

# END-USER LICENSE AGREEMENT

## ACCEPTANCE

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**Please read this document carefully.**

Before installing this product, you must accept the terms of this End-User License Agreement (hereinafter “EULA”). By installing or using the software or by clicking on “**I Accept**”, you (on behalf of yourself and the business entity you represent) agree that you have read all of the terms and conditions of this EULA and that you fully accept to be bound by these terms and conditions.

## DEFINITIONS

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**Distributor:** the commercial entity that has provided the *Product* to the *End User*. The *Distributor* may be a commercial distributor, but also directly the *Editor* and more frequently an instrument manufacturer that integrates the *Product* into their own offering.

**Documentation:** All operating guides, and other reference materials, including in particular the *Reference Manual*, the *Reference Guide*, *examples and tutorials*.

**Dongle:** small hardware device that must be plugged into a USB port on the PC in order to make it possible to run the *Product*. **Network dongles** are available for multiple licenses. Alternatively, the dongle can also be an equivalent piece of software.

**Editor:** the developer and editor of the *Product* is the company DIGITAL SURF SARL potentially including its subsidiaries, whose registered office is 16 rue Lavoisier, 25000 Besançon, FRANCE.

**Effective Date:** Date of the first launch of the product.

**End User:** Individual user(s) employed by the company or organization that bought the *Product* from the *Distributor*.

**Fixed-term License:** License to use the *Product* with a fixed expiry date, with a License term commencing on the *Effective Date* and ending as of the expiry of its subscription period.

**Licensee:** Any natural or legal person including but not limited to the *End user*, *User* or *Distributor*, to whom this license to *Use* the *Product* is granted, in order to use the *Product* upon acceptance of the terms and conditions of this EULA.

**On-line Help:** first level of documentation provided directly on the screen while using the *Product*, such as popup tooltips when a cursor is moved over a functional object or informative texts provided in dialog boxes in conjunction with functional controls.

**Product:** the analysis software that you are installing right now.

The product may be a generic software product supplied by DIGITAL SURF under DIGITAL SURF's brands such as MountainsMap™, MountainsSEM™, MountainsSPIP™ or MountainsLab™.

Alternatively, the Product may be a specific version adapted for an instrument in partnership with the instrument manufacturer; in such a case the Product is usually offered under the manufacturer's brand(s). In some cases, the Product may also be embedded in the manufacturer's software.

**Reference Guide:** set of electronic documentation pages available with the software when pressing F1.

**Reference Manual:** paper version of the *Reference Guide*.

**Services:** any services performed or provided by the *Product*, such as metrology results calculated by the *Product*, or any services performed or provided by the *Distributor* or the *Editor* in connection with the *Product*.

**Update:** replaces a version of the software by a more recent equivalent version (i.e. same level, same options). A change in functionality may however occur.

**Upgrade:** increases the level of an installed *Product* or its number of *Optional Modules*. An upgrade may be within the same version number or alternatively it may require a simultaneous update.

**Use:** To install, run or use the *Product*, or the installation, running or use of the *Product*

**User:** either the *End User* of the *Product* or an employee of the *Distributor*, for example a Sales Engineer or Application Engineer. Also referred to as “You” in this document.

**User Interface:** set of visual elements of the *Product* that includes, in particular, the Document, Ribbon bar, Icons, Dialog boxes and Panels.

Supplementary terms are defined further in this agreement. For greater ease of reading, the terms defined specifically by this agreement are shown in ***Bold Italics*** at the place they are defined, and shown in simple *Italics* elsewhere.

## LICENSE GRANT

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The *Editor* hereby grants the *User* a non-assignable, non-transferable, non-exclusive limited license to install and use the *Product* in object code form solely and its *Documentation*, under the terms and conditions of this EULA.

## DISTRIBUTION AGREEMENT

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The *Editor* has granted some *Distributors* the right to use, market, distribute licenses and support the *Product* as the analysis software delivered with their instruments.

In such cases, this does not imply any copyright transfer to the *Distributor* and all provisions below relating to intellectual property are applicable to the *Distributor*. For convenience the *Distributor* may however be entitled to refer to the *Product* under its own customized name and to communicate about the *Product* as its own product.

The terms and conditions of this EULA apply to the *End user* regardless of the distribution channel of the *Product*.

## INSTALLATION

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The *User* can install the *Product* on any number of computers. The *Product* can be run if a dongle is plugged in (or visible on the network) or if the license is activated using an activation code.

The *User* shall ensure that the *Product* is installed on a computer that complies with the technical specifications stated by the *Editor* for the version and product level installed.

## SERIAL NUMBER OF THE LICENSE

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The *Product* is protected by either a USB dongle or a software code. In each case, a unique *Serial Number* identifies the license and represents a proof of license.

**DO NOT LOSE THE DONGLE.**

**PLEASE WRITE THE SERIAL NUMBER IN A SAFE PLACE. IT WILL BE NEEDED FOR ANY COMMUNICATION WITH THE DISTRIBUTOR.**

In case of a lost or stolen dongle, *Users* must provide official certification of loss in order to obtain a replacement. In case of a damaged dongle, *Users* must send the *Dongle* back before it can be replaced.

A *Serial Number* is private information bound to individual or multiple licenses. It should not be communicated to third parties.

## PRODUCT LEVEL

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The *Product* is usually available in different levels, corresponding to different instruments or applications. In some cases, *Users* can upgrade their *Product* to a higher level (see the *Upgrades* provisions).

## OPTIONAL MODULES

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Optional modules are available for purchase depending on the *Product*. These modules bring advanced features or application-oriented features. A description of these modules can be found in the *Reference Guide*.

*Optional modules* may be evaluated during a 30-day trial period.

Contact your *Distributor* for more information and to receive an activation code.

## MULTIPLE LICENSES

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**Floating multiple licenses** are available for the same site. In order to consider that computers belong to the same site they need to comply with the three following conditions:

- (1) they must be linked to the same local network and the same subnet,
- (2) they must be used by the same legal entity, and
- (3) they must be located at the same geographical place.

*Floating multiple licenses* can be installed at a unique geographical site and on a single network using a single network dongle. Access to the dongle through VPN or gateways is not permitted. *Floating Multiple Licenses* must have the same product definition, the same set of *Optional modules* and must be of the same version.

**Stand-alone multiple licenses** are regular individual licenses (one dongle per user) that were purchased at the same time or subsequently for use at a unique geographical site.

In both cases, *Multiple licenses* allow the installation of the software on any number of computers, but restrict the number of simultaneous users to the number of licenses purchased, the price depending on this number.

*Multiple licenses* benefit from special prices. Please contact your *Distributor*.

## FREE TRIAL LICENSES

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A free trial license may be granted to the *End User* for evaluation of the *Product* during a 30-day period. This 30-day period may be renewed at the *Editor's* sole discretion, and may be canceled at any time at its sole discretion.

Upon expiry of each 30-day period of the free trial license, the *Product* that is the subject of this trial license will be disabled. Upon free trial license expiry, the *End User* undertakes to remove the *Product* from any of the computers on which it has been installed and undertakes to comply with all other obligations and restrictions in this EULA.

This evaluation period shall be used to check the suitability of the *Product's* features and the *Product* compatibility both with instrument file formats and with the *End User's* hardware and software configuration. Any other use of the *Product* provided *via* a free trial license grant, especially business, commercial, production or research use is prohibited.

An *evaluation period* may or may not be offered by your *Distributor* depending on their own policy. Contact your *Distributor* for more information.

## DEMONSTRATION DONGLES

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For the purpose of sales promotion, the *Editor* provides the *Distributor* with **Demonstration Dongles**. They allow employees of the *Distributor*, in particular Sales Engineers and Application Engineers to demonstrate a particular *Product* level with a specified set of *Optional Modules*. *Demonstration Dongles* must be reactivated every 12 months.

The *Demonstration Dongles* shall be used by the *Distributor's* employees only, for internal use or sales promotion activities. *Demonstration Dongles* shall not be supplied (in particular they shall not be given, lent or rented) to any third party (in particular to the prospects or the *End User*), and shall not be used for paid services/activities.

Documents produced with a *Demonstration Dongle* have the message "For demonstration purposes only" written in the page footer. The *User* shall not try to hide or alter this message.

## VERSIONS AND UPDATES

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The software version is formalized by a three-digit system, e.g. version 8.0.9213

**Major version updates** correspond to a first digit change in the version number of the software (e.g. from version 7 to version 8). They bring major new features that usually include changes in the user interface and product definitions.

**Interim updates** correspond to a second digit change (for example from 8.0 to 8.1) and will bring some new features.

**Service packs** correspond to a third digit change (for example 8.0.6634 to 8.0.6754) and will bring bug fixes and minor improvements.

*Major* and *Interim* version updates are not free of charge. The *Serial Number* of the license is required for all paid *updates*.

Please contact your *Distributor* for more information about updates.

## UPGRADES

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*Upgrades* allow *Users* to access higher levels of functionality of the *Product*. Upgrades are not free of charge. Please contact your *Distributor* for more information. The *Serial Number* of the license is required for upgrades.

## LANGUAGES

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Unless otherwise specified in the *Product* description, the *Product* is available and installed in several languages as follows. The language can be changed from the *Preferences* in the *File* menu.

The **User Interface** is available in: English, French, German, Spanish, Italian, Polish, Brazilian Portuguese, Russian, Japanese, Simplified Chinese and Korean.

The **Reference Guide** is available in: English, French, German and Japanese. When not available in a given language, the reference guide is displayed in English. Except for the free trial Licenses the Reference Guide is always installed with the *Product*.

The **Reference Manual** is available in English, French, German and Japanese. It can be purchased separately.

The *Editor* reserves the right to change language availability at its discretion without prior notice.

Some translations may not be available for recently introduced features and will usually be made available in the following interim updates or service packs.

If you find any incorrect or mistaken translations, please report the error to your *Distributor* or to the *Editor*; this will help to improve the quality of future versions.

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*End Users*, *Distributors* or any third party may from time to time suggest enhancements to the *Product*, that may or may not be implemented by the *Editor*; they may also contribute to its translation, pass on information on file formats to assist with compatibility issues or help resolve problems; in all instances, unless specified in a specific cooperation agreement relating to, and restricted to, a particular dedicated module, any

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The *Product* includes several embedded libraries supplied by third parties, the license of which requires the following extra notices.

### Terms applying to OGRE Graphics Library:

The *Product* includes a third party graphics library under the following conditions:

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#### **Terms applying only to the Twist optional module:**

The *Product* optionally includes a software library related to "lead twist assessment of second generation" (forecast of oil leaks from surface geometry) developed and patented by the company Daimler AG – 70546 STUTTGART Germany. This library remains the intellectual property of the Daimler Company and the *Editor* is allowed to sell sublicenses of it within the *Product* under a specific license agreement signed between the Daimler Company and the *Editor*.

#### **Terms applying to the TBB Library:**

The *Product* embeds object code issued from the TBB library from Intel® (Threading Building Blocks, Intel® TBB) to optimize image processing using multi-core processors. The TBB is an Open Source code downloadable from the web site <http://threadingbuildingblocks.org> under the Apache 2.0 License. You may obtain a copy of the License at <http://www.apache.org/licenses/LICENSE-2.0>

#### **Terms applying to the PDF library:**

The *Product* embeds PDF generation code that is under the copyright of the company Two Pilots (<https://www.colorpilot.com>)

#### **Terms applying to Codejock:**

The *Product* embeds user interface software code that is supplied by the company Codejock under license. Such License terms can be found on Codejock software web site.

<http://www.codejock.com/products/licensefaq.asp>.

#### **Microsoft platform and user interface:**

The *Product* embeds intellectual property from Microsoft, in particular in terms of user interface design, that is licensed by Microsoft to the *Editor*, in conjunction with development tools developed by Microsoft and used by the *Editor* under license.

#### **Terms applying to the Intel® Math Kernel Library (Intel® MKL):**

The *Product* embeds Intel® Math Kernel Library (Intel® MKL) Copyright (c) 2018 Intel Corporation.

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#### **Terms applying to the Apache log4net™ library:**

The *Product* embeds the Apache log4net™ library to assist the output of log statements.

You may obtain a copy of the License at: <https://logging.apache.org/log4net/license.html>

#### Terms applying to the WebP library:

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#### Terms applying to the AutoMapper library:

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#### Terms applying to VIRIDIS color palette:

The product includes the color scale VIRIDIS to help color-blind users. The VIRIDIS color scale was created by Stéfan van der Walt and Nathaniel Smith of Berkeley Institute of Data Science. The VIRIDIS color scale is used under the CC0 license terms:

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#### Terms applying to CIVIDIS color palette:

The product embeds a CIVIDIS color scale to help color-blind users.

Authors: Chris Anderton, Jamie Nunez, and Ryan Renslow

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## COMPATIBILITY WITH INSTRUMENT FILE FORMATS

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Each version of the *Product* is compatible with a dedicated set of instrument file formats.

The availability of a file format in the *Product* does not imply necessarily that there is any special agreement between the *Editor* and the corresponding *Instrument Manufacturer*.

File formats are subject to change by *Instrument Manufacturers*. In some cases, a recent variant of a file format may not be compatible with a given version of the *Product*. While the *Editor* is keen to update the *Product* in its latest version, no guarantee can be given that it will be updated within a given time or that the updated version will be available to the *User*. Any update will follow the commercial terms defined in the "Versions and Updates" section.

## USE OF RESULTS PRODUCED

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Except in the case of free trial licenses, the *User* can use printouts, screen copies, numerical results, graphs and data produced by the *Product* for any purpose such as educational material, scientific publications, oral presentations, industrial or metrological reports, etc. without referring to the *Editor*.

*Users* are allowed to mention the name of the *Product* and its version, but not to copy or reproduce its *Documentation* (as stated in the Intellectual Property Rights clause).

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The **Mountains<sup>®</sup> Software Maintenance Plan** (hereinafter "*MSMP*") is included in the *Fixed-term license* at no additional charge.

*MSMP* is also freely included with the permanent license, but only for an initial 12-month period. Upon expiry of this 12-month period, *MSMP* may be renewed at the then-current price, as long as the *Editor* still offers such service and as long the current license concerned is maintained.

*MSMP* is not included by default in the case of an upgrade from version 7 or older to version 8 or newer, but it can be purchased for an additional fee.

A new *MSMP* can be put in place only for a *Product* of the current or previous major versions.

*MSMP* includes: (i) Technical support which will consist on reasonable telephone, E-mail or web-based support respecting the *Use of the Product* (ii) *Software Updates* as defined in the "Versions and Updates" provision above (iii) Discounted prices on metrology seminars and on printed *Reference Manual* (iv) Insurance services: free software license replacement in case of PC change, replacement of broken or stolen *Dongle*.

## FIXED-TERM LICENSE

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A *Fixed-term License* for Mountains® software is available for renewable 3 or 12 month periods.

The *Fixed-term License* will commence on the *Effective Date* and will end as of the *Expiry date* of its subscription period.

The *Fixed-Term License* is attached to one PC only.

To ensure uninterrupted service, the *Licensee* may renew their subscription period at the end of the initial period, for 3 or 12 months, failing which, the *Fixed-term License* will be disabled.

## TECHNICAL SUPPORT

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Bugs can be reported to the *Distributor* (via the *Distributor's* E-mail address) or to the *Editor* ([support@digitalsurf.fr](mailto:support@digitalsurf.fr))

Bug reports shall include the serial number, product definition, product version, the diagnostic file and a detailed explanation on how to reproduce the bug. Additional files (data files, documents) can be sent to help reproduce the bug.

The *Diagnostic file* can be found under the *Help* tab. It contains useful information for the *Editor's* technical support team and can speed up the process of solving the problem.

The *Editor* makes its best efforts to ensure the quality of the product. However, reporting a bug does not imply the right to receive a fixed version.

Fixed versions will be provided within the same major version, provided this major version is still maintained.

The *Licensee* is aware and accepts that as part of the *Editor's Product* improvement process, the *Editor* may obtain feedback from the *Product* regarding the hardware profile and operating system of the *User*, internal errors that may have occurred with respect to the *Product* and the functions of the *Product* that the *Licensee* has used.

## FUTURE RELEASES – PRODUCT ENHANCEMENT

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The *Editor* reserves the right to enhance, change or discontinue the *Product* without prior notice, although any such enhancement, change in, or discontinuance of, the *Product* shall not abrogate your right to continue using a previously licensed *Product* for the duration of the term.

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## LIMITATION OF LIABILITY

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Under no circumstances shall the *Distributor* or the *Editor* be liable for indemnifying direct or indirect immaterial damages such as loss of exploitation, loss of profit, commercial prejudice, etc., linked to use of the *Product* or *Services*.

*Users* shall validate all results before using the *Product* or the *Services* for any activity, in particular for activities that carry risks of any kind whatsoever, including, but not limited to, production, life science, defense or transportation. If any problem or error is detected, it shall, however, be reported without delay to the *Distributor* and to the *Editor*.

Although the *Product* was fully tested with the best practices, the *Editor* cannot guarantee that it is bug free.

## EXPORT RESTRICTIONS

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The *Licensee* must comply with all domestic and international export laws and regulations that apply to the *Product*.

## TERM

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Unless terminated earlier according to this agreement, especially according to termination provisions below, this EULA will continue perpetually in case of a perpetual license, and will end as of the expiry of the subscription period concerning the *Fixed-term License*.

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Upon any breach of the terms and conditions of this EULA , the *Editor* may immediately and without prior notice and without indemnity of any kind, terminate this EULA if the *User* fails to comply with any of its terms and conditions and the *User* shall cease all use of the software.

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When the *Product* is no longer used, the *User* may unbind himself from this EULA by destroying (recycling) the *Product's* materials (CD, dongle, *Documentation*) or returning them to the *Editor* or to the *Distributor*.

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## APPLICABLE LAW

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In the event of a dispute, and in the absence of an amiable settlement, both parties agree that this contract will be interpreted according to French Law by the Tribunal of Commerce in Besançon France.

## CONTACT

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Should you have any questions, please contact your *Distributor* or the *Editor* ([www.digitalsurf.com](http://www.digitalsurf.com))

**Thank you for reading this document.**

This document was last updated in May 2019.

END OF THE *END-USER LICENSE AGREEMENT*