## Software License Agreement

### 1. Parties

1.1 **"Aerokube"**, **"Licensor"** or **"We"** means Aerokube Software OÜ, having its principal place of business at Harju maakond, Tallinn, Kesklinna linnaosa, Estonia pst 5-309B, 10143, Estonia, registered in the Commercial Register of Estonia, registry code: 14653208.

1.2 **"Customer"**, **"Licensee"** or **"You"** means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. For legal entities, "Customer" includes any entity which controls, is controlled by, or is under common control with Customer. For the purposes of this definition, "control" means one of the following:

* The power, directly or indirectly, to direct or manage such entity, whether by contract or otherwise.
* Ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

### 2. Definitions

2.1 **"Agreement"** means this License Agreement.

2.2 **"Product"** means any generally available Licensor’s software product identified by Licensor as a software development tool. For the avoidance of doubt, the Product is not produced to the specifications of Customer nor customized through modification or personalization, is intended for mass distribution, and no software code will be provided to Customer.

2.3 **"Cloud Platform"** means a third-party software and hardware product providing on-demand availability of computer system resources. For the purpose of clarity, example cloud platforms are: Amazon Web Services ([https://aws.amazon.com/)](https://aws.amazon.com/%29), Google Cloud Platform ([https://cloud.google.com/)](https://cloud.google.com/%29) and Microsoft Azure ([https://azure.microsoft.com/)](https://azure.microsoft.com/%29).

2.4 **"Supported Cloud Platform"** means a Cloud Platform where a copy of the Product can be run and listed on Aerokube website: <https://aerokube.com/moon/>.

2.5 **"Cloud Platform Region"** means a physical geographic location of computer system resources provided by Cloud Platform. A full list of locations is listed in Cloud Platform documentation.

2.6 **"Cloud Platform Fee"** means a Licensor’s payment to Cloud Platform for consumed computer system resources of periodic nature on a postpayment plan.

2.7 **"Product Installation"** means a copy of the Product running in a Supported Cloud Platform and maintained by Licensor.

2.3 **"User"** means any employee, independent contractor or other personnel obtaining access to the Product(s) from Customer.

2.8 **"Access Credentials"** means a combination of user name and password for obtaining access to the Product(s) from Customer.

2.9 **"Number of Concurrent Sessions"** means the maximum number of software testing processes being run using the Product in parallel. This can be for example browsers executing User’s tests. Number of Concurrent Sessions is mainly needed to limit Cloud Platform Fee and can be adjusted any time on Customer request.

2.10 **"Licensor Fee"** means a payment to Licensor for Product Installation maintenance.

2.11 **"Subscription Fee"** means a sum of Cloud Platform Fee and Licensor Fee.

2.12 **"Subscription"** means an arrangement for making use of the Product of periodic nature on a postpayment plan. For the purpose of clarity, Subscription includes the subscription term, Products provided to Customer, Supported Cloud Platform, Cloud Platform Region, Licensor Fee and payment schedules.

2.13 **"Product Evaluation"** means using the Product without a valid Subscription.

2.14 **"E-mail Support"** means a form of customer support provided by the Licensor. At the time of writing, the corresponding e-mail address is support@aerokube.com; should the address be changed, the new address will be referred to on the Licensor’s web site.

2.15 **"Instant Messaging Support"** means a form of customer support provided by the Licensor in Telegram (https://telegram.org/) messenger.

2.16 **"Affiliate"** means any entity belonging to the same group as the Licensor.

### 3. How this Agreement Works

3.1 **Entire Agreement.** This Agreement, including the Third-Party Software license terms, constitutes the entire agreement between the parties concerning its subject matter and supersedes any prior agreements between Customer and Licensor regarding Customer’s use of any Products. No purchase order, other ordering document or any handwritten or typewritten text which purports to modify or supplement the printed text of this Agreement or any schedule will add to or vary the terms of this Agreement unless signed by both Customer and Licensor.

3.2 **Reservation of Rights.** Aerokube reserves the right at any time to cease the support of the Product and to alter prices, features, specifications, capabilities, functions, terms of use, release dates, general availability or other characteristics of the Product.

3.3 **Opportunity to Review.** Customer hereby declares that Customer has had sufficient opportunity to review this Agreement, understand the content of all of its clauses, negotiate its terms, and seek independent professional legal advice in that respect before entering into it. Consequently, any statutory "form contract" ("adhesion contract") regulations shall not be applicable to this Agreement.

3.4 **Severability.** If a particular term of this Agreement is not enforceable, the unenforceability of that term will not affect any other terms of this Agreement.

3.5 **Headings.** Headings and titles are for convenience only and do not affect the interpretation of this Agreement.

3.6 **No Waiver.** Our failure to enforce or exercise any part of this Agreement is not a waiver of that section.

3.7 **Notice.** Aerokube may deliver any notice to Customer via electronic mail to an email address provided by Customer, registered mail, personal delivery or renowned express courier (such as DHL, FedEx or UPS). Any such notice will be deemed to be effective:

* On the day the notice is sent to Customer via email.
* Upon personal delivery.
* One (1) day after deposit with an express courier or five (5) days after deposit in the mail, whichever occurs first.

3.8 **Governing Law.** This Agreement will be governed by the laws of the Estonia, without reference to conflict of laws principles. Customer agrees that any litigation relating to this Agreement may only be brought in, and will be subject to the jurisdiction of, any competent court of the Estonia. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

3.9 **Force Majeure.** Except with respect to Customer’s payment obligations, 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 such party ("Force Majeure Event"), such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency. In the event of a Force Majeure Event that prevents one part from substantially performing its obligations hereunder for a period of ten (10) days or more, either party may terminate this Agreement on five (5) days written notice.

### 4. Grant of Rights

4.1 The Product include code and libraries licensed to Licensor by third parties, including open source software.

4.2 The Product is provided basing on the Number of Concurrent Sessions. If Customer complies with the terms of this Agreement, Customer has the rights stipulated hereunder for each Subscription that Customer acquires. Customer’s rights acquired in relation to the Product are limited to those necessary to enable Customer and its Users to effectively operate the Product(s). All other rights remain reserved to Licensor.

4.3 Unless the Subscription has expired or this Agreement is terminated in accordance with respective section, and subject to the terms and conditions specified herein, Licensor grants Customer a non-exclusive and non-transferable right to use each Product covered by the Subscription as stipulated below.

* 1. Customer **may**:
* For each Subscription have **one Product Installation**.
* For each Product Installation select **Supported Cloud Platform, Cloud Platform Region and Number of Concurrent Sessions.**
* For each Product Installation have one or several pairs of Access Credentials.

4.5 Customer **may not**:

* Rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, or transfer the Product.
* Provide access to the Product or the right to use the Product to a third party.
* Reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Product.
* Remove or obscure any proprietary or other notices contained in the Product.

4.6 The rights granted in this section are expressly contingent upon Customer not being in breach of this Agreement, including having paid in full the applicable Subscription fees for the preceding 12 months or longer without interruption.

4.7 Customer acknowledges that no ownership right is conveyed to Customer under this Agreement, irrespective of the use of terms such as "purchase" or "sale". Licensor has and retains all rights, title and interest, including all intellectual property rights, in and to the Products and any and all related or underlying technology, and any modifications or derivative works thereof, including without limitation as they may incorporate Feedback (as defined below).

4.8 This Agreement applies whether Customer purchases a Subscription directly from Licensor or through resellers. Resellers are not authorized to make any promises or commitments on Licensor behalf, and Customer understands and agrees that Licensor is not bound by any obligations to Customer other than as specified in this Agreement.

### 5. Access to Products

5.1 All deliveries under this Agreement will be electronic. Customer and its Users must have an Internet connection in order to receive any deliveries. For the avoidance of doubt, Customer is responsible for configuring and using the Products. Configuration instructions are made available on Licensor website at https://aerokube.com/moon/.

5.2 Customer enables full access to Product Installation by using Access Credentials provided by Aerokube.

5.3 Subject to the terms of this Agreement, Customer is granted a right to use the Product for evaluation purposes **up to 1 week**. Licensor reserves the right at any time to change Product Evaluation duration.

### 6. Fees

6.1 The Subscription term is **1 month** from Subscription Confirmation date.

6.2 The Subscription product is **Moon** – an automated testing solution. Detailed description is available on on Licensor website at <https://aerokube.com/moon/>.

6.3 The Subscription Number of Concurrent Sessions is **20**.

6.4 The Subscription Supported Cloud Platform is **Amazon Web Services** ([https://aws.amazon.com/)](https://aws.amazon.com/%29).

6.5 The Subscription Cloud Platform Region is **Europe (Frankfurt)** also referred as **eu-central-1**.

6.6 Product Installation address is https://example.cloud.aerokube.com/.

6.7 The Licensor Fee is calculated on a monthly basis as **twenty five percent (25%) of Cloud Platform Fee for previous month**.

6.8 The Subscription fees shall be paid in full, and any levies, duties and/or taxes imposed by Customer’s jurisdiction (including, but not limited to, value added tax, sales tax and withholding tax), shall be borne solely by Customer.

6.9 Customer may not deduct any amounts from fees payable to Licensor or the reseller, unless otherwise specified in the applicable terms of purchase.

6.10 All invoices, fees and payments shall be made in **Euro (€)**, unless otherwise mutually agreed.

6.11 Payment is due **thirty (30) days** after Customer’s receipt of the Licensor’s invoice.

### 7. Feedback

7.1 Customer has no obligation to provide Licensor with ideas, suggestions, or proposals ("Feedback").

7.2 If Customer or Users submit Feedback to Licensor, then Customer grants Licensor a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, or publicly perform the Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise.

### 8. LIMITED WARRANTY

ALL PRODUCTS ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES. USE OF THE PRODUCTS IS AT YOUR OWN RISK. AEROKUBE MAKES NO WARRANTY AS TO THEIR USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AEROKUBE, AND ITS SUPPLIERS (WHICH SHALL INCLUDE THE PROVIDERS OF THE THIRD PARTY SOFTWARE) AND RESELLERS, DISCLAIM ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE PRODUCTS, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION. AEROKUBE (AND ITS AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES) DOES NOT WARRANT:

* THAT THE PRODUCTS ARE ACCURATE, RELIABLE OR CORRECT
* THAT THE PRODUCTS WILL MEET YOUR REQUIREMENTS
* THAT THE PRODUCTS WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE
* THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED
* THAT THE PRODUCTS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS

ANY CONTENT OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PRODUCTS ARE DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD. NO WARRANTY OR LIABILITY AT ALL IS GIVEN TO PRODUCTS UNDER EVALUATION.

### 9. DISCLAIMER OF DAMAGES

9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL AEROKUBE (OR ITS AFFILIATES, AGENTS, DIRECTORS, OR EMPLOYEES), OR AEROKUBE LICENSORS, SUPPLIERS OR RESELLERS BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR:

1. ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE
2. ANY LOSS OR DAMAGES IN CONNECTION WITH TERMINATION OR SUSPENSION OF CUSTOMER’S ACCESS TO OUR PRODUCTS IN ACCORDANCE WITH THIS AGREEMENT
3. ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), INCLUDING THOSE:
	* RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FORESEEABLE
	* BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHER TORTIOUS ACTION
	* ARISING FROM ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER’S USE OF OR ACCESS TO THE PRODUCTS OR SUPPORT.

9.2 THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

9.3 THE TOTAL LIABILITY IN ANY MATTER ARISING OUT OF OR IN RELATION TO THIS AGREEMENT IS LIMITED TO ONE HUNDRED (100) US DOLLARS OR THE AGGREGATE AMOUNT PAID OR PAYABLE BY THE CUSTOMER FOR PRODUCTS DURING THE THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY, WHICHEVER IS GREATER. THIS LIMITATION WILL APPLY EVEN IF WE OR YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF LIABILITY EXCEEDING SUCH AMOUNT AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

### 10. Term and Termination

10.1 The term of this Agreement will commence upon acceptance of this Agreement by Customer as set forth in the preamble above, and will continue for each Product through the end of the applicable subscription period specified in the respective Subscription Confirmation. This Agreement will **automatically renew** with respect to each Product for a successive subscription term, unless terminated as set forth herein.

10.2 Customer may terminate this Agreement at any time by cancelling its Product subscription. If such termination occurs during a then-current subscription period, this Agreement will continue to be effective until the end of that subscription period. Such termination does not relieve Customer of the obligation to pay any outstanding subscription fees owed to Licensor, and no credits or refunds will be issued to Customer for prepaid subscription fees (except as specified in the Licensor Terms of Purchase, if applicable).

10.3 Licensor **may terminate** this agreement if:

* Customer has materially breached this Agreement and fails to cure such breach within thirty (30) days of written notice thereof.
* Customer fails to make the timely payment of subscription fees in accordance with "Fees" Section of this Agreement.
* Licensor is required to do so by law (for example, where the provision of the Product to Customer is, or becomes, unlawful).
* Licensor elects to discontinue providing the Product, in whole or in part.

10.4 Licensor will make reasonable efforts to **notify Customer** via email as follows:

* Thirty (30) days prior to termination of the Agreement when required to terminate by law or because of discontinued Product. In such events Customer will be entitled to a refund of the unused portion of prepaid subscription fees, if applicable.
* Three (3) days prior to termination of the Agreement in other cases. In such events Customer will not be entitled to any refund of the unused portion of prepaid subscription fees.

### 11. Temporary Suspension for Non-payment

11.1 Licensor reserves the right to suspend or limit Customer’s access to Aerokube Products if Customer fails to pay subscription fees on time.

11.2 If Licensor suspends or limits Customer’s access to Aerokube Products for non-payment according, Customer must pay all past due amounts in order to restore full access to Aerokube Products.

### 12. Export Regulations

Customer shall comply with all applicable laws and regulations with regards to economic sanctions, export controls, import regulations, and trade embargoes (all herein referred to as "Sanctions"), including those of the European Union and United States (specifically the Export Administration Regulations (EAR)). Customer declares that it is not a person targeted by Sanctions nor is it otherwise owned or controlled by or acting on behalf of any person targeted by Sanctions. Further, Customer warrants that it will not download or otherwise export or re-export the Product or any related technical data directly or indirectly to any person targeted by Sanctions or download or otherwise use the Product for any end-use prohibited or restricted by Sanctions.

### 13. Customer Support

13.1 Licensor provides Email Support as well as Instant Messaging Support. The response time will be reasonable, but no specific response time guarantees are given.

13.2 Customer may request additional paid support from Licensor which is subject of a supplementary individually negotiated Agreement between Customer and Licensor.

13.3 Any guarantees of support availability only apply to the latest version of Licensed Software available in Customer Subscription.

### 14. Customer Data

14.1 **Use of Name and Logo.** Customer agrees that Licensor may identify it as a customer of Aerokube and may refer to it by name, trade name and trademark, if applicable. Licensor may also briefly describe Customer’s business in Licensor marketing materials, on the Aerokube website and/or in public or legal documents. Customer hereby grants Licensor a worldwide, non-exclusive and royalty-free license to use Customer’s name and any of Customer’s trade names and trademarks solely pursuant to this marketing section. Notwithstanding anything to the contrary herein, Licensor acknowledges that in some cases Customer licenses and does not own marks or logos (for example, marks or logos of the Affiliates) and cannot permit Licensor to use such marks.

14.2 **Gathering of Usage Statistics.** Customer acknowledges and agrees that the Product may contain a feature that reports the usage statistics, diagnostics information and usage meta-information of the Product back to the Licensor. Customer may opt out of the gathering of usage statistics by turning off this feature in the Product settings.

**LICENSOR** **LICENSEE**

Aerokube Software OÜ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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