

Terms of Service

CoresOnDemand.com Computer Rental Service from Phoenix Analysis & Design Technologies, Inc.

1. ACCEPTANCE OF TERMS

The CoresOnDemand.com services offered by Phoenix Analysis & Design Technologies, Inc. (PADT) to any qualifying United States firm (the "User") are subject to the following Terms of Service, and only the following Terms of Service. Any additional terms and conditions, such as those set forth on the User's purchase order shall not be applicable unless accepted in writing by PADT. In addition, both the User and PADT are subject to any changes to the rules or guidelines posted on the CoresOnDemand.com website. All such rules and guidelines, upon acceptance by User within thirty (30) days, are hereby incorporated by reference into the Terms of Service. A failure to accept the changes may be a cause for termination.

2. DESCRIPTION OF THE SERVICE PROVIDED

PADT provides the User with access to high performance computing hardware hosted by PADT at its facilities (the "Service"). The Service also includes access to open source or PADT owned or licensed software that is installed on PADT's hardware to which the user has access. An individual User may also run selected commercial software on the computing hardware provided it has the necessary valid license. The User may rent exclusive use of specifically designated computer nodes in one day increments, from midnight to midnight Mountain Standard Time, from PADT. The Service is only provided to a User that is accessing the Service from within the United States of America. PADT also charges specific fees for additional services that are provided by PADT to the User. The User must provide PADT a valid Purchase Order before access is granted to the Service. The User must pay for all Service including additional services that are specified in the accepted Purchase Order. The financial terms are NET30 unless otherwise agreed to by PADT before receipt of the Purchase Order. Failure to pay promptly for all Services and additional services shall be deemed a material breach of contract and may result in immediate termination of access to the Service.

3. ACCESS TO THE SERVICE

Access to the Service is only through the Internet. The User is assigned access to certain computer nodes, identified by their Internet Protocol (IP) address. The Service is available to the User during the duration of the rental period, twenty four hours a day, seven days a week except during announced and scheduled maintenance times or during access or system failures that are beyond PADT's control.

PADT limits which computer networks have access to the Service. Users must inform PADT as to which computer networks, via IP addresses, they wish to have access from and PADT will grant access.

4. ACCURATE CUSTOMER IDENTIFICATION AND CREDIT CHECKS

The User must provide accurate and up-to-date contact information. In addition, the User must provide and hereby warrants the accuracy of license information for any commercial software to be used with the Service, including customer numbers and any license files or license agreements.

If the User provides PADT with any information that is inaccurate, incomplete, or misleading and the User fails to correct it within ten (10) days, PADT has the right to immediately terminate the User's access to the Service.

5. USER ACCOUNT AND PASSWORD

The User will receive a password and account designation upon completion of registration. The User is responsible for maintaining the confidentiality of the password and account, and is fully responsible for all activities that occur under the User's password or account. The User acknowledges that it is responsible to (a) immediately notify PADT of any unauthorized use of the User's password or account or any other breach of security, and (b) ensure that the User exits from its account at the end of each session. PADT shall not be liable for any loss or damage arising from the User's failure to comply with this Section.

6. USAGE RULES

The User acknowledges that all information transferred to, created on, or calculated while using the Service shall be considered User Content and is the sole responsibility of the User. The User hereby warrants that it will comply with all the Usage Rules attached hereto as Exhibit A.

7. ACCESS GUARANTEE

PADT warrants that it is providing access to its Service which includes the use of high performance computer hardware and software. PADT's sole warranty is that the User shall have that access. If the User is unable to access, and successfully use, the Service and any additional services that it has contracted for or if a process fails to compute successfully; and the event was a result of a problem with the Service i.e., the hardware, network, or software provided by PADT, the User may apply for a refund of what it has paid for the time of the Service and for the additional rental service or services. The User must make the claim in writing within 30 days of the event. Any refund or credit is granted at the sole discretion of PADT.

8. CONFIDENTIALITY

PADT will treat all Content on the Service that is placed by User as confidential. PADT's access to information on the Service is limited to the PADT staff members who support the system or provide technical support to the User. PADT will not transfer any data from the Service unless authorized in writing by the User. Any User Content remaining on the Service after the completion of the User's rental period will be encrypted using industry standard methods.

All User Content shall be removed from the Service at the time of completion of the rental period for the Service. If requested, PADT shall perform a full Data Erasure in compliance with specified regulatory standards.

PADT shall not identify the User, the organization(s) the User works for, or the nature of the work the User is conducting on the Service unless required by software license agreements or local, state, federal, or international law.

The User agrees to treat all pricing information for the Service as confidential.

9. TERMINATING ACCESS TO THE SERVICE

PADT reserves the right, at its sole discretion, to terminate the User's access to the Service at any time, for any reason, without notice. If access is terminated because of a violation of Terms of Service, then PADT may delete all User Content. In all other cases, PADT will make a reasonable effort to return all User Content to the User.

10. RIGHT TO REFUSE SERVICE

PADT reserves the right to refuse service to any prospective User for any reason.

11. CHANGES TO THE SERVICE

The User agrees that PADT, at its sole discretion and at any time upon ten (10) days' notice, may change the Service or additional services being offered, the pricing structure, or access to the system, including the discontinuance of any or all Service including other additional services. The User may at its option immediately terminate this Agreement if the pricing structure is increased by PADT. The User further acknowledges that PADT shall not be liable to it or any third party as a result of any changes to the Service.

12. DISCLAIMER OF WARRANTIES

The User Expressly acknowledges the following:

- a) The Service is provided on an "as available" basis
- b) Storage of User Content on the Service is at the User's sole risk and no sensitive data should be stored on the Service.
- c) PADT does not warrant that:
 - i) the Service will be continuous, uninterrupted, or error free,
 - ii) the information generated on the Service, including simulation results, are accurate or reliable,
 - iii) any content that is moved from the Service to another computer system is done at the User's sole risk. Further, the User is solely responsible for any damage to any computer system, or loss of data, as a result of moving that content to any other Service or system, and
- d) No advice, recommendation, or information provided by any representative of PADT, through or from the system to the User, whether oral or written, shall create any warranty not expressly stated in this Agreement.

13. LIMITATION OF LIABILITY

The User expressly acknowledges that PADT shall not be liable for any, direct, indirect, incidental, special, consequential, or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data, or other intangible losses, resulting from:

- a) The use of the Service,
- b) The inability to use the Service,
- c) Unauthorized access to or alteration of the User's transmitted content or data,
- d) Statements or conduct of any third party about the Service, or,
- e) Any other matter related to the Service.

14. COMPLIANCE WITH APPLICABLE LAW

The User warrants that it shall comply with all laws and regulations applicable to the use of PADT's Service or applicable additional services.

15. EXPORT CONTROL

The User acknowledges that any computational product created on the Service will not be exported contrary to U.S. Export Administration Regulations or other government export control regulations. The User shall access and use the Services only in compliance with all U.S. and foreign export and re-export control laws and their implementing regulations, including but not limited to the U.S. Export Administration Regulations and International Traffic In Arms Regulations, where the terms "export" and "re-export" refer to any transfer or release of technology or software or direct products thereof to another country or to a national of another country by any means. The User acknowledges that it is not an individual or party identified on any U.S. or foreign government's export exclusion lists and warrants that the User will not transfer electronically any item or content to parties identified on U.S. or foreign government's export exclusion lists.

The User also warrants that it will not to use the Service for military, nuclear, missile, chemical or biological weaponry end uses in violation of U.S. export laws.

16. GOVERNING LAW

This Agreement shall be interpreted in accordance with the law of the State of Arizona, without regard to the rules or provisions governing conflicts of laws.

17. INDEMNITY

The User hereby agrees to indemnify and hold PADT, its, officers, agents, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of the content the User submits, posts to, or transmit through the Service, the User's use of the Service, the User's connection to the Service, the User's violation of this Agreement including the Usage Rules, or the User's violation of any rights of another.

18. ENTIRE AGREEMENT.

This Agreement is the final, complete, and exclusive agreement of the parties with respect to the subject matter of this Agreement and supersedes and merges all prior communications and understandings between the parties. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged.

Exhibit A: USAGE RULES

The User acknowledges that all information transferred to, created on, or calculated while using the Service shall be considered User Content and is the sole responsibility of the User. This includes, but is not limited to user provided or generated computer files, images, software, scripts, interactive sessions, and software licenses.

The user also agrees to abide by all applicable license agreements for User Content.

PADT shall not be liable for any User Content, including, but not limited to, loss or damage of any kind that is incurred as a result of the use of the User Content, errors or omissions in any User Content, loss or damage of user content while using the service or transmitting the User Content to or from the service.

Furthermore, the User agrees to not use the service for any of the following:

- a) Upload, store, execute, transmit, or calculate any Content that is unlawful, inappropriate, or any other material that PADT deems inappropriate or illegal or is illegal by law of the State of Arizona, the state from which the User is accessing the service, or the United States.
- b) Attempt to hide or obfuscate the origin of any User Content transmitted or created on the service.
- c) Upload, store, calculate, execute, or transmit any Content that the User does not have a right to create, view, or transmit under any law.
- d) Upload, store, calculate, execute, or transmit any Content that infringes any patent, trademark, trade secret, copyright or other intellectual property rights of another party.
- e) Upload, store, calculate, execute, or transmit and military, nuclear, missile, chemical or biological weaponry end uses in violation of U.S. export laws.
- f) Upload any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or network equipment.
- g) Disrupt, sabotage, or interfere with the computer network or other systems of the Service.
- h) Disobey or ignore any policies, procedures, requirements, or rules of any networks connected to the service.
- i) Intentionally or unintentionally violate any applicable local, state, national or international law.
- j) Attempt to access, or load software or utilities that provide access, from the Service to any other external computer network beyond networks authorized by PADT.
- k) Attempt to access the Service without a valid User authorization.
- l) Attempt to access directories or file systems that the User's assigned Identification does not have permission to access.
- m) Attempt to access computer nodes on the system that are not assigned to the User.
- n) Disregard or ignore any request from PADT to stop an activity or behavior that PADT determines is inappropriate.

Failure to follow any of these rules may result in immediate termination of access to the Service. If necessary, PADT will report the User's contact information and User Content to an enforcement agency.