

Infinite Atelier, LLC Software License Agreement

This Software License Agreement ("Agreement") is between Infinite Atelier, LLC ("Infinite Atelier") and the customer (individual or entity) that has downloaded or otherwise procured the licensed Software (as defined below) for use as an end user ("Customer").

IMPORTANT. READ THIS AGREEMENT CAREFULLY.

BY DOWNLOADING, INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE, CUSTOMER IS ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. CUSTOMER AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN, SIGNED AGREEMENT.

IF CUSTOMER DOES NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, CUSTOMER SHOULD NOT USE OR ACCESS THE SOFTWARE.

BY AGREEING TO THESE TERMS AND CONDITIONS, CUSTOMER REPRESENTS THAT CUSTOMER IS 18 YEARS OLD OR OLDER AND IS CAPABLE OF ENTERING INTO A LEGALLY BINDING AGREEMENT.

IF CUSTOMER IS USING THE SOFTWARE AS AN EMPLOYEE OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN CUSTOMER HEREBY CERTIFIES THAT CUSTOMER IS AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT.

1. Definitions

- 1.1 "Software" means Infinite Atelier's software EP3 and any updates, releases, activation or license keys, documentation, data, process or other manuals, templates, databases, simulation files, integrated or standalone models, technology archives, process tools, enhancements and instructions.
- 1.2 "Proprietary Information" means the Software and other confidential information provided by Infinite Atelier in connection with Software.

2. Software License

- 2.1 **License Grant.** Infinite Atelier grants and Customer accepts a non-exclusive, non-transferable, non-sublicensable license to use the Software during the License Term solely on the one or more computers for which it has received an activation key from Infinite Atelier in accordance with the Customer's invoice. The Customer's license is specific to the individual Customer as the sole user unless otherwise stated on the Customer's invoice. The license granted is solely for the business purposes of Customer in accordance with terms and conditions of this Agreement.
- 2.2 **No Copies.** Customer may not copy the Software for any purpose. In the event that the Customer needs to install the software on a new computer or is licensed to install it on

multiple computers, the Customer is required to download and receive an activation key for each computer.

2.3 Updates. The Software or Infinite Atelier may notify the Customer when updates to the Software are available. "Updates" include maintenance releases, bug fixes, and minor updates to the current version of the Software. Infinite Atelier is under no obligation to release Updates or enhancements, but if it does make such releases available to other customers with licenses similar to that of the Customer, then Customer shall be entitled to download such Updates or enhancements.

2.4 Evaluation License. Evaluation licenses shall be for the term permitted by the activation key provided by Infinite Atelier. During the evaluation period, the Software may be used solely for evaluation purposes. **NO WARRANTY, UPDATES OR SERVICE ARE PROVIDED FOR THE EVALUATION LICENSE.**

2.5 Academic License. Academic Licenses shall be for the term permitted by the activation key provided by Infinite Atelier. The Customer for an academic license hereby certifies that they are a bona fide student or teacher of energy modeling at an accredited educational institution. Software under this Academic License may be used solely for academic purposes and not for commercial or other paid work. **NO WARRANTY, UPDATES OR SERVICE ARE PROVIDED FOR THE ACADEMIC LICENSE.**

3. Proprietary Rights

3.1 General. Title to, ownership of, and all rights in patents, copyrights, trade secrets and other intellectual property rights in the Software and all copies, modifications and derivative works thereof (including any changes which incorporate any of Customer's ideas, feedback or suggestions) do not transfer to Customer and shall remain the sole property of Infinite Atelier. Customer shall not remove any product identification, proprietary, copyright, or other notices contained in the Software.

3.2 License Restrictions. Customer shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming architecture of the Software by any means whatsoever, or (b) copy, modify, enhance, or translate any part of the Software, create a derivative work of any part of the Software, or incorporate the Software into or merge it with other software.

3.3 No Distribution. Customer shall not distribute, sell, sublicense, rent, lease, or use the Software (or any portion thereof) for time sharing, hosting, service provider, or like purposes.

3.4 Protection of Proprietary Information. Customer shall protect Proprietary Information to the same degree Customer protects its own proprietary information, but with no less than a reasonable degree of care. Customer acknowledges that disclosure of Infinite Atelier Proprietary Information would cause substantial harm to Infinite Atelier that could not be remedied by the payment of damages alone and therefore that upon any such disclosure by

Customer, Infinite Atelier shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

3.5 Consent to Use of Data. Infinite Atelier may, directly or through third parties, collect and use technical information, information about Customer, and/or data that Customer provides in relation to Customer's use of the Software or the provision of maintenance and technical support for the Software. Infinite Atelier will not use such information in a form that personally identifies Customer except to the extent necessary to provide maintenance and technical support. Customer acknowledges that, to the extent permitted by law, Infinite Atelier assumes no responsibility for storage of Customer's data or information.

3.6 Privacy. Customer acknowledges and agree to the terms of (1) the Infinite Atelier's Privacy Policy, located at www.EP3.Solutions or a successor url, which may be updated from time to time and without notice or consent. Information collected by Infinite Atelier in connection with Customer's license and use of the Software may be stored and processed in the United States or any other country in which Infinite Atelier or its agents maintain facilities. Accordingly, by using the Software Customer consents to any transfer of such information outside of Customer's country. Customer acknowledges and agrees that Infinite Atelier may access, preserve, and disclose Customer's account information if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) satisfy any applicable law, regulation, legal process or governmental request; (b) enforce this Agreement, including investigation of potential violations hereof; (c) detect, prevent, or otherwise address fraud, security or technical issues (including, without limitation, the filtering of spam); (d) respond to user support requests; or (e) protect the rights, property or safety of Infinite Atelier, its users, and the public. Infinite Atelier will not be responsible or liable for the exercise or non-exercise of rights under this Agreement.

4. Warranty, Service, Limitations

4.1 Customer Responsibility. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ITS USE OF THE SOFTWARE AND THE RESULTS, INCLUDING, WITHOUT LIMITATION, SUITABILITY FOR CUSTOMER'S WORK, ACCURACY AND VERIFICATION OF RESULTS, AND DATA INTEGRITY. WITHOUT LIMITING THE FOREGOING, INFINITE ATELIER IS NOT RESPONSIBLE FOR THE INTEGRITY OF ENERGY MODELS CREATED WITH THE SOFTWARE OR FOR THE ACCURACY OF RESULTS EVEN IF THE SOFTWARE'S LIBRARIES, TEMPLATES, WIZARDS, IMPORTER, OR ANY OTHER CALCULATION, LOOKUP, OR ALGORITHM OF THE SOFTWARE IS USED TO GENERATE THE MODEL OR RESULTS.

4.2 Limited Warranty. Infinite Atelier provides a limited warranty that Software will be free from Defects. "Defect" means a material error in program logic attributable to Infinite Atelier that prevents the performance of a principal function of the Software resulting in critical disruption of the Customer's business operations. Customer's exclusive remedy and Infinite Atelier's sole obligation will be to correct or provide instructions for circumvention of any Defect reported to Infinite Atelier, provided, however, that: (i) Customer must report any Defects to Infinite Atelier promptly after discovery in accordance with such reporting procedures as Infinite Atelier may establish, and furnish Infinite Atelier with supporting documentation and details adequate to substantiate the report and assist Infinite Atelier in

the identification and detection of such Defect; and (ii) Infinite Atelier is able to reproduce the Defect on properly functioning equipment controlled by Infinite Atelier. This limited warranty is contingent upon: (i) use of the Software in accordance with this License Agreement; and (ii) no interference from applications, derivative works, or configurations provided by Customer or third parties.

4.3 ALL OTHER WARRANTIES EXCLUDED. INFINITE ATELIER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. INFINITE ATELIER DOES NOT WARRANT THAT THE OPERATION OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. SOFTWARE PROVIDED SUBJECT TO AN EVALUATION OR ACADEMIC LICENSE IS PROVIDED "AS IS," WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED.

INFINITE ATELIER MAKES NO WARRANTIES WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR COMPONENTS OF THE SOFTWARE EVEN IF SUCH THIRD PARTY SOFTWARE IS INTEGRATED OR USED IN CONJUNCTION WITH THE SOFTWARE.

INFINITE ATELIER WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF INFINITE ATELIER.

4.4 LIMITATION OF REMEDIES. NEITHER INFINITE ATELIER NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS OR DATA), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. IN ANY EVENT, INFINITE ATELIER'S LIABILITY SHALL BE LIMITED TO THE AMOUNT THE CUSTOMER PAID PURSUANT TO THE MOST RECENT INVOICE. THIS SECTION SHALL SUPERCEDE ANY PROVISION OF THIS AGREEMENT THAT IS INCONSISTENT WITH IT.

4.5 Services. Customer shall be entitled to receive up to 5 hours of customer service per 12-month license period, with the content of such services, timing and execution to be determined by mutual agreement. Services in excess of such allocation shall be subject to availability of Infinite Atelier personnel and shall be paid by the Customer at the rate then in effect for Infinite Atelier.

4.6 Indemnity. Customer agrees to hold harmless and indemnify Infinite Atelier and its owners, subsidiaries, affiliates, officers, agents, and employees from and against any claim, suit or action arising from or in any way related to Customer's use of the Software or Customer's violation of this Agreement, including any liability or expense arising from all claims, losses, damages, suits, judgments, litigation costs and attorneys' fees, of every kind and nature.

5. **Payment.** Customer shall pay all fees associated with the Software licensed in accordance with the processes set forth on Infinite Atelier's website or otherwise communicated by Infinite Atelier, without setoff, counterclaim or other defense. All payments shall be made in US Dollars, in advance prior to delivering an activation key for the Software. Customer shall be responsible for all taxes, withholdings, duties and levies arising from all orders, including, but not limited to, sales and use taxes; excise taxes; value added taxes; consumption taxes; or goods and services taxes (excluding taxes based on the net income of Infinite Atelier). Fees for any training or professional services are payable in accordance with Infinite Atelier's billing and payment procedures then in place.

5.1 **REFUND POLICY:** Customer may request a refund for any reason within fourteen (14) calendar days from the date of purchase ("Refund Period"). To request a refund, Customer must submit a written request to the party from whom Customer purchased the Software (whether Infinite Atelier, a merchant of record, authorized reseller, or other sales channel). The written refund request must include: (i) Customer's full name and contact information; (ii) proof of purchase, including order number or transaction ID; (iii) date of purchase; (iv) the Software product name and version purchased; and (v) a statement requesting a refund. Refund requests must be received within the Refund Period. Upon approval of a valid refund request, Customer's license to use the Software shall immediately terminate, and Customer must comply with all obligations set forth in Section 6.1 regarding return and deletion of the Software. **NO REFUNDS WILL BE GIVEN FOR ANY REASON OUTSIDE OF THE REFUND PERIOD.**

Upon receipt of a valid refund request submitted within the Refund Period, Infinite Atelier (or the applicable merchant of record or authorized reseller) will reimburse to Customer all payments received from Customer for the Software. Infinite Atelier will make the reimbursement without undue delay, and not later than fourteen (14) calendar days after the day on which the valid refund request is received. Infinite Atelier will make the reimbursement using the same means of payment as Customer used for the initial transaction, and Customer will not incur any fees as a result of the reimbursement.

6. **Term and Termination.**

6.1 **Term.** The license granted under this Agreement commences on the date the Customer receives an activation code for the Software and expires at the end of the last year or month for which the Customer has paid licensee fees. Upon termination, Customer's right to use Software shall end and Customer shall promptly: (i) return to Infinite Atelier all Software and Proprietary Information and all copies thereof; (ii) erase all Software from the memory of Customer's computer(s) and storage devices or render it non-readable; and (iii) certify in writing that Customer has satisfied its obligations under this Section.

6.2 **Termination.** Either party may terminate a license or this Agreement upon 30 days' written notice if the other party breaches its obligations under this Agreement and fails to cure the breach by the end of such notice period. **NO REFUND SHALL BE DUE UPON TERMINATION FOR ANY REASON, EXCEPT AS PROVIDED IN SECTION 5.1 (REFUND POLICY) REGARDING REFUNDS REQUESTED WITHIN THE REFUND PERIOD.**

6.3 **Survival of Terms.** Sections 3 (Proprietary Rights), 4 (Warranty, Service, Limitations, and 13 (General) shall survive any termination or expiration of this Agreement.

7. General Terms.

7.1 **Compliance with Laws.** Customer is responsible for complying with all applicable laws, regulations and codes of practice in Customer's use of the Software and use of any results derived from the Software.

7.2 **Compliance with Export Control.** Customer is responsible for complying with all applicable export and import regulations and obtaining all necessary export and import licenses or permits for the direct or indirect export or import of any Software. Customer shall not export, re-export, transfer, divert or disclose any Software, or any direct product thereof, to any destination restricted or prohibited by U.S. export control laws, or to any national or resident thereof. Customer's obligations under this paragraph will survive the termination of this Agreement for any reason. Customer will defend, indemnify and hold Infinite Atelier harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this paragraph. Customer's failure to comply with any term of this paragraph will constitute a material breach of this Agreement and entitle Infinite Atelier to immediately terminate this Agreement in addition to any other remedy available at law or equity.

7.3 **Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Infinite Atelier may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of the Software or of all or substantially all of Infinite Atelier's assets or voting securities. Customer may not assign or transfer this Agreement, in whole or in part, without Infinite Atelier's written consent. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

7.4 **Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

7.5 **Amendments; Waivers.** No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

7.6 **Notices.** Any notice or report hereunder shall be in writing. If to Infinite Atelier, such notice or report shall be sent to Infinite Atelier at the address on its most recent. If to Customer, such notice or report shall be sent to the address Customer provided upon placing Customer's order. Notices and reports shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered U.S. mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service.

7.7 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. No provision of any Purchase Order or in any other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document issued by a party hereto relating to this Agreement shall be for administrative purposes only and shall have no legal effect. The section headings in this Agreement are for convenience only and have no legal or contractual effect. The official version of this Agreement can be found online at <http://www.infiniteatelier.com>.

7.8 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

7.9 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license or changes in law or regulations by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure event at reasonable cost.

7.10 Government End-Users. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes. The Software was developed fully at private expense. All other use is prohibited.

7.11 Governing Law. Regardless of where any action may be brought, the validity and performance of this Agreement will be governed by the laws of the State of Vermont, U.S., without regard to its rules on conflicts of law. Customer hereby agrees to submit to the exclusive jurisdiction of the state and federal courts in and of the State of Vermont.