



MAADS-VIPER Software License

Version 2.0+

MAADS-HPDE Software License

Version 5.0+

December 2020

<http://www.otics.ca/maadsweb/maads-viper/license/Software-License-VIPER.pdf>

TERMS AND CONDITIONS FOR USE, REPRODUCTION, AND DISTRIBUTION

BACKGROUND:

The Vendor wishes to license computer software to the Licensee and the Licensee desires to purchase the software license under the terms and conditions stated below.

IN CONSIDERATION OF the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

LICENCE

1. Under this Agreement the Vendor grants to the Licensee a non-exclusive and non-transferable license (the "License") to use MAADS-VIPER or MAADS-HPDE (the "Software").

2. Definitions:

- a. "Associated Documentation" means the user manuals and on-line documentation, which are provided by the Vendor from time to time to assist the Licensee to understand or use the Software, Software Versions, any Enhancement, Customisation or Update.
- b. "Customisation" means an extension, addition or further development of an existing feature or capability of the Software, or the creation of a new capability or feature of the Software or any component thereof which is requested by the Licensee for its own specific use of the

Software or which relates to the manner in which the Licensee wishes to integrate the Software with any other software or any of its other business processes or which the Licensee requires to be developed in advance of the time at which the Vendor would otherwise release that feature or capability in accordance with the Vendor's development program. Customisation of the Software will incur an Additional Charge.

- c. "Designated Computer Equipment" means the computer equipment at the Software Location on which the Software is to be installed.
- d. "Enhancement" means an extension, addition or further development of an existing feature or capability of the Software, or the creation of a new capability or feature of the Software or any component thereof which is released by the Vendor to all of its customers.
- e. "Error" means an error in the Software which impairs or prevents the Software from operating in the manner described in the Associated Documentation.
- f. "Intellectual Property Rights" means patents, copyright, registered and unregistered design rights, registered and unregistered trademarks, rights in know-how and confidential information, data base rights and all other intellectual and industrial property rights (without limitation) and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights or any right to use any third party's intellectual property. Intellectual property rights include the appearance and user-interface of the Software;
- g. "Licensee Information" means information deposited, entered or added to the Software in a manner authorized by this Agreement by the Licensee or its employees, agents, contractors or other persons authorized to use the Software.
- h. "Software" includes the executable versions of MAADS-VIPER and executable versions of any and all Enhancements and Updates to the foregoing;
- i. "Territory" means the Province of Ontario;
- j. "Update" means any change to the Software intended to remedy Errors and may exclude any change to the Software encompassed by the term "Enhancement".

3. In consideration of the Licensee paying the Licence Fee (as defined in Schedule 1) to the Vendor pursuant to this Agreement, the Vendor hereby grants to the Licensee, and the Licensee accepts, a non-exclusive, non-transferable, and royalty-free licence to install on the Designated Computer Equipment up to the number of Licences of the Software set out in the Schedule 1 (as modified from time to time), in object-code form only, and to use the Software for the Purchaser's internal business only. The Licensee acknowledges and agrees that it will be responsible for providing the Designated Computer Equipment, network connectivity (including without limitation the web browser) and all equipment necessary to utilize the Software.
4. To the extent permissible under applicable law, the licence granted under this Agreement shall not include any rights to:
 - a. translate, decompile, disassemble or reverse engineer the Software;
 - b. modify or alter the Software or adapt the Software in any way or use it to create a derivative work;
 - c. merge the Software with any other software except as expressly set forth in the Associated Documentation;
 - d. permit or encourage any third party to do any of the foregoing.
5. Use of the Software is limited to the Designated Computer Equipment and the Software Location, unless the consent of the Vendor is first obtained to use the Software on alternative equipment and/or at an alternative Location. Such consent shall not be unreasonably withheld.
6. The Licensee will not remove any product identification, trademark, copyright or other proprietary rights notices from the Associated Documentation or other materials provided to it by the Vendor without written permission from the Vendor.
7. The rights and obligations of this Agreement are personal rights granted to the Licensee only. The Licensee may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. The Licensee may not make the Software available for use by any third party.

8. Failure to comply with any of the terms under the License section will be considered a material breach of this Agreement.

9. The License Fee are calculated without reference to Goods and Services Tax (GST) and/or Harmonized Sales Tax (HST) exigible pursuant to the *Excise Tax Act* (Canada) and similar provincial legislation. If the Vendor is required to collect GST/HST from the Licensee, or the Licensee is required to pay GST/HST to the Vendor in respect of the License, then such amounts shall be paid in addition to the License Fee.

LIMITATION OF LIABILITY

10. The Software is provided by the Vendor and accepted by the Licensee "as is". In no event will the Vendor, its directors, agents, or employees be liable for any damages resulting from the Licensee's inability or failure to carry on its business or for loss of profit, or indirect, incidental, special, consequential or exemplary damages, notwithstanding that notice may have been given of the possibility of such losses or damages. In any event, the Vendor's aggregate liability to the Licensee, whether arising in contract, tort, restitution or any other legal or equitable theory (inclusive of any obligation to indemnify the Licensee), shall be limited to the amount of the License Fee paid by the Licensee to the Vendor over the twenty-four months immediately preceding the date on which any such claim is made by the Licensee.

11. The Vendor makes no warranty expressed or implied regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for the specific requirements of the Licensee.

12. The Vendor does not warrant that use of the Software will be uninterrupted or error-free. The Licensee accepts that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.

WARRANTS AND REPRESENTATIONS

13. The Vendor warrants and represents that it is the copyright holder of the Software. The Vendor warrants and represents that granting the license to use this Software is not in violation of any other agreement, copyright or applicable statute.

ACCEPTANCE

14. All terms, conditions and obligations of this Agreement will be deemed to be accepted by the Licensee ("Acceptance") upon execution of this Agreement.

USER SUPPORT

15. The Licensee will be entitled to 6 Months of Email Support available 9:00 AM to 5:00 PM Eastern, Weekdays only, up to 40 hours per year at no additional cost. Additional support can be purchased in blocks of 20 hours, billed at \$175.00 per hour.

TERMINATION

16. This Agreement will be terminated and the License forfeited where the Licensee has failed to comply with any of the terms of this Agreement or is in breach of this Agreement. On termination of this Agreement for any reason, the Licensee will promptly destroy the Software or return the Software to the Vendor.

FORCE MAJEURE

17. The Vendor will be free of liability to the Licensee where the Vendor is prevented from executing its obligations under this Agreement in whole or in part due to Force Majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Vendor has taken any and all appropriate action to mitigate such an event.

GOVERNING LAW

18. The Parties to this Agreement submit to the jurisdiction of the courts of the Province of Ontario for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement. This Agreement will be enforced or construed according to the laws of the Province of Ontario.

MISCELLANEOUS

19. This Agreement does not create or imply any relationship in agency or partnership between the Vendor and the Licensee.

20. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.
21. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.
22. This Agreement contains the entire agreement between the parties. All understandings have been included in this Agreement. Representations which may have been made by any party to this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value in this Agreement. Only the written terms of this Agreement will bind the parties.
23. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the Vendor's successors and assigns.

SCHEDULE 1

SOFTWARE AND LICENCE

The provisions of this Schedule 1 apply and are incorporated into and form part of the Software Licence and Services Agreement.

Where the provisions of this Schedule 1 apply, if there is any inconsistency between the provisions of this Schedule 1 and the Software Licence and Services Agreement, the provisions of the Software Licence and Services Agreement will prevail to the extent of any inconsistency, unless this Schedule 1 specifies otherwise.

License Description	License Fee
MAADS-VIPER	TBA