that this location is not in an embargoed or sanctioned country) and shall not require any services so that they can be integrated into the IT systems of the Client or the Beneficiaries, unless otherwise set forth in an applicable Sales Proposal for the supply of specific services. The Parties agree and acknowledge that the Software and/or Overlay shall operate in accordance with the following features: (i) access shall be provided twenty-four (24) hours a day, seven days a week, and the Licensor shall make commercially reasonable efforts to ensure availability, subject to any testing or installation phase, and further subject to any interruptions required for the repair and technical maintenance of the hardware or software; (ii) depending on the applicable License set forth hereunder, the licensor shall provide the License Key to ensure Users accessing the Software obtain an access code, conditioned upon Client's performance of its obligation under any Sales Proposal and/or these Standard Terms and the different types of licenses as provided in Article 4, (iii) the licensor may change its hardware or software environment, and (iv) If Client must issue its own purchase order, Client hereby acknowledges and agrees that it shall be authorized to do so solely to comply with its own internal business purposes, such as validation for internal systems, and this Agreement and/or the Licensor's Sales Proposal(s) shall prevail over all other documents, including but not limited to prospectuses, catalogues, and Client's

own terms and/or purchase order(s), as to terms and conditions of sale of the Software and/or Services.

## **Article 3 - Licenses**

### **3.1 There are four different types of Licenses:**

- **Academic License**

The Academic License is limited to Client's using the Software for education and research purposes only and comes with absolutely no warranty.

The Client must be an entity specialized in education and research in order to benefit from the Academic License.

The Client requests an Academic License on the Website, and the Licensor decides, in its discretion, whether it shall grant such Academic License to the Client based on a number of objective criteria, namely the teaching mission of the Client and its non-profit research activity.

The Academic License is free when limited to 1 computer and 1 concurrent User. For other usages, License Fees shall be paid by the Client to the Licensor. The License Key will be sent to the Client after receipt of the Sales Proposal signed by the Client and payment of the License Fees.

Any commercial use is strictly prohibited. Only strictly personal use is authorized. Using the Software (whether for a fee or not) for the benefit of any other entity is forbidden to the Client regardless of the commercial or noncommercial nature of this entity.

- **Trial License**

A time-limited free Trial License can be granted by the Licensor on demand, at the Licensor's discretion, for a specified period. A Trial License is limited to Clients using the Software for evaluation purposes only and comes with absolutely no warranty.

Any commercial use or exploitation of the results obtained with the Software is strictly prohibited.

- **Development License**

A Development License is granted by the Licensor for use of the Software for development purposes only. For purposes of this Agreement, to "develop" means to model optimization problems by using the Hexaly Modeler or its application programming interfaces (namely Python, Java, C#, or C++ APIs), then to produce results by running Hexaly Optimizer on data submitted by Clients for testing and evaluation purposes. Clients may not exploit these results for business or industrial purposes, and any attempt to do so shall constitute a material breach of this Agreement.

License Fees shall be paid by the Client to the Licensor pursuant to the Article entitled Fees. The License Key will be sent to the Client after receipt of the Sales Proposal signed by the Client and payment of the License Fees set forth therein.

- **Production License**

A Production License is granted by the Licensor to exploit results produced by this Software for Client's business or industrial use.

The integration of Hexaly Optimizer inside an Application is performed solely by the Client, under its own responsibility. Once Hexaly Optimizer is integrated into an Application, Hexaly Optimizer will be used as part of its functionalities by the Client's end-users and never as a standalone software product.

License Fees shall be paid by the Client to the Licensor pursuant to the Fees Article herein. The License Key will be sent to the Client after receipt of the Sales Proposal signed by the Client and payment of the License Fees.

- **Unlimited License**

An Unlimited License is granted by the Licensor for development and production use as defined above.

License Fees shall be paid by the Client to the Licensor pursuant to the Fees Article herein. The License Key will be sent to the Client after receipt of the Sales Proposal signed by the Client and payment of the License Fees.

### **3.2 Conditions for all types of Licenses**

Subject to the terms and conditions of this Agreement, the Licensor hereby grants a personal, non-exclusive, non-assignable and non-transferable worldwide right to use and operate (i) Hexaly Optimizer, on its own, as accessible through the Account, (ii) the aaS Materials solely in connection with the Service and Hexaly Optimizer, all solely according to the type of License granted, and (iii) any part of the Services protected by an intellectual property right, only for the purpose of operation on the proper functioning of the Software, during the entire Term of the Agreement.

Notwithstanding anything to the contrary herein, the Licensor may grant Clients, in its sole and absolute discretion, the right to sublicense the Software as integrated in an Application to Clients' own customers subject to such additional terms and conditions as Licensor may require. At no time, shall Clients ever be authorized to sublicense the Software to be used on its own. In this context, the Client agrees that only duly authorized persons including the Beneficiaries and Users shall have access to the Services and Hexaly Optimizer, and that all instructions or queries received by the Client, any User or any Beneficiary shall originate from a person authorized to bind the Client.

The Client is alone responsible for any use of the Account(s), Hexaly Optimizer **on its own and/or as integrated in any Applications by Clients' customers** and the Services, and the Client agrees to bear any and all consequences arising from the use of the Services or Hexaly Optimizer, whether by itself or by any Beneficiary, User or third party using the Account(s) and/or an Application.

The Client shall be responsible for ensuring that the Beneficiaries and Users comply with the terms of the license and the Agreement.

The Client, the Beneficiaries and the Users are authorized to use the Services and Hexaly Optimizer only in relation to the data owned by them or to any personal data in respect of which they are acting as data processors.

Unless expressly authorized in writing by the Licensor, the Client shall not - and shall not authorize any Beneficiary, User or third party to:

1. Enable any third party not expressly authorized by the Licensor to access the Services or Hexaly Optimizer, sublicense, sell, translate, loan, lease, distribute or use the Services or the Hexaly Optimizer, providing any (direct or indirect) access to the Services or to the Hexaly Optimizer or using the Services or Hexaly Optimizer under any time-share arrangement and/or as otherwise permitted herein;
2. Create any derivative works or access the Services or Hexaly Optimizer in order to develop any product or service, whether competing or not, or to copy any material, function or graphics of the Services or the Hexaly Optimizer;

3. Retro-engineer, decompile, disassemble, reverse translate, seek to remove or circumvent any of the devices of the Services or Hexaly Optimizer, or seek to rebuild or discover the related source code;
4. Remove any material allowing for the identification of any copyrights or trademarks or any other indication pertaining to protected rights.
5. Client shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Service, Hexaly Optimizer, or the aaS Materials available to any third party other than an authorized;
6. Client shall not create Internet "links" to the Service or Hexaly Optimizer or "frame" or "mirror" any part of the Service or Hexaly Optimizer, including any content contained in the Service or Hexaly Optimizer, on any other server or device;
7. Except as expressly stated herein, no part of the Service or Hexaly Optimizer or aaS Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means;
8. Client agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Service or Hexaly Optimizer;
9. Client acknowledges and agrees that the Licensor or its Third Party Vendors shall own all right, title and interest in and to all intellectual property rights in the Service, the Hexaly Optimizer, and the aaS Materials and any suggestions, enhancement requests, feedback, or recommendations provided by Client or its beneficiaries or Users relating to the Service, Hexaly Optimizer, or the aaS Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof;
10. Unauthorized use, resale or commercial exploitation of any part of the Service, Hexaly Optimizer, or aaS Materials in any way is expressly prohibited;
11. Client does not acquire any rights in the Service, Hexaly Optimizer, or aaS Materials, express or implied, other than those expressly granted in this Agreement and all rights not expressly granted to Client are reserved by the Licensor and Third Party Vendors ; and
12. This Agreement is not a sale and does not convey any rights of ownership in or related to the Service, Hexaly Optimizer, Software, or aaS Materials to Client.
13. In addition, when using Services and Hexaly Optimizer, the Client, the Beneficiaries and the Users agree not to upload, download, publish, send or circulate in any manner whatsoever any materials or contents: breaching, whether intentionally or not, any applicable law or regulation; breaching any rights of third parties, including any intellectual property rights or personality rights; likely to damage, disable, overload or impair the Services or Hexaly Optimizer or any server or networks connected to the Services or to Hexaly Optimizer, or to breach any requirements, procedures, rules or regulations of the networks connected to the Services

### **3.3 Account**

An Account shall be created (i) by the Licensor at the request of the Client or any Beneficiary or User or (ii) by the Client or any Beneficiary or User by using the form accessible on the Website.

The various steps to be taken to open an Account are detailed in the said form. Prior to approving such form, the Client may check the supplied information and correct any misstatements and shall receive, as soon as practicable an email confirming receipt of such form.

After verification of the supplied information, the Licensor shall send Electronic Communications containing the License Key and connection data allowing for access to the created Account.

The Client agrees not to use its connection data for any purposes other than in order to use the Services and Hexaly Optimizer under the applicable License so granted and to take any step necessary in order to protect the confidential and secure use of its connection data, in particular by avoiding to disclose or make them available to any third party.

The Client shall also be responsible for protecting the confidentiality and security of the Account(s), and where applicable any Accounts of the Beneficiaries and Users, e.g., by regularly changing the relevant passwords. If the Client or any Beneficiary or User has any grounds for considering that its connection data (and in particular its identifiers and passwords) have been lost, stolen, or compromised in any manner whatsoever, or in case of unauthorized use of any Account, the Client shall immediately inform the Licensor by any means of the relevant event.

In such case, the Client authorizes the Licensor to take any necessary steps to protect the security of the Account, e.g., by resetting the passwords or temporarily suspending access to the Services and to Hexaly Optimizer.

Absent any such notice, any use of the Account, Hexaly Optimizer and the Services shall be deemed to originate from the Client.

The Client shall hold all rights in and to any contents created or generated on its Account in relation to its conformance with the Licensor Regulation (excluding the format or structure of the same as resulting from the Hexaly Optimizer).

The Licensor shall record and retain any Content created or generated on the Account, it being understood that the Client shall be solely responsible for any deletion or modification of such Content by the Client or by any Beneficiary or User on its Account.

#### **Article 4 - License Fees**

**4.1** In consideration for the Services and use of Hexaly Optimizer, the Client agrees to pay to the Licensor the amounts specified in the Sales Proposal in accordance with the terms set out therein.

Invoices shall be sent to Client at the address set forth in the Sales Proposal and shall be payable upon receipt. In addition to any remedies the Licensor may have pursuant to this Agreement or at law for non-payment, delinquency in payment may result in a delay or suspension of the right to use Hexaly Optimizer and/or Service.

In addition, if Client does not make payment when due, in addition to the Licensor's rights herein, the Licensor may charge interest on the unpaid amount at Licensor Interest Rate. In the event the Licensor incurs any costs (including reasonable attorney's fees and collection costs) from efforts collecting overdue fees from Client, Client agrees to pay all such costs expenses and fees, whether or not litigation is commenced. Client further agrees to pay all foreign, federal, states, and local taxes, if applicable, to Client's access to, use, or receipt of the Service and/or Hexaly Optimizer.

License Fees shall be paid by the Client to the Licensor in order to receive the License Key for a License.

**4.2** The Academic License is free when limited to 1 User computer and 1 Beneficiary concurrent use.

**4.3** The Trial License is free.

#### **Article 5 - Description of Services**

**5.1** For free Licenses, the Services are not available. Licenses purchased through a Sales Proposal, i.e., for which Client shall pay Licensor, shall benefit from the Services which shall be set forth in the applicable Sales Proposal. In consideration of the Fees paid by Clients under such applicable Sales Proposal, the Licensor agrees to provide Client, the Beneficiaries, and the Users access to Hexaly Optimizer and/or Service. Specific components of the Service to be provided to Client are as outlined in the applicable Sales Proposal and Documentation.

**5.2** The Licensor shall, during the License Period and subject to the payment by the Client of the License Fees, make any reasonable commercial effort to correct or circumvent possible Errors



identified by the Client, and notified by the Client to the Licensor, in the latest release of Hexaly Optimizer.

The Services and Hexaly Optimizer shall be standard, shall be accessible from a remote location (provided that this location is not in an embargoed or sanctioned country) and shall not require any services so that they can be integrated into the IT systems of the Client or the Beneficiaries, unless otherwise set forth in an applicable Sales Proposal for the supply of specific services. The Parties agree and acknowledge that the Licensor may change its hardware or software environment.

The Licensor shall not have to furnish Correction or Bypass on Hexaly Optimizer if Hexaly Optimizer is modified by the Client or by a third party unless the Licensor has given prior written agreement to integrate such modifications.

**5.3** The Client shall notify the Licensor of an Error by email sent to the Licensor at the following address: [support@hexaly.com](mailto:support@hexaly.com). Such notification shall only be made by the Client. Support will be initiated at most 24 Services Hours after receiving his email.

The Client is responsible for providing any input and output data necessary for the reproduction of the Error.

**5.4** The Licensor may, in its sole discretion and without any obligation whatsoever, during the License Period and subject to the payment by the Client of the License Fees, furnish the Client with such updates and upgrades of Hexaly Optimizer and/or Overlay as Licensor deems appropriate, such as new releases of the software which correct bugs and add capabilities to Hexaly Optimizer and/or Overlay.

## **Article 6 - Warranty and Limitation of Liability**

### **6.1 Warranty of Functionality**

The Licensor warrants to Client during the License Period that Hexaly Optimizer and Service will substantially comply with the material functionality described in the aaS Materials and Documentation and that such functionality will be maintained in all material respects in subsequent upgrades to the Service, subject to normal deprecation of features. Client's sole and exclusive remedy for the Licensor's breach of this warranty shall be that the Licensor shall use commercially reasonable efforts to correct such Errors or modify Hexaly Optimizer and/or Service to achieve the material functionality described in the aaS Materials within a reasonable period of time. However, the Licensor shall have no obligation with respect to this warranty claim unless notified of such claim within (30) days of the first material functionality problem. Further, the Licensor shall have no obligation with respect to this warranty claim, and Client may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by the Licensor. The Licensor does not warrant that the Service and/or Hexaly Optimizer will be free of non-material Errors, bugs, or minor interruption, or that all such Errors will be corrected.

### **6.2 DISCLAIMER OF WARRANTIES**

**EXCEPT AS OTHERWISE** STATED IN THIS ARTICLE, THE LICENSOR DOES NOT REPRESENT THAT CLIENT'S USE OF HEXALY OPTIMIZER AND SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT HEXALY OPTIMIZER OR SERVICE WILL MEET CLIENT REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES HEXALY OPTIMIZER OR SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR HEXALY OPTIMIZER OR SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY THE LICENSOR OR THE OPERATION OF HEXALY OPTIMIZER OR SERVICES WILL BE SECURE OR THAT THE LICENSOR AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CLIENT DATA OR CLIENT'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CLIENT DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES

STATED IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY THE LICENSOR. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED HEREIN, HEXALY OPTIMIZER AND SERVICE IS PROVIDED TO CLIENT ON AN "AS IS" AND "AS AVAILABLE" BASIS AND IS SOLELY FOR USE AS INDICATED ABOVE. CLIENT ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER HEXALY OPTIMIZER AND SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE CLIENT'S PURPOSE. CLIENT ASSUMES ALL RESPONSIBILITY FOR ANY DECISION TAKEN BASED ON THE RESULTS OBTAINED WITH THE SOFTWARE.

### **6.3 LIMITATIONS OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST OR CORRUPTED DATA OR CONTENT, LOST REVENUE ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION HEXALY OPTIMIZER AND/OR SERVICE, THE USE OF HEXALY OPTIMIZER AND/OR SERVICE OR THE INABILITY TO USE PLATFORM AND/OR SERVICE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **6.4 DIRECT DAMAGE LIMITATIONS**

**6.4.1** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE LICENSOR OR ANY THIRD PARTY VENDORS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY LICENSE, USE, OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CLIENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THERE SHALL BE ONLY ONE AGGREGATE LIABILITY CAP UNDER THIS AGREEMENT EVEN IF THERE ARE MULTIPLE CLAIMS; EACH CLAIM SHALL REDUCE THE AMOUNT AVAILABLE IN THE AGGREGATE LIABILITY CAP. IF THE CLIENT HAS PAID FEES UPFRONT FOR MULTIPLE YEARS, THE AGGREGATE LIABILITY CAP SHALL BE THE TOTAL AMOUNT ACTUALLY PAID BY THE CLIENT DIVIDED BY THE NUMBER OF YEARS COVERED BY SUCH PAYMENT.

**6.4.2** THE LICENSOR SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OR CORRUPTION OF ANY DATA OR CONTENT WHETHER RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS OR OTHERWISE.

**6.4.3 EXCLUSIONS** - THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE SHALL NOT APPLY WITH RESPECT TO: (I) DAMAGES TO PERSONS AND/OR TANGIBLE PROPERTY OCCASIONED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY, (II) BREACHES BY CLIENT OF LICENSE TERMS APPLICABLE TO THE LICENSOR, AND (III) CLIENT'S UNAUTHORIZED USE OF THE LICENSOR'S OR THIRD PARTY THE LICENSOR'S INTELLECTUAL PROPERTY, MATERIALS OR ASSETS. DAMAGES AS LIMITED BY THIS ARTICLE ARE CLIENT'S SOLE AND EXCLUSIVE REMEDY IF ANOTHER REMEDY IS PROVIDED AND SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

## **Article 7 - Term and Termination**

### **7.1 License Period**

**7.1.1** The Academic License is granted by the Licensor for a 3-month period from the License Effective Date.

**7.1.2** The Trial License is granted by the Licensor for a 30-day period from the License Effective Date.

**7.1.3** The Development License and/or the Production License and/or the Unlimited License are granted by the Licensor from the License Effective Date defined in the Sales Proposal for a term set forth therein ("Initial Term"). If the Initial Term is less than three (3) months, the Agreement shall terminate at the end of the Initial Term. If the Initial term is three (3) months or more, the following shall apply: 45 days prior to the expiration of an Initial Term and/or any renewal for a period of the same duration (a "Renewal Term"), the Licensor shall notify Client of the License Fee to be applied to the Renewal Term, if different from the License Fee of the Initial and/or previous Term. The Initial Term and any Renewal Term shall be referred to collectively as the "Term"; Client may terminate the Agreement in writing with a minimum of 30-day notice before expiration date of the Term, otherwise the Agreement shall automatically renew for a period of the same duration and subject to all terms and conditions of the Agreement, but for the amount of any applicable License Fees.

Notwithstanding anything to the contrary herein, Client may not terminate the Agreement prior to its expiration date unless terminated as provided in this Section. Any expiration or termination as set forth herein shall have no force or effect on any obligation that, due to its nature, is to survive expiration or termination, and in particular any clauses related to liability, confidentiality, governing law and jurisdiction.

## **7.2 Term of Services**

The Services for applicable License types shall commence on the License Effective Date and shall remain into effect for the period defined in the Sales Proposal.

## **7.3 Suspension and Termination of the Agreement**

The Licensor reserves the right to suspend Client's access and/or use of the Service and/or Hexaly Optimizer for any account for which any payment is due but remains unpaid after thirty day's written notice of such delinquency. Client agrees that the Licensor shall not be liable to Client, or to any third party, for any suspension of the Service and/or access to Hexaly Optimizer resulting from Client's non-payment of the Fees as described in this Article.

Client agrees that the Licensor may, with reasonably contemporaneous telephonic or electronic mail notice to Client, suspend Client's access to the Service if the Licensor reasonably concludes that Client's use of the Service and/or Hexaly Optimizer is causing immediate and ongoing harm to the Licensor or others. The Licensor will use commercially reasonable efforts to resolve the issues causing the suspension of Service and/or access to Hexaly Optimizer. Client agrees that the Licensor will not be liable to Client or to any third party for any suspension of the Service and/or access to Hexaly Optimizer under such circumstances as described in this Article.

The Licensor may terminate this Agreement immediately upon written notice for any breach of Sections related to license restrictions, intellectual property rights, or payment obligations, or upon thirty (30) days' written notice to the Client in the event of any other material breach under this Agreement, provided that such other breach is not cured during the thirty (30) day notice period. Upon termination or expiration of this Agreement, Client shall have no rights to continue use the Service and/or access Hexaly Optimizer.

Client acknowledges and agrees that following termination of this Agreement, the Licensor may request that Client return all aaS Materials (except that it may retain a copy for archival purposes or as otherwise provided in this Agreement) to the Licensor and the Licensor may immediately deactivate Client's account. Client agrees that the licensor shall not be liable to Client or to any third party for any termination of Client access to the Service or deletion of Client Data, provided that the licensor is in compliance with the terms of this Article. Notwithstanding the foregoing, nothing shall preclude the licensor from maintaining one copy of Client Data if required by law.

The provisions of Articles 6, 7, 8, and 10 shall survive the termination of this Agreement for any reason.

## **Article 8 - Governing Law - Dispute Resolution**

Any action related to this Agreement will be governed by the Licensor Governing Law. No choice of law rules of any jurisdiction will apply. Any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the Licensor Domestic Courts. This Agreement, together with the Sales Proposal and Appendix annexed hereto, represent the Parties' entire understanding relating to the use of Hexaly Optimizer and Service and supersedes any prior or contemporaneous, conflicting, or additional, communications. No text or information set forth on any Purchase Order form, preprinted form or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between the Licensor and Client as a result of this Agreement or use of Hexaly Optimizer or Service. Any rights not expressly granted herein are reserved by the Licensor.

## **Article 9 - Terms of Service**

### **9.1 Service Extensions or Updates**

Client further agrees that, unless explicitly stated otherwise, any new features that augment or enhance Hexaly Optimizer and/or Service, and or any new service subsequently purchased by Client pursuant to an amendment accepted by the Licensor referencing this Agreement and/or the Sales Proposal will be subject to this Agreement.

### **9.2 Client Must Have Internet Access**

In order to use Hexaly Optimizer and/or Service, Client must have or must obtain access to Internet either directly or through devices that access Web-based content. Client must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web in accordance with the requirements set out in the aas Materials.

### **9.3 Email and Notices**

**Client** agrees to provide the Licensor with Client's e-mail address (es), and to accept emails (or other Electronic Communications) from the Licensor at the e-mail address Client specifies. Notwithstanding any provision in the Agreement to the contrary, acknowledgement by an officer of Client is not required with respect to e-mail communications pertaining to the Client's routine use of the Service, including without limitation communications relating to the support, maintenance, or the updating of Hexaly Optimizer and/or Service. Client further agrees the Licensor may provide any and all required notices including legal notices to Client through either e-mail (or other electronic transmission), or by mail.

### **9.4 Client's Responsibilities**

Both Parties agree to comply with all applicable local, state, national and foreign laws, treaties, regulations, and conventions in connection with its use of Hexaly Optimizer and/or Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data.

**Client will ensure** that any use of Hexaly Optimizer and/or Service by Client's Users and/or Beneficiaries is in accordance with the terms of this Agreement. Client agrees to notify the Licensor immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Client Data.

Client acknowledges and agrees that Hexaly Optimizer and/or Service is subject to the U.S. Export Administration Laws and Regulations.

**Client agrees that** no part of Hexaly Optimizer and/or Service or information obtained through use of Hexaly Optimizer and/or Service, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear

activities, chemical biological weapons, or missile projects unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice, and Client must comply with the list as it exists in fact. Client represents and warrants that neither Client nor any Users are on the U.S. Department of Commerce's Denied Persons List or affiliated lists, the U.S. Department of Treasury's Specially Designated Nationals List, or any other applicable restricted party lists, and Client shall immediately notify Licensor if it becomes listed on any such list during the term of this Agreement. Client agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Any unauthorized use of Hexaly Optimizer and/or Service may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes. The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774.

In addition to its responsibilities in this Agreement, Client is responsible for all Client responsibilities indicated in the Sales Proposal attached hereto or entered into pursuant hereto and all other responsibilities not designated as responsibilities of the Licensor.

**Client shall not** resell access to Hexaly Optimizer and/or Services directly or indirectly to third parties.

### **9.5 Transmission of Data**

Client understands that the technical processing and transmission of Client's Electronic Communications is fundamentally necessary to Client's use of Hexaly Optimizer and/or Service. Client expressly consents to the Licensor's interception and storage of Electronic Communications and/or Client Data, and Client acknowledges and understands that Client's Electronic Communications will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by the Licensor. Client acknowledges and understands that changes to Client's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Client further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Client agrees that the Licensor is not responsible for any Electronic Communications and/or Client Data which are lost, altered, intercepted, or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by the Licensor.

### **9.6 Confidential Information**

The parties agree to use commercially reasonable efforts not to make each other's Confidential Information available in any form to any third party. Notwithstanding the foregoing, Client acknowledges and agrees that the Licensor may disclose Client's Confidential Information to its Third-Party Vendors solely to the extent necessary to provide products or services under this Agreement. This Article will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "Responding Party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure, so as to permit such party an opportunity to obtain a protective order or take other appropriate action. The Responding Party will cooperate in the other party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If the Responding Party is compelled as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

### **9.7 Transfer, Outsourcing and Assignment**

The Client shall not transfer in any way this Agreement to any third party.

The Licensor may transfer in any way this Agreement on the condition that the Client is informed by the Licensor prior to the transfer.

**Change of Control:** Notwithstanding the foregoing, Hexaly may assign this Agreement, in whole or in part, without the consent of the Client, to any affiliate or in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets, or any similar transaction. In the event of such assignment due to a change of control, Hexaly shall notify the Client in writing within sixty (60) days of such change.

**Client Rights:** The Client may not assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of Hexaly, and any attempt to do so without such consent will be void.

**Binding Effect:** Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

## **Article 10 -Intellectual property**

Client acknowledges and agrees that Hexaly Optimizer and Service and any necessary software used in connection with Hexaly Optimizer and the Services contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Client further acknowledges and agrees that the content or information presented to the Client through Hexaly Optimizer and/or the Services may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. The user license is granted to the Client only in strict compliance with the terms of the Agreement and shall not operate any transfer of intellectual property rights in or to the Services or Hexaly Optimizer. The organization, structure, sequences, logic, and source code of such materials are trade secrets. Such materials and any copies and parts thereof, as well as any improvements, modifications and derivative works, and any intellectual property rights therein, are and shall remain the Licensor's exclusive property as well. Except where expressly provided otherwise by the Licensor, nothing in Hexaly Optimizer, the Software, the Services, the aaS Materials, or the Agreement shall be construed to confer any license to any of the Licensor's (or its third-party manufacturer's, author's, developer's, or Third-Party Vendors, intellectual property rights, whether by estoppel, implication, or otherwise. The Licensor reserves the right to subcontract any or all services provided hereunder to third parties.

## **Article 11 - Client's Indemnity**

Client shall defend and indemnify the Licensor and its Third-Party Vendors against any and all Losses incurred by the Licensor and its Third-Party Vendors arising out of or in connection with a claim by a third party (i) alleging that the Client Data or the Client Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Client's breach of this Agreement. Client will indemnify, defend, and hold harmless the Licensor, its affiliates, successors, assigns, officers, directors, employees, and agents for all damages, costs, expenses and attorneys' fees the Licensor incurs from any unaffiliated third-party claim arising from Client's Content or Client's or Beneficiary's use of the Services.

## **Article 12 - Miscellaneous Provisions**

### **12.1 Force Majeure**

Neither party will be liable to the other for any failure or delay in the performance of its obligations (except for Client's payment obligations) due to causes beyond its control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, government orders of quarantine, communications line or power failures, or governmental laws, court orders, and regulations imposed after the fact.

### **12.2 Contents of the Agreement**

Should any provision of the Agreement be held unlawful, unenforceable, prohibited, or invalid, whether in whole or in part under applicable laws, such provision shall be disregarded only to the extent of its invalidity, and this shall not invalidate the remaining part of the said provision or the other provisions of the Agreement. The parties shall negotiate in good faith to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

### **12.3 Waivers**

The failure of the Licensor to enforce any right or provision in this Agreement and/or Sales Proposal shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the Licensor in writing. The Licensor reserves the right to assign its rights, including but not limited to the right to receive and collect payments hereunder, to any third party without prior notice to or consent from Client.

### **12.4 Notices**

Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, (d) sent by facsimile (with a hard copy mailed on the same date), (e) by email, provided that receipt is confirmed by return email from an officer of the receiving Party within two (2) business days pursuant to the information set forth in any applicable Sales Proposal. Notices shall be considered to have been given at the time of actual delivery in person, five business days after posting if by mail, one business day if by overnight courier service, or upon receipt of machine confirmation of successful transmission by facsimile or email as described herein.