

**END USER CLICK-WRAP LIMITED SOFTWARE LICENSE AGREEMENT  
For Access and Use of the QUAIL Software**

1. **IMPORTANT NOTICE TO USERS:** This End User Click-Wrap Limited Software License to Use Agreement (“Agreement”), in an online electronic format, is a legal and binding license agreement between the California Department of Transportation (“Caltrans”), a California state agency, and you and your employer (also known as: User(s), External User(s), Third-Party User(s), or End User(s)). Hereinafter, you and your employer shall be collectively referred to as “Users.” This Agreement sets forth the terms and conditions for accessing, downloading, installing, and using the Caltrans QUAIL Software (the “QUAIL Software”) by Users in object code format only.
  - 1.1. **USERS AGREE TO BE BOUND: BY CLICKING ON THE “I ACCEPT THE TERMS OF THIS AGREEMENT” BUTTON BELOW, OR BY ACCESSING, DOWNLOADING, INSTALLING, OR USING THE QUAIL SOFTWARE, USERS AGREE TO ENTER INTO THIS AGREEMENT AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT IN AN ONLINE ELECTRONIC FORMAT.**
  - 1.2. **USERS DO NOT AGREE TO BE BOUND: BY CLICKING THE “CANCEL” BUTTON BELOW, USERS DO NOT AGREE TO ENTER INTO THIS AGREEMENT AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. USERS ARE NOT AUTHORIZED BY CALTRANS TO ACCESS, DOWNLOAD, INSTALL, OR USE THE QUAIL SOFTWARE UNLESS USERS AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT BY CLICKING ON THE “I ACCEPT THE TERMS OF THIS AGREEMENT” BUTTON BELOW.**
2. **QUAIL Software Description:** The QUAIL Software is a geotechnical engineering software developed by Caltrans Geotechnical Services, Division of Engineering Services. The QUAIL Software runs on Windows operating system and the object code file is in .xml database format to allow the transferring of data onto the Caltrans SQL server. The QUAIL Software facilitates the transfer of consistent digital data recordings of soil nails and ground anchors pullout tests, required by the Caltrans Standard Specifications and the project construction contract, to assist contractors and resident engineers in evaluating the recorded test results. The QUAIL Software contains certain features like requirements of consistent electronic entry of test; options for all load schedules required by Caltrans Standard Specifications, Caltrans Standard Plans and Caltrans Special Provisions; options for alternative load schedules required in contracts for construction on state highways for Caltrans or during the project construction phase; visual load test displays; and test results evaluations. The QUAIL Software is available through the Caltrans website for Users working on current state highway construction contract projects for Caltrans (“Caltrans Construction Contract”), that include Ground Anchors and Soil Nails project components requiring electronic entry of consistent test data of ground anchors or soil nails under the Caltrans Construction Contract Special Provisions section entitled, 46 Ground Anchors and Soil Nails §§46-1.01C – 46-1.01C (4) (Test Data), to access; download; install; and use in performance of their construction work.

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**TERMS AND CONDITIONS**

Legal authorization to electronically access, download, install and use the Caltrans QUAIL Software by Users is subject to the terms and conditions of this Agreement; and if this Agreement is considered an offer, acceptance is expressly limited to the following terms and conditions below:

- A. **Activate Authorized Use by Users:** Each User must request his or her own Activation Code through the prompted QUAIL Software activation procedure to electronically activate his or her authorized limited license to use the QUAIL Software. After carefully reading and understanding this Agreement, Users must Click on the “**I ACCEPT THE TERMS OF THIS AGREEMENT**” button below to obtain authorization by Caltrans to access, download, install, run, and use the QUAIL Software. If Users Click on the “**CANCEL**” button below, Users will not be authorized to access, download, run, install, or use the QUAIL Software. Users are required to keep their Activation Code confidential and shall not share, transfer, sublicense, sell, lend, or otherwise make it available to any other individual, colleague, employee, employer, or entity.
- B. **Limited License to Use Software:** Subject to Users carefully reading and understanding this Agreement and acknowledging to be bound by the terms and conditions of this Agreement by Clicking the “**I ACCEPT THE TERMS OF THIS AGREEMENT**” button, Caltrans grants Users a limited, non-exclusive, non-transferable, revocable, non-assignable, royalty-free license to access, download, install, run and use the QUAIL Software, in object code format and only on Users’ employment business premises in California. Users’ authorized use of the QUAIL Software is limited to the performance of the construction work in connection with the executed Caltrans Construction Contract, specifically the construction work related to the construction quality assurance tests of ground anchors and soil nails required under the Caltrans Construction Contract Special Provisions section entitled, 46 Ground Anchors and Soil Nails §§46-1.01C – 46-1.01C (4), and not for production or commercial purposes. The QUAIL Software is licensed to Users solely for said limited purpose and use, not sold, gifted, loaned, assigned, or transferred to Users.
- C. **Certification by User:** Users represent and certify that Users are prime contractors, subcontractors (at any tier), consultants, or current employees of prime contractors, subcontractors, or consultants under a current and executed Caltrans Construction Contract that include ground anchors and soil nails construction project components.
- D. **Authorized Installation and Limited Use:** Users may install and use the QUAIL Software only on Users’ single business computer used to request and obtain the Activation Code from Caltrans. Users’ single business computer must be under the direct operational control of Users’ employer. Users may not copy, use, install, or download the QUAIL Software on hosted, personal, outsourced, or any other business computer(s) or servers. Under no circumstances shall Users permit any third-party access or use of the QUAIL Software.
- E. **Ownership of Software:** Users acknowledge and agree that Caltrans owns and continues to retain all rights, title, and interest including, but not limited to, copyrights, trademarks, patents, trade secrets, or other intellectual property in and to the QUAIL Software (in

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both object and source code form); related software documentation; and to all copies (“QUAIL Software Package”), regardless of the form or media in or on which the original or other copies may subsequently exist. Users neither own nor acquire any claim, interest, or right of ownership to the QUAIL Software or the QUAIL Software Package under the terms and conditions of this Agreement, or to any related patents, copyrights, trademarks, trade secrets, or other intellectual property.

- F. **Copyright Protection**: The QUAIL Software, which includes the entire QUAIL Software Package, is the intellectual property of Caltrans and protected by a federal registered copyright with the United States Copyright Office and may be protected by other federal and state laws as well.
- G. **Restrictions on Use**: Users acknowledge and agree that Caltrans owns all intellectual property rights in and to the QUAIL Software (in object and source code forms) including the QUAIL Software Package; that no title, ownership or interest to the QUAIL Software is transferred, granted, gifted, sold, or assigned to Users in this Agreement; and that Users’ rights to access, download, install, run, and use the QUAIL Software are strictly limited by the terms and conditions of this Agreement. Users shall not: (i) sell, sublicense, loan, gift, market, provide, demonstrate, rent, lease, assign, share, publish, display, distribute, or transfer to any third-party any portion of the QUAIL Software or any copies; (ii) cause, aid, or permit reverse compilation, reverse engineering or reverse assembly of all or any portion of the QUAIL Software; (iii) modify, alter, copy, translate, disassemble, decompile or create derivative works based on the QUAIL Software or attempt to gain access to the source code of the QUAIL Software; (iv) use the QUAIL Software to provide services to third parties, either personal or commercial (i.e., in the operation of a service, commercial time-sharing or third-party training); or (v) permit any parent, subsidiaries, affiliated entities or third parties to use the QUAIL Software. Users further agree that the QUAIL Software will be used by Users in compliance with the limited rights granted in this Agreement.
- H. **Confidentiality of Software**: The QUAIL Software contains and embodies the confidential information, know-how and trade secrets of Caltrans (“Confidential Information”). Users shall not personally use or disclose such Confidential Information, except as allowed by the terms and conditions of this Agreement. Users shall not take any action to assist, facilitate, or encourage access to such Confidential Information by any third-party including, but not limited to, sharing the access link, passwords, activation codes, or other information used to access, download, install, or use the QUAIL Software, or provide access to its system or server containing the QUAIL Software and Confidential Information.
- I. **Equitable Remedy**: Users acknowledge that due to the unique nature of Caltrans’ Confidential Information contained in the QUAIL Software, Caltrans does not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of Caltrans’ Confidential Information and/or the QUAIL Software. In addition to any other equitable remedies that may be available by law under this Agreement or otherwise, Caltrans shall be entitled to obtain any injunctive relief that may be appropriate to prevent such unauthorized use or disclosure of Caltrans’ Confidential Information and/or the QUAIL Software.

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- J. **Disclaimer of Warranties:** The QUAIL Software is provided to Users “AS IS” and “WITH ALL FAULTS.” There are no warranties of any kind, express or implied, given or made with respect to the QUAIL Software. All representations and warranties are disclaimed, whether express or implied as to the fitness for a particular purpose, merchantability, accuracy, or standard of quality of the QUAIL Software, including any content contained therein. No warranty is made that use of the QUAIL Software will be uninterrupted, or that any errors or defects in the QUAIL Software will be corrected, or that the QUAIL Software will interoperate with Users’ system, or that the QUAIL Software’s functionality will meet Users’ requirements. No warranty is made regarding the results of use of the QUAIL Software, or that the QUAIL Software will accurately, consistently, or reliably evaluate soil nails or ground anchors pullout tests results; that it will accurately display load tests or test evaluation results; provide options for alternative load schedules; facilitate the transfer of consistent digital data recordings of soil nails and ground anchors pullout tests; assist contractors and resident engineers in evaluating the recorded test results, or any other information to be obtained from the use of the QUAIL Software to comply with any federal, state, industry standards, or Caltrans Standard Specifications, Standard Plans, or Special Provisions. No warranty is made that the QUAIL Software will accurately predict or test the safety or adequacy of soil nails or ground anchors, or other construction features. Engineering judgment must be used when using or applying the QUAIL Software to evaluate the construction quality assurance tests data and results entered. The QUAIL Software is not intended to be a substitute for engineering knowledge, experience, or judgment. Users acknowledge their responsibility to accurately input the required construction quality assurance test data and test results and adequately test before deployment of the QUAIL Software in a configuration which reasonably simulates Users’ planned environment.
- K. **Indemnity and Limitation of Liability:** In consideration of the royalty-free limited license to use the QUAIL Software, Users hereby indemnify, defend, release, discharge, and holds harmless Caltrans from and against any claims, loss, damages, or liability arising in connection with the use of the QUAIL Software or this Agreement including: (i) the availability, accuracy, damage or loss of data, software, hardware or other real, personal or intellectual property arising from or in connection with the use of the QUAIL Software; (ii) any defects, failures, or delays arising from or in connection with the use of the QUAIL Software; (iii) any claims, loss, damages, or liability based on contract; construction contract arbitration; or tort; (iv) any claims related to the current Caltrans Construction Contract including, but not limited to, project delays claims, labor claims, monetary claims, construction claims, project claims, additional time, subcontractors’ construction claims, equipment claims, overhead claims, claims relating to soil nails or ground anchor pullout tests, data, or test results; (v) any loss of revenue (direct or indirect) claims; loss of profits or any consequential loss (whether of an economic nature or not); (vi) any identity theft, fraud or other activity related to the login password or activation code; or (vii) any disruption or suspension of Users’ (as an individual or employee) or Users’ (as the employer) business. However, the above indemnity, defense, release, discharge and hold harmless shall not apply to any intentional and willful misconduct by Caltrans or any third-party copyright infringement claims relating to the QUAIL Software.

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- L. **Termination by Caltrans:** Caltrans may revoke and terminate this Agreement for its convenience upon providing Users with a 15-day written notice. In such event, Caltrans will deny access to the QUAIL Software, and Users must discontinue use of the QUAIL Software immediately. However, Users will continue to be bound by the terms and conditions in this Agreement.
- M. **Expiration of Use:** Users' use of the QUAIL Software will terminate on the expiration date listed on Users' Activation Code request. On such date, the QUAIL Software will be disabled by Caltrans. Effective immediately, Users will not be authorized to continue to use the QUAIL Software and must discontinue such use immediately.
- N. **Governing Law:** This Agreement shall be governed, construed, and interpreted exclusively by the laws of the State of California. In the event of dispute, Users shall submit to the exclusive jurisdiction and venue of the courts of California.
- O. **Entire Agreement:** Users and Caltrans agree that this Agreement, together with the Users' current Caltrans Construction Contract, is the complete and exclusive contractual understanding between the parties with respect to the use of the QUAIL Software.

**READ THIS AGREEMENT CAREFULLY. BY CLICKING THE “I  
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ELECTRONIC FORMAT AND TO BE BOUND BY ALL OF THE TERMS  
AND CONDITIONS OF THIS AGREEMENT.**

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**CANCEL**