

SOFTWARE USE AGREEMENT

1. OVERVIEW

This Agreement applies to all University of Ontario Institute of Technology (“Ontario Tech University” or “Ontario Tech”) students at the University of Ontario Institute of Technology who download and/or use third party software programs and applications (“Software”) deployed by Ontario Tech’s Information Technology Services (“ITS”) either through the Ontario Tech Software Portal or which are pre-installed on Ontario Tech owned computing devices loaned to the student. Any reference to a “Computing Device” herein means either an Ontario Tech owned computing device loaned to the student or a student-owned computing device used as part of the Bring-Your-Own-Device (BYOD) Program, as the case may be.

Use of Software is **a privilege, not a right** that is subject to and expressly conditioned upon acceptance, without modification of this Software Use Agreement (“Agreement”), as may be amended from time to time by the University.

This Agreement is between you (“User”) and the University. By clicking “I agree” below, you acknowledge that as the User you have read, understood and agree to be bound by the terms and conditions contained in this Agreement.

2. OWNERSHIP

2.1 Ownership. Software is not the property of the University or the User. All Software is owned by a third party provider (“Licensor”) and licensed to the University subject to terms and conditions. The Software, in whole and in part, all copies thereof, and all modifications, enhancements, and derivatives thereto, are and will remain the sole and exclusive property of the Licensor. All proprietary rights in and to the Software, including patents, copyrights or any other intellectual property rights shall remain with the Licensor, or respective owner.

3. ACCEPTABLE USE OF SOFTWARE

3.1 License. Subject to the conditions of this Agreement and any applicable third party agreement, Ontario Tech grants to User a non-exclusive, non-transferrable right and license to download authorized Software from the Ontario Tech Software Portal and to use the Software for academic purposes.

3.2 Term. The Agreement is effective as of the date the User accepts the terms and conditions set out herein (i.e. clicks “I agree”) and will continue in full force and effect as long as the User is enrolled as a full-time or part-time student at Ontario Tech, unless terminated earlier by the University.

3.3 Termination. Upon graduation or the discontinuation of the User’s studies for any reason (i.e. transfer, dismissal), all rights under this Agreement will automatically terminate and the User shall promptly cease the access and use of any Software licensed to it vis-a-vis the University, including all software programs and applications which exist on any Computing Device(s).

3.4 Permitted Use. User acknowledges and agrees that any Software licensed for use under this Agreement may only be downloaded once onto a single Computing Device at the direction of a faculty member and/or course instructor and shall only be used for authorized academic purposes.

3.5 Third Party Agreements. User shall be familiar with and strictly adhere to the terms and conditions set out in any third party agreement governing the use of the Software, including but not limited to license agreements, end-user agreements and terms of use.

3.6 Ethical Standards. User agrees to exercise its rights under this Agreement in a lawful manner and in accordance with the highest ethical standards appropriate for an institution of higher learning.

3.7 University Policies. Acceptance of this Agreement is also acceptance of the University's broader Technology Use Policy and Student Conduct Policy. User is responsible to be familiar with and abide by all University policies and procedures, as they may be approved, amended and enforced from time to time.

4. PROHIBITED USES OF SOFTWARE

4.1 Prohibited Use. User shall not use the Software for any prohibited purpose, including without limitation:

- Violating or infringing any copyright, trademark, patent or other proprietary right of a third party;
- Violating or breaching any third party agreement related to use of the Software;
- Selling, giving, lending, renting, sublicensing or otherwise transferring the Software, or any portions of the Software, to any third party without the prior written permission of the Licensor;
- Decompiling, disassembling, modifying, translating or otherwise reverse engineering the Software to discover any source code or underlying algorithms of the Software;
- Using the Software for any commercial activity;
- Accessing or using unauthorized Software or permitting a third party to access and/or use Software; and
- Engaging in any criminal or other illegal activity.

4.2 Oracle Java Restricted Use. Users are advised that some of the software provided under this Agreement uses Oracle Java software to run. Certain versions of Oracle Java software are paid for commercial users, which Ontario Tech is one. User's use of such paid software may result in Ontario Tech being charged a licensing fee. Ontario Tech has implemented protocols to ensure that paid Oracle Java software is not available for download for Users through the Ontario Tech Software Portal.

Should Oracle Java be required to run software provided under this Agreement, ITS will instruct Users on how to download a free version of Oracle Java software or alternative free software. Users who download and/or update Oracle Java software without following instructions of ITS may cause Ontario Tech to incur licensing fee(s) as a result of the User's use of paid Oracle Java software ("Oracle Java Paid Use"). ONTARIO TECH RESERVES THE RIGHT TO CHARGE USER, AND USER AGREES TO PAY, ANY FEES THAT ONTARIO TECH INCURS AS A RESULT OF THE USER'S ORACLE JAVA PAID USE. In the case of a student User, such fees will be charged against the User's Ontario Tech student account.

In order to avoid incurring Oracle Java Paid Use fees, Users must not download and/or update Oracle Java software (even if prompted to do so by Oracle or a third party), except in accordance with instructions from ITS. Users who experience issues related to Oracle Java should contact ITS as soon as possible for resolution.

5. SANCTIONS

5.1 Sanctions. Violations of this Agreement will be treated like other allegations of misconduct at the University. Allegations will be investigated and adjudicated in accordance with the University's policies. Any breach of this Agreement or applicable policies may result in disciplinary action. Sanctions include, but are not limited to:

- Verbal or written warnings;
- Restricted or suspended access to and use of Software and/or the University Network;

- Disciplinary action up to and including suspension/expulsion from the University; and
- Legal action under applicable laws and/or contractual agreements.

6. WARRANTY, DISCLAIMER AND LIABILITY

6.1 No Warranty. Ontario Tech, including its governors, officers, employees and agents, makes no representations and extends no warranties, express or implied, with respect to the Software which is provided “as is”. There are no warranties of merchantability or fitness for a particular purpose. The downloading and use of Software under this Agreement is at the User’s own risk. Any advice or information, whether oral or written, obtained by User from Ontario Tech or Licensor shall not create or constitute a warranty of any kind with respect to the Software. Additionally, Ontario Tech makes no warranty that:

- The third party Software will meet User requirements or expectations;
- The third party Software is suitable for use or compatible with User’s Computing Device;
- The third party Software will be uninterrupted, timely, secure or error-free; and
- The results from the use of the third party Software will be effective, accurate or reliable.

6.2 Disclaimer. Without limiting the generality of section 6.3 (No Liability) Ontario Tech disclaims any and all liability for the following:

- Errors or omissions and other inaccuracies in third party Software or documentation;
- Technical failures or interruptions in the use of the third party Software;
- Viruses, Trojans, adware and spyware and other security breaches related to the download or use of Software; and
- Failures, damages or programming errors that compromise or render other Software or hardware unusable.

6.3 No Liability. Ontario Tech, including its governors, officers, employees, and agents shall not be liable to User or any third party for any special, punitive, incidental, indirect or consequential damages, the loss of use, the loss of data or any other liability, cost, expense (including legal fees) or damages incurred by User arising out of or relating to the downloading and use of Software even if advised of a possibility of such damages.

6.4 Indemnity. User shall indemnify and hold harmless Ontario Tech, including its governors, officers, employees, and agents from and against any claims, costs and suits arising from or relating to the misuse of the Software, the infringement of third party intellectual property rights, or any breach of this Agreement or related third party agreement.

6.5 Survival. This section 6 (Warranty, Disclaimer and Liability) shall survive the expiry or termination of this Agreement.

7. INTERRUPTION, SUSPENSION AND TERMINATION

7.1 Interruptions. The Ontario Tech Software Portal may, from time to time, be inaccessible or inoperable for any reason, including without limitation, (i) equipment and system malfunctions; (ii) periodic maintenance, upgrades or repairs; (iii) viruses or other security breaches; and (iv) other causes beyond the control of Ontario Tech.

7.2 Suspension or Termination. Ontario Tech reserves the right to, without notice or liability, at any time and for any reason: (i) disable the Ontario Tech Software Portal; (ii) suspend the User’s access to the Ontario Tech Software Portal or right to use Software; and (iii) terminate this Agreement.

8. REPORTING AND AUDITS

8.1 Reporting. User agrees to forthwith report to the University's IT department i) the infringement (actual or alleged) of any intellectual property rights in the Software, ii) the unauthorized access to the Ontario Tech Software Portal or the unauthorized use of Software by any person; and iii) the loss or theft of a Computing Device that contains Software.

8.2 Audits. User shall grant to Ontario Tech personnel assistance and cooperation and such access to Computing Devices, systems and materials as is reasonably necessary to determine compliance with this Agreement.

9. GENERAL

9.1 Entire Agreement. This Agreement, together with all applicable University policies incorporated by reference, constitutes the entire agreement between User and University and supersedes all prior agreements, understandings and arrangements, written or oral, concerning the subject matter of this Agreement.

9.2 Amendments. University may amend this Agreement and/or distribute and enforce new or amended policies related to the use of Software at any time without notice, provided that the University complies with all applicable laws. By continuing to use Software, User agrees to be governed by the terms and conditions as provided in the most current version of this Agreement and any related policies.

9.3 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, it shall be severed from the Agreement and the remaining provisions shall continue in full force and effect.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

9.5 No Assignment or Transfer. The rights and obligations under this Agreement are not capable of assignment, transfer, license or sublicense

9.6 Third Party Beneficiaries. Any Licensor that grants to the User a license to use its Software is a third party beneficiary to this Agreement and is entitled to the rights and benefits hereunder and may enforce the provisions of this Agreement as if it were a party hereto.

9.7 No waiver. The waiver by Ontario Tech of a breach or default of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent breach or default in respect of such provisions, nor shall any delay or omission on the part of Ontario Tech to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the User.

BY CLICKING "I AGREE" BELOW, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD THE AGREEMENT. I UNDERSTAND THAT IF I VIOLATE THE TERMS AND CONDITIONS SET OUT HEREIN, I MAY FACE LEGAL OR DISCIPLINARY ACTION IN ACCORDANCE WITH APPLICABLE LAWS AND UNIVERSITY POLICIES.