

plusFORT Software End User Licence Agreement

This End User Software Licence Agreement (the “EULA”) is a contract between the user or users of the plusFORT Software (the “End User”) and POLYHEDRON SOLUTIONS LIMITED, (the “Licensor”) having its principal place of business at Magdalen House, 98 Abingdon Road, Standlake, Witney, Oxfordshire, UK, OX29 7RN. The Licensor and the End User together shall be referred to as the “Parties” and individually shall be referred to as a “Party”.

Please read this EULA carefully. By installing or using the Software, the End User accepts all of the terms and conditions set out in this EULA. Do not install or use the Software if you do not wish to be legally bound by the terms and conditions of this EULA.

The Parties agree as follows:

1. Definitions

1.1 *Definitions.* Unless otherwise provided in the main body of this EULA, capitalised terms shall have the meaning given to them in the attached Exhibit A, which forms part of this EULA as if set out here.

2. Licence

2.1 *Licence.* Subject to the provisions of this EULA, the Licensor grants to the End User a non-transferable, non-sub-licensable, and non-exclusive licence to use the Software.

2.2 *Reservation of rights.* Except for the licence explicitly granted by Clause 2.1, the Licensor reserves all its rights. The End User acknowledges and agrees that the End User is licensed to use the Software only in accordance with the express provisions of this EULA and not further or otherwise.

3. Use

3.1 *Restrictions.* Except to the extent permitted by applicable mandatory law, the End User shall not: (a) copy or reproduce the Software; (b) merge the Software with any other software; (c) translate, adapt, vary, or modify the Software; or (d) disassemble, decompile, or reverse engineer the Software, or otherwise attempt to derive the source code of the Software.

3.2 *Further restrictions.* The End User shall not: (a) provide, disclose, demonstrate, or otherwise make available the Software to any third party; or (b) use the Software to provide any services or training for any third party; or (c) sell, lease, rent, transfer, hire-out, license, sub-license, assign, distribute, publish, charge, pledge, encumber, commercially exploit, or otherwise deal with the Software, or have any software written or developed that is based on or derived from the Software.

3.3 *Obligations.* The End User shall at all times: (a) effect and maintain adequate security measures to safeguard the Software from unauthorised access, use, and disclosure; (b) supervise and control access to and use of the Software in accordance with the provisions of this EULA; (c) provide the Licensor from time to time on request with contact details for the person responsible for supervising and controlling such access and use; and (d) ensure that the Software is at all times clearly labelled as the property of the Licensor.

4. Payment

4.1 *Licence Fee.* The End User shall pay the agreed Licence Fee to the Licensor, or to an authorized agent of the Licensor.

4.2 *Payment terms.* All payments due under this EULA:

- (a) are exclusive of Value Added Tax, which where applicable shall be paid by the End User in addition at the rate and in the manner prescribed by applicable law;

(b) shall be paid in full by the End User by the relevant due date.

5. Support and Updates, Liability.

- 5.1 *Acknowledgements.* The End User acknowledges and agrees that software in general is not error-free and agrees that the existence of any errors in the Software shall not constitute a breach of this EULA by the Licensor.
- 5.2 *Support and Updates.* Licensor agrees to provide maintenance support in respect of Software to a single named user for a period of three months after the Start Date. The End User may also update the licensed software with newer versions which the Licensor makes available within three months of the Start Date.
- 5.3 *Further support.* The End User may extend the maintenance and update support service beyond the initial three month period by purchasing a maintenance contract from the Licensor at the then published price.
- 5.4 *Viruses, etc.* The Licensor does not warrant that the Software supplied under this EULA shall be free from all viruses. The End User acknowledges and agrees that it is solely the End User's responsibility to conduct appropriate virus scanning of the Software prior to installation and use.
- 5.5 *No implied warranties, etc.* The express undertakings and warranties given by the Licensor in this EULA are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way, including any implied warranty of merchantability, satisfactory quality, fitness for any particular purpose. All of these are excluded to the fullest extent permitted by applicable law. Without limiting the scope of the preceding sentences, the Licensor gives no warranty or guarantee that the Software will meet the End User's requirements, that the use of the Software will be un-interrupted, or that any errors and/or defects in the Software can or will be corrected.
- 5.6 *Indemnity.* The End User shall indemnify the Licensor from and against any and all losses, damages, claims, demands, liabilities, costs, and expenses of any nature whatsoever that may be asserted against or suffered by the Licensor and which relate to: (a) any use by the End User of the Software; and/or (b) the development, manufacture, use, supply, or any other dealing in any products or services that were generated from the use of the Software, including any claims based on product liability laws.
- 5.7 *Limit of liability.* The cumulative maximum liability of the Licensor to the End User under or in connection with this EULA, irrespective of the basis of the claim (whether in contract, tort, negligence, or otherwise), shall be limited in accordance with the provisions of this Clause 5.7:
- (a) The Licensor does not seek to exclude or limit liability where such exclusion or limitation is precluded from applicable law, including any liability that may arise in respect of (i) death or personal injury resulting from the Licensor's negligence, or (ii) fraud.
 - (b) Subject to the rest of the provisions of this Clause 5.7, the cumulative liability of the Licensor in respect of any and all claims made under or in connection with this EULA shall not exceed an amount that is equal to the Licence Fee.
 - (c) Subject to Clause 5.7(a), the Licensor shall in no circumstances be liable for any type of special, indirect or consequential loss, for any loss of profit, revenue, or anticipated saving, lost, incorrect or spoilt data, loss of use, loss of contracts with third parties, loss of business or loss of goodwill, even if such loss was reasonably foreseeable or the Licensor had been advised of the possibility of the same arising.

6. Duration and termination

- 6.1 *Commencement and termination.* This EULA, and the licence granted hereunder, shall come into effect on the Start Date and shall continue in force unless and until terminated in accordance with Clause 6.2 or Clause 6.3.
- 6.2 *Termination by either party.* Either Party may terminate this EULA, and the licence granted

hereunder, at any time by notice in writing to the other Party (the “**Other Party**”), such termination to take effect as specified in the notice if the Other Party is in material or persistent breach of any provision of this EULA..

- 6.3 *Further rights of the Licensor to terminate.* The Licensor may terminate this EULA, and the licence granted hereunder, at any time by notice in writing to the End User, such termination to take effect as specified in the notice, if the End User fails to pay any amount due under this EULA by the relevant due date.
- 6.4 *Consequences of termination.* In the event of any termination of this EULA for any reason:
- (a) any licence granted by the Licensor under this EULA shall automatically terminate without further notice, and the End User shall make no further use of, or carry out any other activity in relation to, the Software; and
 - (b) any instalments of the Licence Fee due to be paid after the date of termination shall forthwith become due and payable by the End User, and the Licensor shall be under no obligation to reimburse the whole or any part of the Licence Fee.
- 6.5 *Accrued rights.* Termination of this EULA for any reason shall not affect the rights and obligations of the Parties accrued before termination, including any right to claim damages. The rights and obligations of the Parties set out in Clauses **Error! Reference source not found.**6, 5.7, 6.4, 6.5, and 7 shall survive any termination of this EULA for any reason.

7. General

- 7.1 *Amendments.* This EULA may only be amended in writing signed by duly authorised representatives of the Licensor and the End User.
- 7.2 *Invalid clauses.* If any provision or part of this EULA is held to be invalid, amendments to this EULA may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this EULA to the maximum extent permissible under applicable law.
- 7.3 *No agency.* Nothing in this EULA shall create, evidence, or imply any agency, partnership, or joint venture between the Parties. Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other’s behalf.
- 7.4 *Interpretation.* In this EULA:
- (a) references to persons include incorporated and unincorporated persons and references to the singular include the plural and vice versa;
 - (b) references to Clauses and Exhibits mean clauses of, and exhibits to, this EULA;
 - (c) references in this EULA to termination include termination by expiry; and
 - (d) where the word “including” is used it means “including without limitation”.
- 7.5 *Governing law and jurisdiction.* The validity, construction, and performance of this EULA shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales to which the Parties hereby submit.
- 7.6 *No use of names, etc.* Neither Party shall use the names, marks, trade names, trade marks, crests, logos, or registered images of the other Party without that Party’s prior written consent.
- 7.7 *Entire agreement.* This EULA, including the attached Exhibits, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral and written agreements, arrangements, or understandings between them relating to such subject matter.

Exhibit A

Definitions

Licence Fee	As published on the Polyhedron Solutions website on the date of purchase, or agreed between End User and Polyhedron Solutions Ltd or its authorized agent.
Software	One or more versions of the plusFORT software suite compiled to allow execution on End User's Windows, Linux or Apple computers.
Start Date	The date on which the software key, contained in the key file named plusFORT.fig is emailed or otherwise transmitted to the End User.