

# Hypertherm Software

## Hypertherm Subscription Terms and Conditions for single-user

Effective Date: June 1, 2019

These terms and conditions are the Relationship Program Terms which govern Your Hypertherm Subscription for a single user (the "Subscription Agreement for single-user").

**"Single-user"** refers to a single individual user who is authorized to install and access benefits under, and in accordance with, this Subscription Agreement for single-user.

**Important Note: This Subscription Agreement for single-user relates to subscription for a Hypertherm desktop software product. Subscriptions for Hypertherm web services are covered by different subscription terms and conditions.**

### 1. DEFINITIONS

The following terms shall have the meanings set forth below. Capitalized terms used and not otherwise specifically defined in this Subscription Agreement for single-user shall have the meaning assigned to them in Your applicable Hypertherm License and Services Agreement.

**"Hypertherm"**: Hypertherm, Inc., a New Hampshire corporation, except that if, You subscribe to Your Subscription for single-user in (a) a country in Europe, Africa or the Middle East, "Hypertherm" means Hypertherm Europe B.V. or (b) in China, "Hypertherm" means Hypertherm (Shanghai) Trading Co. Ltd., or (c) Oceania or the Asia-Pacific region, "Hypertherm" means Hypertherm (S) Pte Ltd, or (d) a country in South America, "Hypertherm" means Hypertherm Brasil LTDA.

**"Hypertherm Account"**: the website located at <https://www.hypertherm.com/customer-support/software/knowledge-base/> or other designated Hypertherm location where You or Your Named User can access and/or reference Your account information and/or Your Benefits, or any successor or other websites or locations as may be designated by Hypertherm for Your Subscription for single-user.

**"Hypertherm License and Services Agreement"**: the standard software license agreement or license and services agreement, as applicable, between You and Hypertherm included with or as part of the download or install, or otherwise governing, a copy of a version of Hypertherm software granting You a license to Install and Access that copy of Hypertherm software.

**"Benefits" or "Entitlements"**: means those benefits described on or accessible from, and made available to You or Your Named User through, Hypertherm Account corresponding to the Subscription for single-user offering purchased by You. Benefits may include (amongst other things) updates and upgrades, certain support, training and other services, web services and other software products. Benefits may vary for different levels or types of Subscription for single-user.

**"Contract Manager"**: an individual Personnel designated by You who has the authority to accept on Your behalf, and to bind You to, these terms and conditions, and who will have the authority to designate Your Software Coordinators and Named Users, on Hypertherm Account, will receive Subscription for single-user renewal notices, and other communications related to Your Subscription for

single-user, and, where the Contract Manager has not designated a Software Coordinator, will receive certain Benefit availability notices.

**“Covered Software”**: the Hypertherm software program for which You have subscribed to a Subscription for single-user as listed on Your order confirmation or license identification, as applicable. Any supplemental software code (which may include modular additions or extensions to a version of Covered Software, hotfixes, executables, libraries, plug-ins, enhancements or other software functionality which supplements or enhances a version of Covered Software) which does not require separate Installation and cannot function independently of a version of Covered Software (to which that supplemental software code relates), provided to You or Your Named User as a Benefit of Your Subscription for single-user is deemed to be part of that version of Covered Software (to which that supplemental software code relates) unless otherwise specified by Hypertherm.

**“Customer Information Form”**: the form (whether written or electronic) which is either (1) completed by You and submitted to a reseller or to Hypertherm, or (2) completed by a reseller on Your behalf using information provided by You to that reseller and submitted to Hypertherm, in connection with Your order for a Subscription for single-user, and providing the information necessary to purchase a Subscription for single-user.

**“Effective Date”**: the date described in Section 5.1.

**“Log-On”** means the identification and authentication process by which a Named User uses their Hypertherm ID to gain access to Hypertherm Account and/or Access Benefits.

**“Named User”** is You or an individual Personnel authorized by You, in accordance with Hypertherm instructions specific to Your Subscription for single-user, to Install and Access Benefits. Unless otherwise authorized by Hypertherm in writing, each Named User must (i) be identified by a unique user id (“Hypertherm ID”) and (ii) be individuals, not groups or generic Log-Ons.

**“Software Coordinator”**: an individual Personnel designated by You or Your Contract Manager for administering particular Benefits. The Software Coordinator will receive certain Benefit availability notices and will be responsible for receiving shipment of any physical Benefits, if any, for the applicable group.

**“Switched Subscription”** means a Subscription for single-user to a Hypertherm software program (a) which is a successor to or substitute for Your Subscription for single-user to the Covered Software, (b) is provided to You, the party who has acquired this Subscription for single-user to Covered Software, and (c) for which Hypertherm generally charges a separate fee or makes available solely to customers under a Relationship Program. Whether a Subscription for single-user to an Hypertherm software program is a Switched Subscription may be specified on Your order confirmation or license identification. Whether a Subscription for a single-user to a particular Hypertherm software program is a Switched Subscription, and whether You have met the qualifications to purchase a particular Switched Subscription, are determined by Hypertherm.

**“Subscription for single-user”**: means the Relationship Program offered generally by Hypertherm referred to as “Subscription for single-user” or “term licensing” program or plan, under which Hypertherm may provide (among other things) a limited term license to (a) version(s) of Covered Software and associated Benefits. Subscription for single-user offerings may be comprised of different

types of Benefits. Subscription for single-user Benefits may vary based on the related Covered Software and Territory.

**“Subscription for single-user Fee”:** the fee paid, or payable, by You for a Subscription for single-user.

**“Term”:** the time periods (initial and renewal) defined in Sections 3.2 and 5.1.

**“Territory”:** (a) the country, countries or jurisdiction(s) specified in the License Identification, or (b) if there is no such License Identification, or no country or jurisdiction is specified in the License Identification, the country in which You acquire a Subscription for single-user. If the License Identification specifies, or You acquire the Subscription for single-user in, a member country of the European Union or the European Free Trade Association, “Territory” means all the countries of the European Union and the European Free Trade Association.

**“You”:** the company or other legal entity on behalf of which a Subscription for single-user is acquired, if a Subscription for single-user is acquired on behalf of such an entity (e.g., by an employee, independent contractor, or other authorized representative), or if there is no such entity, the individual who acquires a Subscription for single-user for the individual’s own account. For clarification, “You” refers only to a single, specifically identified legal entity or individual, and does not include any subsidiary or affiliate of any such legal entity or individual or any other related person.

## **2. BENEFITS**

### **2.1 Benefits.**

2.1.1 During the Term, subject to Section 2.1.2 below You will be entitled to receive, and Hypertherm will provide You or Your Named User with, the Benefits specified and made available by Hypertherm in the Territory for the level or type of Subscription for single-user offering You have purchased.

2.1.2 **Benefits Terms.** Certain Benefits may include rights in addition to or different from those set forth in this Subscription Agreement for single-user.

2.1.2.1 Those Benefits are subject to the Hypertherm terms applicable therefor (“Benefits Terms”), which Benefits Terms are set forth on or accessible from Hypertherm Account.

2.1.2.2 You agree that if You or Your Named User request, accept, or make use of any Benefit, You will be bound by, and You agree that You shall ensure Your Named Users are bound by, the Benefits Terms applicable to that Benefit, as they may be modified from time to time by Hypertherm by notice in writing provided in accordance with this Subscription Agreement for single-user or in accordance with the applicable Benefits Terms (and such terms, as so modified from time to time, are a part of and incorporated by reference into this Subscription Agreement for single-user).

2.1.2.3 You acknowledge that Hypertherm may require a further acceptance of such Benefits Terms as a condition to using or accessing any particular Benefits.

2.1.2.4 You further acknowledge and agree that if You or Your Named User do not accept and agree to be bound by the Benefits Terms applicable to a particular Benefit, then You will not be entitled to receive, or to Install or Access that Benefit, even if Hypertherm has made that Benefit available in Your Hypertherm Account.

**2.2** Hypertherm reserves the right at its discretion to change any Benefits or to add any Benefits to, or remove any Benefits from, Your Subscription for single-user from time to time, without prior notification to You. HYPERTHERM DOES NOT GUARANTEE THAT IT WILL MAKE AVAILABLE, AND YOU ACKNOWLEDGE THAT YOU MAY NOT RECEIVE, ANY PARTICULAR BENEFIT DURING THE TERM OF YOUR SUBSCRIPTION FOR SINGLE-USER.

**2.3** You may not distribute, rent, loan, sell, sublicense or otherwise transfer or market any Benefit (including but not limited to, rights to Covered Software made available to You as a Benefit) to, or share any Benefit with, any other person or entity without Hypertherm's prior written consent. Benefits may only be Installed and/or Accessed and/or otherwise used by Named Users, and may not be shared between more than one individual.

#### **2.4 Named Users.**

2.4.1 Named Users must Log On using their Hypertherm ID to access Hypertherm Account and to Install and/or Access Benefits;

2.4.2 Each unique Hypertherm ID and associated rights and Benefits may only be used by the Named User identified by that Hypertherm ID, and may not be shared with any other individual;

2.4.3 If Your Subscription for single-user offering authorizes generic Log-Ons, the provisions of sections 2.5.1 and 2.5.2 shall not apply to Your Subscription for single-user. The generic Log-On must be used to Install and/or Access Benefits. Further, Your generic Log-On and associated rights and Benefits may only be used by one individual at a time, and may not be shared and/or used by any other individual simultaneously.

2.4.4 A Named User may access Hypertherm Account and/or Install and/or Access Benefits on multiple Computers, provided that a Named User may not be Logged On to Hypertherm Account or Accessing Benefits on more than three (3) Computers simultaneously;

2.4.5 You shall ensure Your Named Users are bound by, and comply with, the terms and conditions of this Subscription Agreement for single-user (as may be modified from time to time by Hypertherm by notice in writing as provided herein);

2.4.6; Named User license and other entitlement privileges may be reassigned from one individual Personnel to another individual Personnel. All Named User reassignments must be pursuant to Hypertherm's policy and process for reassignment, and shall be subject to Hypertherm timescales for processing such reassignments.

2.4.7; Notwithstanding anything else in this Subscription Agreement for single-user or in the applicable Hypertherm License and Services Agreement, all licenses made available to You or Your Named Users in connection with a Subscription for single-user will be "Fixed Term/Limited Duration/Rental License" License Type for use only by Named Users.

#### **2.5 Effect of Switched Subscriptions.**

2.5.1 If Hypertherm or a reseller provides You with a Switched Subscription, then 30 calendar days following commencement of the Switched Subscription the Benefits of this Subscription for single-user to the Covered Software will thereafter be deemed to be "Original Subscription Benefits" Except as set

forth in the Home Use Benefits Terms and the Previous Version Rights Benefits Terms all rights granted hereunder with respect to any Original Subscription Benefits will terminate 30 calendar days following commencement of Your Switched Subscription. 30 calendar days following commencement of the Switched Subscription, except as set forth in the Home Use Benefits Terms and the Previous Version Rights Benefits Terms, (a) You must immediately cease all use of any Original Subscription Benefits, and (b) You will no longer have the right to Access or otherwise use any such Original Subscription Benefits. At Hypertherm's request, where applicable You agree to Uninstall and destroy or return to Hypertherm or the reseller from which they were acquired all copies of the Original Subscription Benefits. Where so requested by Hypertherm, Hypertherm reserves the right to require You, where applicable, to show satisfactory proof that all copies of any Original Subscription Benefits have been Uninstalled and, if so requested by Hypertherm, destroyed or returned to Hypertherm or the reseller from which they were acquired.

2.5.2 For the purposes of this Agreement, the commencement date of a Switched Subscription will be the date as determined by Hypertherm in accordance with its policies for entering Your Switched Subscription into the Hypertherm systems.

**2.6** Hypertherm reserves the right, but shall have no obligation, at any time to verify that Named Users have been authorized by You and to restrict access to Benefits if, in Hypertherm's reasonable judgment, a Named User cannot be so verified. Further, You agree that Hypertherm has the right to require an audit (electronic or otherwise) of Your or Your Named Users' Installation, use and/or Access of any Benefits including Access to machine IDs, serial numbers and related information. As part of any such audit, Hypertherm or its authorized representative will have the additional right, on fifteen (15) days' prior notice to You, to inspect Your records, systems and facilities, including machine IDs, serial numbers and related information, to verify that the Installation, use of, and Access to any and all Benefits is in conformance with this Subscription Agreement for single-user and any applicable Benefits Terms. Additionally, within fifteen (15) days of such prior notice for audit, You will provide to Hypertherm all records and information requested by Hypertherm in order to verify that the Installation, use and/or Access of any and all Benefits is in conformance with this Subscription Agreement for single-user and any related Benefits Terms. You will provide full cooperation to enable any such audit. If Hypertherm determines that Your or Your Named Users' Installation, use of or Access to any Benefit is not in conformity with this Subscription Agreement for single-user and/or any related Benefits Terms, You will immediately take such steps as are necessary to bring Your or Your Named Users' Installation, use and/or Access into compliance with this Subscription Agreement for single-user and other applicable Benefits Terms, and pay the reasonable costs of the audit. In addition to such payment rights, Hypertherm reserves the right to seek any other remedies available at law or in equity, whether under this Subscription Agreement for single-user or otherwise.

### **3. PURCHASES; RENEWALS**

**3.1 Purchases.** When You purchase a Subscription for single-user, Hypertherm will provide You with instructions on how to access Subscription for single-user information and Benefits on Hypertherm Account.

**3.2 Renewals.** Prior to expiration of Your Subscription for single-user, if generally made available for sale by Hypertherm in Your Territory You may purchase a renewal of Your Subscription for single-user for an additional term ("Renewal Term") from a reseller or Hypertherm. If You have elected an

automatic renewal plan, each auto renewal will be a Renewal Term. Unless otherwise agreed by Hypertherm, if You do not purchase a renewal for Your Subscription for single-user prior to expiration of the Term or if You cancel Your automatic renewal, Your Subscription for single-user will automatically expire.

#### **4. DELIVERY**

Benefits which comprise software shall at Hypertherm's discretion be (a) available for download at Hypertherm Account, (b) shipped to You FCA (Incoterms 2010) Hypertherm's facilities to the address specified on Your Customer Information Form (or, if no Customer Information Form or address is provided, to any other address known or made available to Hypertherm by You or on Your behalf), or (c) shipped to You via an Hypertherm authorized third party. Hypertherm will notify You of availability of software Benefits and the delivery method, if applicable. If Hypertherm ships to You, it will make commercially reasonable efforts to deliver within thirty (30) days of its notice or, as applicable, Your request for physical shipment, but shall not be liable for any losses or expenses incurred by You as a result of late delivery or a delivery to an incorrect address. Additional fees may be payable by You for physical shipments.

#### **5. TERM AND TERMINATION**

**5.1 Effective Date; Term.** The Effective Date of Your Subscription for single-user will be the date as determined by Hypertherm in accordance with its policies for entering Your Subscription for single-user into the Hypertherm systems. Renewal Terms of Your Subscription for single-user shall commence on an appropriate anniversary of the Effective Date. The Initial Term of Your Subscription for single-user will continue for one (1) month, three (3) months (also known as "Quarterly") or one (1), two (2) or three (3) years from the Effective Date, depending on the length of term for which You qualify, select and purchase. Renewal Terms of Your Subscription for single-user will continue for one (1) month, three (3) months (also known as "Quarterly") or one (1), two (2) or three (3) years from the anniversary of the Effective Date immediately following the end of the Initial Term or the immediately preceding Renewal Term (as the case may be), depending on the length of Renewal Term which You select and purchase. Hypertherm will endeavor to confirm Your purchase within 48 hours after the Effective Date or relevant anniversary of the Effective Date (as the case may be).

**5.2 Termination.** Each of Hypertherm or You may terminate this Subscription Agreement for single-user, if the other party is in breach of this Subscription Agreement for single-user and fails to cure such breach within ten (10) days after written notice of the breach. In addition, Hypertherm may terminate or suspend Your Subscription for single-user, and/or other Hypertherm obligations or Your Benefits under this Subscription Agreement for single-user, if You fail to make a payment to Hypertherm or a reseller or otherwise fail to comply with the provisions of this Subscription Agreement for single-user or other terms relating to Your Subscription for single-user. Hypertherm may also terminate this Subscription Agreement for single-user if You become subject to bankruptcy proceedings, become insolvent, or make an arrangement with Your creditors. This Subscription Agreement for single-user will terminate automatically without further notice or action by Hypertherm if You go into liquidation or if You attempt to transfer this Subscription Agreement for single-user or any Benefit without the prior written consent of Hypertherm.

**5.3 Effect of Termination.** Upon termination or expiration of Your Subscription for single-user, this Subscription Agreement for single-user and all rights and Benefit entitlements granted hereunder will terminate, and You must, and You shall ensure that Your Named Users, cease all use of and/or access to all Benefits. Hypertherm reserves the right to require You to show satisfactory proof that all Benefits are no longer in use or being accessed.

## **6. LIMITATION OF LIABILITY; NO WARRANTIES**

**6.1 Limitation of Liability.** IN NO EVENT WILL HYPERTHERM BE LIABLE FOR FAILURE TO MANUFACTURE OR MAKE COMMERCIALY AVAILABLE ANY BENEFITS DURING THE TERM OF YOUR SUBSCRIPTION FOR SINGLE-USER. IN NO EVENT SHALL HYPERTHERM BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. IN NO EVENT WILL HYPERTHERM HAVE ANY LIABILITY (DIRECTLY OR INDIRECTLY) FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES; FOR LOSS OF PROFITS, USE, REVENUE, OR DATA; OR FOR BUSINESS INTERRUPTION (REGARDLESS OF THE LEGAL THEORY FOR SEEKING SUCH DAMAGES OR OTHER LIABILITY). IN ADDITION, THE LIABILITY OF HYPERTHERM ARISING OUT OF OR RELATING TO THIS SUBSCRIPTION AGREEMENT FOR SINGLE-USER WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY YOU TO HYPERTHERM OR THE RESELLER FOR THE SUBSCRIPTION FOR SINGLE-USER IN CONNECTION WITH WHICH THE CLAIM ARISES. THESE LIMITATIONS WILL APPLY EVEN IF HYPERTHERM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. YOU ACKNOWLEDGE THAT THE SUBSCRIPTION FOR SINGLE-USER FEE REFLECTS THIS ALLOCATION OF RISK AND THAT THE LIMITATION SET FORTH IN THIS SECTION IS AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES. These limitations shall be in addition to, and not in substitution for, the limitations of liability set out in any applicable Hypertherm License and Services Agreement.

**6.2 No Warranties.** SAVE AS SET OUT IN ANY APPLICABLE HYPERTHERM LICENSE AND SERVICES AGREEMENT OR APPLICABLE BENEFITS TERMS, TO THE MAXIMUM EXTENT PERMITTED BY LAW HYPERTHERM MAKES NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND CONCERNING YOUR SUBSCRIPTION FOR SINGLE-USER, OR ANY BENEFIT EITHER, EXPRESS OR IMPLIED BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY BE IMPLIED BY LAW WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED NOTWITHSTANDING A CONTRACTUAL RESTRICTION TO THE CONTRARY.

## **7. GENERAL**

**7.1 Governing Law and Jurisdiction.** This Subscription Agreement for single-user will be governed by and construed in accordance with the laws of (a) The Netherlands if You acquired Your Subscription for single-user in a country in Europe, Africa or the Middle East, (b) Singapore if You acquired Your Subscription for single-user in a country in Oceania or the Asia-Pacific region, or (c) China if You acquired Your Subscription for single-user in a country in China, or (d) Brasil if You acquired Your Subscription for single-user in a country in South America, or (e) the State of New Hampshire (and, to the extent controlling, the federal laws of the United States) if You acquired Your Subscription for single-user in a country in the Americas (including the Caribbean) or any other country not specified in this Section 7.1 (Governing Law and Jurisdiction). The laws of such jurisdictions shall govern without reference to the conflicts-of-laws rules thereof. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to (and are excluded from the laws

governing) this Subscription Agreement for single-user. In addition, each party agrees that any claim, action or dispute arising under or relating to this Subscription Agreement for single-user will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the Superior Court of the State of New Hampshire, County of Grafton, or the United States District Court for New Hampshire, except that if You have acquired Your Subscription for single-user in (a) a country in Europe, Africa or the Middle East, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of The Netherlands, or (b) a country in Oceania or the Asia-Pacific region, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of Singapore, or (c) in China, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of China, or (d) a country in South America, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of Brasil. Nothing in the foregoing will prevent Hypertherm from bringing an action for infringement of intellectual property rights in any country where such infringement is alleged to occur.

**7.2 Force Majeure.** Hypertherm will not be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from acts of God, supplier delay or other causes beyond Hypertherm's reasonable control.

**7.3 Assignment; Waiver; Subcontractors.** You may not assign this Subscription Agreement for single-user or any rights hereunder (whether by purchase of stock or assets, merger, change of control, operation of law, or otherwise) without Hypertherm's prior written consent, which may be withheld in Hypertherm's sole and absolute discretion, and any purported assignment by You will be void. In the context of any bankruptcy or similar proceeding, this Subscription Agreement for single-user is and will be treated as an executory contract of the type described by Section 365(c)(1) of Title 11 of the United States Code and may not be assigned without Hypertherm's prior written consent, which may be withheld in Hypertherm's sole and absolute discretion. You acknowledge and agree that Hypertherm may assign or sub-contract any of its rights or obligations under this Subscription Agreement for single-user, including, without limitation, delivering Benefits, provided that Hypertherm will remain subject to the obligations of Hypertherm under this Subscription for single-user Agreement. You also agree that Hypertherm's subcontractors may enforce (including taking actions for breach of) this Subscription Agreement for single-user. No term or provision of this Subscription Agreement for single-user will be considered waived, and no breach excused, unless such waiver is in writing signed on behalf of the party against which the waiver is asserted. No waiver (whether express or implied) will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach.

**7.4 United States Export Controls.** You acknowledge that all Benefits are subject to the export control laws and regulations of the United States ("U.S.") and You will abide by those laws and regulations. Under U.S. export control laws and regulations, those Benefits may not be downloaded, accessed, received or otherwise exported, re-exported, or transferred to restricted countries, to restricted end users or for restricted end uses. You represent, warrant and covenant that neither You nor Your Personnel nor Your Named Users (a) are located in, or a resident or a national of, a restricted country; (b) are on any of the U.S. government lists of restricted end users; and (c) will, unless otherwise authorized under U.S. export control regulations, not use any Benefits in any restricted end use, including, without limitation, design, analysis, simulation, estimation, testing, or other activities related to nuclear, chemical/biological weapons, rocket systems or unmanned air vehicles applications. You



understand that the requirements and restrictions of U.S. law as applicable to You may vary depending on the Benefits received and may change over time, and that, to determine the precise controls applicable to the Benefits, it is necessary to refer to the U.S. Export Administration Regulations and the U.S. Department of Treasury, Office of Foreign Assets Control Regulations.

**7.5 Entire Agreement; Severability.** This Subscription Agreement for single-user and any other terms referenced in this Subscription Agreement for single-user (such as any Hypertherm License and Services Agreement and Benefits Terms) constitute the entire agreement between the parties (and merge and supersede any prior or contemporaneous agreements, discussions, communications, representations, warranties, advertising or understandings) with respect to the subject matter hereof. The parties acknowledge that, in entering into this Subscription Agreement for single-user, they are not relying on any agreements, discussions, communications, representations, warranties, advertising or understandings other than as expressly set forth in this Subscription Agreement for single-user. You acknowledge and agree that Hypertherm may add to or change the terms of this Subscription Agreement for single-user or the Benefits Terms from time to time, provided that Hypertherm will provide written notice of the additions or changes before the additions or changes are effective as to You. Terms stipulated by You in any communication by You which purport to vary this Subscription Agreement for single-user or any Benefits Terms or such other terms will be void and of no effect unless agreed in a writing signed by an authorized representative of Hypertherm. Any other modifications to this Subscription Agreement for single-user will also be invalid unless agreed to in a writing signed by an authorized representative of Hypertherm. If a court of competent jurisdiction determines in a final non-appealable judgment that any provision of these terms and conditions is unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of these terms and conditions will remain in full force and effect.

**7.6 Notices.** Notices from Hypertherm shall be in writing and may be sent by electronic mail or posted to Hypertherm Account or Your Hypertherm account or any other method that Hypertherm reasonably determines will provide appropriate notice. You may not opt out of receiving such notices. Notices from You shall be in writing and may be sent by electronic mail to [LicenseCorrespondence@Hypertherm.com](mailto:LicenseCorrespondence@Hypertherm.com). Notices from Hypertherm to You shall be effective (i) in the case of notices by email when sent to the email address set out on Your Customer Information Form (or, if no Customer Information Form or email address is provided, to any other email address known or made available to Hypertherm by You or on Your behalf) or (ii) in the case of postings to Hypertherm Account or other methods deemed reasonable by Hypertherm, ten (10) Business Days after such notices are posted to Hypertherm Account or sent in the manner reasonably determined by Hypertherm. Notices from You to Hypertherm shall be effective when received by Hypertherm.

**7.7 Privacy and Use of Information.** You acknowledge and agree (on behalf of Yourself and Your Named Users) that You (and third parties acting on Your behalf) and Your Named Users may provide, and Hypertherm and its resellers (and third parties acting on behalf of Hypertherm and its resellers) may obtain, certain information and data with respect to You and Your Named Users (including, without limitation, personal information) and Your business in connection with this Subscription Agreement for single-user, including, without limitation, information and data provided to or obtained by Hypertherm and its resellers (or third parties acting on behalf of Hypertherm and its resellers) through the Customer Information Form and otherwise, in connection with ordering, registration, activation, updating, validating entitlement to, auditing, monitoring Installation of and Access to Benefits, and managing the

relationship with You and Your Named Users. You (on behalf of Yourself and Your Named Users) hereby consent to Hypertherm maintaining, using, storing and disclosing such information and data (including, without limitation, personal information, if any) in conformity with Hypertherm's policies on privacy and data protection, as such policies may be updated from time to time, including without limitation Hypertherm's Privacy Statement, as currently located at <https://www.hypertherm.com/policies/privacy/>. Without limitation to the generality of the foregoing, You acknowledge and agree that: (a) Hypertherm may from time to time prompt You (and third parties acting on Your behalf) and Your Named Users to provide express agreement to the terms of Hypertherm's Privacy Statement and/or express agreement to specific uses of information and data (including, without limitation, personal information); (b) Hypertherm may provide information and data, including, without limitation, information and data about You or Your Named Users' use of all/any Benefits, to resellers, Hypertherm affiliates and other third parties in connection with the provision, maintenance, administration or usage of Benefits or in connection with enforcement of any agreements relating to any Benefit; and (c) Hypertherm may make cross-border transfers of such information and data, including to jurisdictions with privacy or data protection laws that are less protective of Your or Your Named Users' information and data than the jurisdiction in which You or Your Named Users are resident or domiciled. You (on behalf of Yourself and Your Named Users) acknowledge and agree that such policies may be changed from time to time by Hypertherm and that, effective upon posting on Hypertherm's website or other written notice from Hypertherm, You and Your Named Users will be subject to such changes.

**7.8 Survival.** Sections 2.6, 6 and 7 of these terms and conditions shall survive termination of Your Subscription for single-user.

**7.9 Revised Terms and Conditions.** Hypertherm may revise this Subscription Agreement for single-user and/or any Benefits Terms at any time and will notify You of any such revision. Notification may occur via email, be posted on Hypertherm Account or may occur in any other manner deemed reasonable by Hypertherm. If You do not accept said revisions, You must notify Hypertherm in writing (in accordance with Section 7.6) within thirty (30) days of the date of Hypertherm's notification to You. If You do so notify Hypertherm, Your then existing Subscription for single-user and related Benefits will continue to be governed by the last Subscription Agreement for single-user and associated Benefits Terms that You accepted (including any deemed acceptances) until the end of Your then current Subscription for single-user Term (if You have paid all applicable fees for the entire Term), and at the end of such Term, Your Subscription for single-user shall expire and if You have not paid all applicable fees for the entire Term then Your Subscription for single-user will end at the end of the period for which You have paid the applicable fees. If You do not so notify Hypertherm, or if You place new orders for or renew Your Subscription for single-user or continue to pay Your Subscription for single-user Fees (if applicable), You will be deemed to have accepted such revisions for Your Subscription for single-user. Notwithstanding the foregoing, in the event Hypertherm revises this Subscription Agreement for single-user, You will not be entitled to any additional benefits or services offered thereunder absent the payment to Hypertherm or resellers of the appropriate fee related to said revision, if any.

**7.10 Language.** The English language version of this Subscription Agreement for single-user is legally binding in case of any inconsistencies between the English version and any translations. If You purchased Your Subscription for single-user in Canada, You agree to the following: The parties hereto confirm that it is their wish that this Subscription Agreement for single-user, as well as other documents

relating hereto, including notices, have been and shall be written in the English language only. Les parties ci-dessus confirment leur désir que cet accord ainsi que tous les documents, y compris tous avis qui s'y rattachent, soient rédigés en langue anglaise.