



# License Agreement

# COMSOL Software License Agreement

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This Documentation and the Programs described herein are furnished under the COMSOL Software License Agreement ([www.comsol.com/comsol-license-agreement](http://www.comsol.com/comsol-license-agreement)) and may be used or copied only under the terms of the license agreement.

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## Contact Information

Visit the Contact COMSOL page at [www.comsol.com/contact](http://www.comsol.com/contact) to submit general inquiries, contact Technical Support, or search for an address and phone number. You can also visit the Worldwide Sales Offices page at [www.comsol.com/contact/offices](http://www.comsol.com/contact/offices) for address and contact information.

If you need to contact Support, an online request form is located at the COMSOL Access page at [www.comsol.com/support/case](http://www.comsol.com/support/case).

Other useful links include:

- Support Center: [www.comsol.com/support](http://www.comsol.com/support)
- Product Download: [www.comsol.com/product-download](http://www.comsol.com/product-download)
- Product Updates: [www.comsol.com/support/updates](http://www.comsol.com/support/updates)
- Discussion Forum: [www.comsol.com/community](http://www.comsol.com/community)
- Events: [www.comsol.com/events](http://www.comsol.com/events)
- COMSOL Video Gallery: [www.comsol.com/video](http://www.comsol.com/video)
- Support Knowledge Base: [www.comsol.com/support/knowledgebase](http://www.comsol.com/support/knowledgebase)

Part number: CM010005

# COMSOL Software License Agreement

CAREFULLY READ THE TERMS AND CONDITIONS BELOW AND IN ANY APPLICABLE ADDENDUM (HEREINAFTER, “TERMS AND CONDITIONS”) BEFORE INSTALLING OR USING THE PROGRAMS OR DOCUMENTATION. YOUR RIGHT TO USE ANY PROGRAMS AND DOCUMENTATION IS CONDITIONED ON ACCEPTANCE OF, AND COMPLIANCE WITH, THESE TERMS AND CONDITIONS. INSTALLING OR USING THE PROGRAMS MEANS YOU HAVE ACCEPTED THE TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS, RETURN THE PROGRAMS AND RELATED MATERIAL UNUSED TO YOUR VENDOR FOR A REFUND OR CEASE ANY AND ALL ATTEMPTS TO DOWNLOAD AND INSTALL THE PROGRAMS AND DELETE ANY MATERIAL DOWNLOADED.

- 1** **License Grant.** During the term of this License Agreement (“Agreement”), COMSOL AB and any subsidiaries or affiliates of COMSOL AB (“we”, “us”, “our”) grants to the licensee (“you”, “your”) a non-exclusive, non-transferable, limited license to install, run, use, operate, and perform (collectively “use”) the COMSOL software (“Programs”) and documentation with model examples therefor (“Documentation”) as provided herein. Certain third party programs (“Third Party Programs”) are sublicensed under different terms set by our licensors, as set forth in the about.txt file that is included with the Programs, or listed under your licensed version of the Programs on [www.comsol.com/legal/about/](http://www.comsol.com/legal/about/). Any terms contained or referenced in the about.txt file, or listed under your licensed version of the Programs on [www.comsol.com/legal/about/](http://www.comsol.com/legal/about/), for a particular Third Party Program shall take precedence for such Third Party Program to the extent of any conflict between such terms and these Terms and Conditions.
  - a** **Programs.** You may license a named single user license (“NSL”), a CPU-locked single user license (“CPU”), a floating network license (“FNL”), a server license (“CSL”), or a client license (“CCL”) version of the Programs under this Agreement. For an FNL or CSL license, your license rights are for the number of concurrent users set forth on our invoice or the purchase order we accept.
  - b** **Object Code.** The license granted herein applies only to the object code version of the Programs. Licensee shall have no rights whatsoever with respect to the source code for the Programs.
  - c** **Ownership.** All right, title and interest in and to the licensed Programs and Documentation, including without limitation, copyrights and trade secrets, are, and shall at all times remain, the exclusive property of us and/or our licensors, and you shall have no right, therein, except the expressly limited license rights granted herein.
  - d** **Non-transferable.** You may not sell, license, sublicense, rent, or distribute any Program or Documentation, or make it available for use on a “time sharing” basis, except that (i) each concurrent user’s rights to the CSL version of the Programs may, subject to the terms and conditions set forth in this Agreement, be sublicensed, in whole or in part, to one or more third parties, including on a time-share basis, for the sole purpose of hosting and running one or more Licensee Applications that require the Programs to run, and (ii) you may embed

the CSL version of the Programs in a hardware device in conjunction with Licensee Applications requiring the CSL version of the Programs to run for the sole purpose of hosting and running such Licensee Applications and you may sublicense end users of such hardware device to run the CSL version of the Programs solely for hosting and running such Licensee Applications in such hardware device. Notwithstanding the foregoing, any sublicensing and/or distribution of the CSL version of the Programs is conditioned upon the following:

(i) In no event shall a number of concurrent sessions of the Programs be run at a single time in excess of 4 sessions per authorized concurrent user.

(ii) Each sublicensee must accept this Agreement.

(iii) You shall not take any steps to disable or interfere in any way with the automatic delivery of this Agreement to sublicensees to whom you provide access to the Programs.

(iv) Any terms and conditions set by you or others for the use of Licensee Applications you make available for use in conjunction with the Programs shall not alter, amend, conflict with, or purport to terminate this Agreement.

(v) Any sublicensing and/or distribution of the Programs shall be conditioned on your compliance with the then-current version of our trademark guidelines, <http://www.comsol.com/trademarks>, when referring to trademarks of ours or of any third party in connection with such sublicensing and/or distribution.

(vi) You shall not sublicense or distribute the Programs other than as part of your authorized sublicensing or distribution of Licensee Applications for use with the Programs.

(vii) You consent to our provision of your identity and the terms of your sublicensing to our licensors.

Except as expressly set forth herein, you may transfer your rights hereunder only in accordance with Section 14.

**e Reservation of Rights.** You acknowledge that all rights with respect to the licensed Programs, whether now or hereafter existing, which are not expressly granted to you are reserved to us or our licensors, and any use of the Programs not expressly authorized by us herein shall be deemed a breach of these Terms and Conditions. Except as expressly set forth in the Licensee Application Addendum, you shall not modify or create any derivative, compilation, or collective work involving the Programs. You shall take appropriate action by instruction, agreement, or otherwise with any persons permitted access to the Programs, so as to enable you to satisfy all your obligations under the Terms and Conditions.

**f License Subject to Payment.** The license granted herein is contingent upon your timely and complete payment of all amounts due and payable to us.

**g Use.**

(i) If you have licensed the NSL version of the Programs, they may be installed and operated on up to four (4) individual computers, provided the Programs are only accessible to, and operated by, a single licensed user designated by us as the "Named User" for that license and provided that the Named User may

concurrently use the Programs on only two (2) of those computers at any given time. Any further installation of the Programs on another computer shall be conditioned upon proof to our satisfaction that the Programs were uninstalled from a computer on which the Programs were previously installed, provided, however, that the Programs may not be transferred to more than two (2) computers in any year. You may replace the named user for the license, on a temporary or permanent basis but no more than two (2) times a year, provided that only one licensed user is designated to us as the named user at any given time. The NSL version of the Programs may not be accessed or used over a network or remotely.

(ii) If you have licensed the CPU version of the Programs, a single individual may use one concurrent session of a Program on a single designated computer at any given time. You may replace the designated computer for the license, on a temporary or permanent basis but no more than two (2) times a year, provided that only one computer is designated to us at any given time. Any transfer of the Programs from one computer to another shall be conditioned upon proof to our satisfaction that the Programs were uninstalled from the first computer, provided, however, that the Programs may not be transferred to more than two (2) computers in any year. The CPU version of the Programs may not be accessed or used over a network or remotely.

(iii) If you have licensed the FNL version of the Programs, they may be installed in a central location on a single dedicated network server or on the server of a third party providing secure remote computing capacity through which the Programs are made accessible for your use. You may have as many sessions of a Program in use at any given time as you have licensed concurrent users. If the Programs have the ability to run as client and server on separate computers, the FNL version (and not the NSL or CPU versions) gives you the right to use the Programs as client and server on separate computers. If the Programs have the ability to perform cluster computing, the FNL version (and not the NSL or CPU versions) gives you the right to have the Programs perform cluster computing. With respect to network installation, the Programs may also be installed on individual computers, as long as the individual installations are controlled by the license manager on the network server. Any transfer of the license manager for the Programs from one computer to another shall be conditioned upon proof to our satisfaction that the license manager was uninstalled from the first computer. You may not provide access to the FNL version of the Programs to users located outside the territory in which the license manager server is installed unless you have contracted for wider use, except with respect to installation on the server of a third party providing secure remote computing capacity, in which case access to the Programs must be restricted to the territory in which you reside. For the purposes of this Agreement, all servers located in a member country of the North American Free Trade Agreement (“NAFTA”) shall be considered located in the same territory as those of the other NAFTA members.

(iv) If you have licensed the CSL version of the Programs, they may be installed on an individual computer or in a central location on a single dedicated network server or on the server of a third party providing secure remote computing capacity through which the Programs are made accessible for use permitted under this Agreement. You may have up to 4 sessions of a Program in use at any

given time for each licensed concurrent user. You may use the CSL version of the Programs to perform cluster computing. With respect to a network installation, the Programs may also be installed on individual computers, as long as the individual installations are controlled by the license manager on the network server. Any transfer of the license manager for the Programs from one computer to another shall be conditioned upon proof to our satisfaction that the license manager was uninstalled from the first computer. The CSL version of the Programs may be installed, accessed, and used worldwide, subject to the terms and conditions of this Agreement, including, without limitation, compliance with the restrictions set forth in Section 4, but the purchaser of the CSL license must reside in the same territory in which the CSL license was sold. The CSL license permits you to use the Programs for the sole purpose of hosting and running Licensee Applications. Your use of Licensee Applications must comply with all restrictions on Licensee Applications set forth in the Licensee Application Addendum and with any terms and conditions specified by the publisher of each Licensee Application. The CSL also allows you to distribute the client software licensed under the CCL to authorized users of your CSL installation for use under this Agreement.

(v) The CCL may be used to connect to an authorized CSL installation. The client software licensed under the CCL must be obtained from a source authorized by us. The client software licensed under the CCL may be either installed on an individual computer or accessed from a CSL installation (licensed by you or another party or provided by us) through a web browser. The CCL gives you the right to run Licensee Applications that are hosted by a CSL installation. Your use of Licensee Applications must comply with all restrictions on Licensee Applications set forth in the Licensee Application Addendum and with any terms and conditions specified by the publisher of each Licensee Application. The CCL also allows you to upload Licensee Applications to a CSL installation and perform administrative tasks where you have been granted privileges to do so by the licensee of the CSL installation.

(vi) If the NSL, CPU, and/or FNL versions of the Programs or the class kit option license (“CKL”) or academic server license (“ASL”) version has been licensed by an Institution at Academic Prices (as such terms are defined in the Academic Addendum to this Agreement), your use of such Programs will be subject to the additional Terms and Conditions in the applicable Addendum to this Agreement.

(vii) With respect to any of the foregoing licenses, you may use the Programs on multicore/multiprocessor computers.

(viii) You may make a backup copy of the Programs and Documentation as reasonably necessary to support the use of the Programs in accordance with this Agreement.

(ix) Except with respect to the CSL version of the Programs, you may use the Programs only for your internal operations within the territory for which we have issued the license. Unless you have contracted for a broader territory as reflected in a purchase order we accept or in our invoice, each country shall be a territory, except that all NAFTA countries shall be a single territory. For the purposes of this Agreement, “internal operations” means use of the Programs by your

employees and on-site independent contractors or those of your subsidiaries or parent company and for the performance of consulting or research for third parties who engage you as an employee or independent contractor.

(x) The fees for the license granted herein are determined based upon your installation and use of the Programs in the territory for which we have issued the license. We may charge you an additional fee for any installation or use of the Programs in any other territory.

(xi) As used herein, “uninstalled” means completely removing the Programs from a computer on which they were installed or otherwise rendering such Programs inaccessible such as by destroying a hard drive on which Programs were installed or recycling a hard drive on which Programs were installed.

- h** No Reverse Engineering. You shall not decompile, reverse engineer, disassemble, isolate, separate, or otherwise attempt to derive source code from any Program(s) or Documentation, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. All copies of Programs and Documentation shall contain all copyright and proprietary notices as in the original. You shall not remove, obscure, or alter copyright notices, trademark notices, or other proprietary rights notices affixed to or contained within the licensed Programs or Documentation.

Notwithstanding anything else set forth in these Terms and Conditions to the contrary, you may reverse engineer, disassemble, isolate, separate, and modify only those files specifically listed in the offer.txt file that is included with the Programs, or listed under your licensed version of the Programs on [www.comsol.com/legal/offer/](http://www.comsol.com/legal/offer/), as eligible for such activities. Upon request as set forth herein, for a period of three years following your acceptance of these Terms and Conditions, we will provide you with the source or object code needed to recreate any or all of only those files specifically listed in the offer.txt file that is included with the Programs, or listed under your licensed version of the Programs on [www.comsol.com/legal/offer/](http://www.comsol.com/legal/offer/), as eligible for such activities. All requests pursuant to this Paragraph shall be made in writing and addressed by first class mail to the address set forth in the offer.txt file. We may charge a fee for sending you the code to cover our cost of distribution.

If you are a licensee in the European Union:

You may decompile, disassemble or otherwise reverse engineer the Programs only where any such act is necessary to create an independent program which is interoperable with the Programs or with another program or to observe, study, or test the functioning of the Programs solely to understand the ideas and

principles which underlie any element of the Programs (“Permitted Objective”) and provided that:

(i) the information necessary to achieve the Permitted Objective has not already been made available or has not been provided by us within a reasonable time after a written request to provide such information;

(ii) the compilation, disassembly, reverse-engineering, etc., is confined to those parts of the Programs necessary to achieve the Permitted Objective;

(iii) the information gained is not used for anything other than the Permitted Objective and is not disclosed to any other person except as may be necessary to achieve the Permitted Objective; and

(iv) the information obtained is not used to create a program(s) substantially similar in its expression to any Program(s), including, but not limited to, expressions of the Programs in other computer languages, or for any other act restricted by copyright in the Programs.

**i** Authentication and Validation. We may use various technologies to authenticate and validate your use of the Programs and to process related information in our information systems.

**j** U.S. Government. If you are acquiring this license to the Programs on behalf of any unit or agency of the U.S. Government, the Government shall only have the rights for this Commercial Computer Software and Commercial Computer Software Documentation as set forth herein in accordance with the applicable Federal Acquisition Regulations for the acquisition of Commercial Computer Software and Commercial Computer Software Documentation. In particular, for units of the Department of Defense: the Government shall have only the rights specified in the license under which the Programs, as commercial computer software, and the Documentation, as commercial computer software documentation, were obtained, as set forth in subparagraph (a) of the Rights in Commercial Computer Software or Commercial Software Documentation Clause at DFARS 227.7202-3, therefore the rights set forth herein shall apply. For any other Government unit or agency: The Government shall have only the rights specified in this Agreement under which the Programs as commercial computer software and the Documentation as commercial computer software documentation were obtained, as set forth in FAR 12.212. When FAR clause 52.227-19 applies, the Government’s rights include those set forth in paragraph (b)(2) of that clause, except that under no condition does this license extend to the source code of the Programs or otherwise obligate us to modify the Programs or Documentation for the Government.

Where the Programs as commercial computer software and the Documentation as commercial computer software documentation are licensed to the Government under a contract that includes FAR clause 52.227-19 or similar, the following Notice is incorporated herein:

NOTICE—Notwithstanding this license agreement that may pertain to, or accompany the delivery of, this computer software (the Programs) and computer software documentation (the Documentation), the rights of the government regarding its use, reproduction, and disclosure are as set forth in clause



52.227-19(b)(2) of the Government Contract under which it was acquired.

If you are acquiring this license pursuant to work you are doing under a U.S. government contract, you agree that you will provide the government with the necessary disclosures, notices, and restricted rights legends, and take any other necessary steps, to ensure that the rights granted with respect to the Programs are no broader than as set forth herein.

**k** Trial Licenses. If you have been granted a license to a trial version of any Program, i.e., to test the Program without any payment obligation, you may not use the Program for any commercial or production use, i.e., you may use the Program only to test the functionality of the Program. Trial licenses shall be for the license type we specify and shall last for the length of time specified by us, in our sole discretion, and may be cancelled at any time by us, in our sole discretion. In the event we do not specify a license type for a trial license, the trial license shall be deemed to be for the NSL license type. Upon expiration of the trial period, all Programs that are the subject of that trial license shall automatically become disabled. Support shall be provided only for the length of time that the trial license is in effect, and there shall be no other maintenance services provided in connection with any trial licenses. We shall have no warranty obligations for trial licenses. With respect to trial licenses, this paragraph (k) shall prevail over any conflicting provisions in this Agreement.

**l** Protection and Confidentiality of Our Information. You acknowledge that the Programs contain trade secrets and other valuable and confidential information of ours and of licensors of information or materials to us, and you shall not act, or fail to act, in any way or manner to intentionally or negligently harm our or our licensors' rights in our or their respective intellectual property in the Programs and Documentation. The Programs, together with any other information learned in connection therewith that should reasonably be considered confidential under the circumstances, are "Confidential Information". You shall disclose Confidential Information of ours and our licensors only on a need-to-know basis to your employees; you may not disclose any Confidential Information of ours and our licensors to a third party; and you shall use all reasonable care to keep the Confidential Information of ours and our licensors confidential consistent with the grant of your licensed rights. In no event shall the obligations set forth in this Section 1(l) override any requirement imposed on any licensee using the Programs by or on behalf of any state or federal government within the U.S. by any public records, freedom of information, or similar law providing for public access to governmental records.

**m** Protection and Confidentiality of Your Information. If you wish to supply your own proprietary information for the purpose of obtaining maintenance and support pursuant to Paragraph 5 of this Agreement, you may do so by conspicuously marking any such information as "Confidential" and submitting such information solely through the web page:

<https://secure.comsol.com/support/confidential>.

All proprietary information marked and transmitted in the foregoing manner which derives actual or potential economic value from being kept confidential shall be considered "Confidential Information." For a period of three years

following the disclosure of any of your Confidential Information to us (to the extent the foregoing written document or documents describing such Confidential Information are delivered): we will disclose such Confidential Information only on a need-to-know basis to our employees; we will not disclose such Confidential Information to a third party; and we shall use all reasonable care to keep such Confidential Information confidential consistent with your disclosure of such information to us.

- n** Exceptions to Confidentiality. The confidentiality obligation set forth in Section I(m) shall not apply to any information or materials which (i) were in our possession before we received them from you; (ii) are or become publicly available through no fault of ours; (iii) are independently developed without reliance on the Confidential Information; (iv) are received from a third party with no duty of confidentiality to you; (v) are approved by you in writing for disclosure, or (vi) are made available by you to a third party without any restriction on disclosure. Furthermore, neither the obligations set forth in Section I(m) nor our receipt of your Confidential Information shall be construed to limit us from independently developing or acquiring products or technologies without the use of your Confidential Information, nor to work with persons or entities that have independently developed information or materials similar to such Confidential Information. You acknowledge that we may be actively engaged in technical development related to the subject matter of your Confidential Information. You covenant not to sue or bring any action, claim, or proceeding against us, our subsidiaries or affiliates, or any of our or their officers, directors, employees, or contractors, based in whole or in part on the use, copying, or other exploitation of any Residuals. “Residuals” means any and all Confidential Information in intangible form that may be retained in the unaided memory of a person having had access to that information, including ideas, concepts, know-how, or techniques that are not recognizable or traceable to a party. We shall have no obligation to limit or restrict the assignment of such persons or to pay royalties for the use of Residuals.
- o** Legal Proceedings/Government Investigations. We may provide any and all information provided to us to any party in response to a subpoena or to a judicial or administrative order requiring the production of such information or to any governmental authority in connection with the investigation and/or prosecution of any actual or potential crime. Notwithstanding the foregoing, we will undertake commercially reasonable measures to ensure that any production of your Confidential Information pursuant to this Section I(o) is done in a manner that ensures the confidentiality of such Confidential Information shall be protected and will undertake commercially reasonable measures to give you notice reasonably in advance of any production of your Confidential Information in response to a subpoena or judicial or administrative order.
- p** Submissions. To the extent you suggest any improvements to the Programs or suggest any new product or service offerings, including ideas, concepts, proposals, or other materials in connection therewith (collectively, “Submissions”): (i) you represent and warrant that, to the best of your knowledge, such Submissions do not infringe any intellectual property rights of any third party; (ii) you acknowledge that we may use such Submissions but are under no obligation to do so; (iii) you grant to us a non-exclusive, irrevocable,

world-wide license to reproduce, distribute, transmit, publicly display, publicly perform, modify, translate, make derivative works based on, manufacture, make, market, sell, offer to sell and/or otherwise use such Submissions and derivative works based thereon, in whole or in part, including, without limitation, by incorporating such Submissions, in whole or in part, within our Programs and/or other programs, and occurring in or through any media now existing or existing at any time in the future, and to grant sublicenses to engage in the foregoing activities; (iv) you waive any right or claim to additional consideration for such Submissions beyond our review of your Submissions and the rights you receive under the Terms and Conditions (including any claim for payment or other compensation); and (v) you waive any right or claim to attribution in connection with any use we may make of such Submissions. To the extent we are not independently developing ideas, concepts, proposals, or other materials similar to the Submission(s), we may contact you regarding any Submissions for which we may want to consider seeking patent rights.

- q** Future Releases. We reserve the right to change or discontinue any or all of the Programs without prior notice, although any such change in, or discontinuance of, a Program shall not abrogate your right to continue using a previously licensed Program for the duration of the term.
- 2** License Term. Unless terminated earlier according to the Terms and Conditions, this Agreement shall continue annually, for a term, or perpetually, as identified in the purchase order accepted by us or our invoice. Term licenses will end after their term, unless the then-current term license fee has been previously remitted to us. You shall have the right to use Programs licensed under a perpetual license indefinitely, subject to the termination as well as maintenance and support provisions of this Agreement.
- 3** Delivery. We may deliver the Programs and Documentation to you in archival form on physical computer readable media or over the Internet with installation materials which specify the licensed Programs. You shall be responsible for all use of your installation materials, authorized or not, and you shall not disclose the archive installation materials or allow them to be used except for use as expressly permitted herein.
- 4** Compliance with Export Laws. The Programs are subject to U.S. and United Kingdom export control laws or other (U.S., U.K., and non-U.S.) governmental export and import laws and regulations (“Export Laws”). Notwithstanding any other term of this Agreement or any other agreement, neither you nor any third party may exercise any of your rights under this Agreement in violation of any Export Law, nor may this Agreement be transferred to any party where doing so would result in such a violation. The terms of any limitation on the use, transfer or re-export of the Programs imposed by us in any document for the purpose of export control shall prevail over any of the Terms and Conditions in this Agreement, but it shall be your responsibility to comply with the latest Export Law. If, in connection with any support request, you wish to send us information that can only be shared with U.S. persons under any Export Laws, the only way in which you may do so is by email to: support@us.comsol.com. You understand and agree that restricting any support request in this manner will limit the number of support engineers available to respond to your request, which may limit our ability to provide a response that is to your satisfaction. In the event that you wish to include any Confidential

Information in such a support request to be protected in accordance with Section 1(m), you must mark such email with the designation “Confidential Information” in the subject line of the message.

- 5 Maintenance and Support.** Unless you have purchased a term license with a maintenance period expiring prior to the end of the term, software maintenance service will terminate upon the earlier of twelve (12) months or the expiration of the term. Notwithstanding the foregoing, termination of the maintenance period for any one Program shall terminate the maintenance period for all other Programs that require that Program in order to run, even if such other Programs were purchased separately. That initial software maintenance period commences on the first day of the month following the month in which a purchase order has been accepted. However, if, by that time, you have not yet supplied us with all of the information needed for us to provide installation materials, the initial software maintenance period shall commence on the first day of the month following the month during which we first requested the information needed to provide installation materials. Notwithstanding the foregoing, there shall be no reduction in the initial software maintenance period on account of any delay by us in requesting the information necessary to provide installation materials or any delay by us in providing installation materials following receipt by us of all such information. Maintenance includes: (a) support by telephone, telefax, or electronic mail regarding the installation and/or use of the licensed Programs and their interaction with hardware, operating environments, and other software products except as set forth below, including the provision of installation materials; (b) subsequent releases of the Programs free of charge; and (c) reasonable commercial efforts to provide (i) workarounds within a reasonable time for any material programming errors in the current release of the Programs which are directly attributable to us, and (ii) correction of such errors in the next available release, provided you provide us with sufficient information to identify such errors and to ensure their elimination from future releases. Maintenance services may be renewed, at the then-current price, as long as we offer such services. Maintenance services are limited to the latest two released versions of the Programs and do not include technology preview functionality or pre-releases such as alphas or betas. For this purpose, separate versions are defined by a change in a digit in the commercial version number. Maintenance services do not include installation and maintenance of your operating system, operating system configuration and hardware support, cluster operating system installation, and cluster configuration and hardware support. Maintenance does not include the use of our application programming interfaces or the interaction of the Programs with software products in instances where our contractual obligations may prohibit us from supporting that use or interaction. Unless you specify otherwise in the contents of a support request or unless the support request is designated as Confidential pursuant to Paragraph 1(m), you agree that any materials provided by you to us in connection with a support request may be retained and used by us for the purpose of correcting, developing, and testing workarounds for any programming errors that such materials may evidence and for the purpose of product development and improvement.

**6 LIMITED WARRANTY.**

- a** We warrant: (i) that we or our licensors have the right to grant the license rights hereunder; (ii) that for a period of ninety (90) days from delivery (“Warranty

Period”) the licensed Programs shall conform in all material respects to their functional specifications in the Documentation; and (iii) you may receive a full refund of the initial fee paid for the Programs if you terminate this Agreement within thirty (30) days of the date of the delivery of the first version of the Programs that we provide to you (the “Acceptance Period”). Delivery of subsequent versions of or upgrades to the Programs shall not enlarge or restart the Acceptance Period or Warranty Period.

- b** If a Program does not operate as warranted and you notify us within the Warranty Period, your exclusive remedy and our sole liability shall be (i) the correction or workarround of major defects within a reasonable time, or (ii) if such correction or workarround prove neither satisfactory nor practical, termination of the relevant license and refund of the initial license fee paid to us for the Programs.
  - c** All requests for warranty assistance should be directed to COMSOL AB, Tegnérgatan 23, SE-111 40 STOCKHOLM, Sweden.
  - d** EXCEPT AS EXPRESSLY PROVIDED ABOVE, EXCEPT AS EXPRESSLY SPECIFIED IN SECTION 8, AND EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW, THE PROGRAMS AND DOCUMENTATION ARE PROVIDED "AS IS AND WITH ALL FAULTS"; AND WE AND OUR LICENSORS, DISTRIBUTORS, AND RESELLERS DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, DESIGN, OPERATION, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF OUTPUT, LACK OF NEGLIGENCE, SECURITY, AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE OR OUR DISTRIBUTORS OR RESELLERS HAVE BEEN INFORMED OF SUCH A PURPOSE) AND WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
- 7** Limitation Of Liability. EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW AND EXCEPT FOR OUR INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 8, OUR SOLE LIABILITY OR OBLIGATION ARISING UNDER OR RELATING TO THIS AGREEMENT (AND THE SOLE LIABILITY OF OUR LICENSORS, DISTRIBUTORS, AND RESELLERS RELATING TO THIS AGREEMENT) IS THE REPLACEMENT OF DEFECTIVE MEDIA ACCORDING TO THE LIMITED WARRANTY ABOVE. EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW AND EXCEPT AS SET FORTH IN SECTION 8, IN NO EVENT SHALL WE OR OUR LICENSORS, DISTRIBUTORS, OR RESELLERS BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DAMAGES FROM THIRD PARTY CLAIMS, LOSS OF PROFITS, LOSS OF DATA, INVASION OF PRIVACY, FAILURE TO MEET ANY DUTY SUCH AS GOOD FAITH OR REASONABLE CARE, NEGLIGENCE, OR ANY OTHER LOSS, EVEN IF WE OR THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, E.G., WE ARE UNABLE TO REMEDY ANY DEFECT IN THE PROGRAMS. IN ANY EVENT, EXCEPT TO THE EXTENT OTHERWISE

REQUIRED BY LAW AND EXCEPT AS SET FORTH IN SECTION 8, OUR AND THEIR MAXIMUM LOSS, REGARDLESS OF ANY ACT OR OMISSION OF OURS OR ANYONE UNDER OUR DIRECTION OR CONTROL, SHALL NOT IN TOTAL EXCEED THE AGGREGATE AMOUNT PAID TO US IN THE SIX-MONTH PERIOD PRECEDING YOUR CLAIM(S), AND FOR SUCH PURPOSES, ALL CLAIMS SHALL BE AGGREGATED. The remedies against us and our licensors, distributors, and resellers expressly provided herein are exclusive and are in lieu of any other remedies at law or in equity. The fees and limitations of liability and remedies for the license to the Programs reflect the allocation of risk between the parties. This section is an essential element of the basis of the bargain between the parties.

## **8 Indemnification.**

- a By You.** You agree to indemnify, defend, and hold harmless us and our parents, subsidiaries, affiliates, successors, distributors, and resellers, and each of our and their officers, directors, employees and representatives, against and from any and all actions, claims, demands, costs, liabilities, losses, expenses (including reasonable attorneys' fees and court costs, whether incurred as the result of a third party claim or a claim to enforce this provision) and other damages (collectively, "Losses") arising out of or in connection with any and all third party claims relating to any use of the Programs by you and any act or omission of yours, including third party claims related to your activities pursuant to this Agreement, except to the extent we indemnify you as described below. If you are a governmental user in a jurisdiction which limits your ability to enter into indemnification agreements, then the foregoing indemnification obligation shall apply only to the extent permitted by applicable law.
- b By Us.** We agree to indemnify, defend, and hold harmless you, your parents, subsidiaries, affiliates, and successors, and each of your and their officers, directors, employees and representatives, against and from, and to the extent you suffer, any Losses because the licensed Programs infringe a third party's intellectual property rights.
- c Limitation.** We shall have no liability or obligation to you hereunder for any infringement based upon (i) the combination of any of the licensed Programs with any other software, hardware or other products not developed by us, (ii) the use of other than a current, unaltered version of the licensed Programs, (iii) any use of a licensed Program for other than its intended purpose, (iv) modifications, improvements and derivative works of the licensed Programs created by or on behalf of you, or (v) if you breach this Agreement for failure to pay amount due.
- d Cooperation.** In connection with any claim or action described in this Section, the party seeking indemnification (i) will give the indemnifying party prompt written notice of the claim, (ii) will cooperate with the indemnifying party (at the indemnifying party's expense) in connection with the defense and settlement of the claim, and (iii) will permit the indemnifying party to control the defense and settlement of the claim, provided that the indemnifying party may not settle the claim without the indemnified party's prior written consent (which will not be unreasonably withheld). Further, the indemnified party (at its cost) may participate in the defense and settlement of the claim.

- 9 Third Parties.** You shall notify us of third parties (and give their respective names, addresses, and contact information) that have access to or use the licensed Programs on your behalf. This provision shall not limit your other obligations hereunder.
- 10 Prevailing Party.** If any legal action or other proceeding is brought for any breach of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in bringing such action or proceeding, in addition to any other relief to which such party may be entitled.
- 11 Taxes.** You shall be liable for any taxes (except those on our net income) due in connection with this Agreement.
- 12 Termination.** We may terminate this Agreement by written notice to you if you breach any of the Terms and Conditions and have not cured such breach within sixty (60) days (within fifteen (15) days if the breach is for non-payment) thereafter. Notwithstanding the foregoing, we may terminate at any time in the event you make any unauthorized use, reproduction, distribution, public display, or public performance of, or preparation of derivative works based on, the Programs as delivered hereunder or as otherwise obtained by you. You may terminate this Agreement at any time for any reason, but you shall not be entitled to any refund except for license fees paid for any Programs for which the Acceptance Period has not expired at the time we receive your notice of termination.
- 13 Effect of Termination.** Immediately upon termination of this Agreement for any reason, (a) your rights shall cease and all rights granted herein shall automatically revert to us; (b) you shall stop using the Programs and Documentation; (c) you shall erase all copies of licensed Programs and Documentation from your computers and deliver to us all tangible copies of the Programs and Documentation; (d) you shall pay all amounts due us; and (e) you shall take such acts and execute all documents we reasonably request to register or effect the termination. Within five (5) business days of the termination, you shall provide us with a written declaration signed under penalty of perjury by you attesting to compliance with the provisions of subsections (b), (c) and (d) above. Expiration or termination of this Agreement shall not relieve a party of obligations accrued before such event. In addition, Sections 1(c), 1(i), 1(l), 1(m), 1(n), 1(o), 7, 8, 10, 11, 13, 15, 16, and 17 of this Agreement and Sections 2, 3, 4, 6, 7, 8, and 9 of the Licensee Application Addendum shall survive termination or expiration of this Agreement.
- 14 Assignment and Transfer.** We may freely assign this Agreement. Unless you provide us with the identity and contact information of any prospective assignee or transferee of your rights and obligations hereunder and such transferee or assignee is acceptable to us, you may not assign or otherwise transfer this Agreement and its rights and obligations, in whole or in part, by operation of law or otherwise. This Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto. We may charge you an administrative fee for any permitted assignment.
- 15 Revised Terms and Conditions.** New releases of the Programs may be licensed under revised Terms and Conditions, and such revised Terms and Conditions shall be effective upon installation thereof.
- 16 Miscellaneous.** You shall not grant any ownership right or security interest in the Programs to any person. You shall comply with all laws applicable to you in the

jurisdiction in which you use the Programs. A breach of any provision of this Agreement may only be waived in writing and the waiver of such breach shall not operate or be construed as a waiver of any subsequent breach. If any of the Terms and Conditions should, for any reason, be held invalid or unenforceable in any respect, the remainder of this Agreement shall be enforced to the full extent permitted by law. A court of competent jurisdiction is hereby empowered to modify the invalid or unenforceable provision to make it valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the United States of America, without regard to conflicts of laws principles. The parties agree that neither the U.N. Convention on Contracts for the International Sale of Goods nor the provisions of the Uniform Computer Information Transaction Act (“UCITA”) as adopted or as may be adopted by any state shall apply or govern this Agreement or the relationship of the parties hereto. To the extent UCITA may be deemed applicable, the parties agree to opt out of its applicability pursuant to the opt out provisions contained therein. The parties consent to the exclusive personal jurisdiction of the state and federal courts in the Commonwealth of Massachusetts if there is any dispute between them. You may not bring any action against us or our licensors more than two (2) years after the cause of action accrued. To the extent permitted by law, you hereby waive any sovereign immunity that you would otherwise be entitled to assert with respect to any claim arising out of or relating to these Terms and Conditions. If you are a governmental user in a jurisdiction whose law restricts your ability to enter into agreements regarding the terms in this Section 16, then such Section shall be enforceable only to the extent permitted by applicable law; and the applicable law for the governance and construction of this Agreement and the applicable jurisdiction for disputes between the parties shall be dictated by any such legal requirement conflicting with this Section 16. If you acquired the Programs outside the United States, then any local laws conflicting with the selection of applicable law and jurisdiction in this Section shall be given precedence over this Section.

**17 Entire Agreement.** This Agreement and the applicable Addenda hereto (if relevant) contain the entire understanding of the parties with respect to the subject matter, and supersedes all prior, contemporaneous, and subsequent proposals, agreements, representations, and understandings. This Agreement may not be changed except as provided herein in a writing signed by you and us. No purchase order or any other standardized business form issued by you, and even if such purchase order or other standardized business form provides that it takes precedence over any other agreement between the parties, shall be effective to contradict, modify, add to or delete from the terms of this Agreement in any manner whatsoever, except that, if you are a governmental user in a jurisdiction where contractors are legally required to comply with applicable laws in order to sell a software license to that user's governmental unit or entity, then we shall comply with such laws, provided that we are informed in writing of any such requirements in advance, provided that such requirements do not conflict with any other laws applicable to our business operations, and provided further that this provision may not be used to change the nature, scope, or duration of the rights you receive in the Programs, our maintenance obligations, or the financial terms of sale. Any acknowledgment, in any form, of any such purchase order or standardized business form is not recognized as a subsequent writing and will not act as acceptance of such terms.



# Academic Addendum

This is an Addendum to the COMSOL Software License Agreement (the “Agreement”), and the Terms and Conditions of this Addendum are incorporated therein. Each capitalized term used but not defined herein shall have the meaning ascribed to it in the Agreement.

Programs licensed to degree-granting educational institutions (“Institutions”) at our educational discount (“Academic Prices”) are subject to separate license provisions and are further restricted to use in connection with on-campus computing facilities that are used solely in support of classroom instruction and research activities of the Institution’s students and faculty. The right to use the Programs licensed at Academic Prices for commercial, governmental, or contract work purposes is expressly prohibited. Academic Prices are offered by us at our sole discretion and we reserve the right to review eligibility from time to time. Distribution of Licensee Applications produced pursuant to the Licensee Application Addendum, including for profit, shall not be considered commercial usage provided that such Licensee Applications are made in accordance with this Academic Addendum and not pursuant to any contractual obligation.

- 1 General Scope.** In addition to the Terms and Conditions in the Agreement and the Licensee Application Addendum (below), the provisions of this Academic Addendum apply to each Program licensed under the Agreement at prices offered only Institutions (“Academic Prices”) for NSL, CPU, and FNL versions of the Programs, and for the class kit option license (“CKL”) and academic server license (“ASL”), as defined below.
- 2 Academic Internal Operations.** The NSL, CPU, and FNL versions of the Programs purchased at Academic Prices give the Licensee the right to use the software in Academic research as well as teaching at the licensed Institution. Moreover, a student working on a thesis or a diploma has the right to use an NSL, CPU, or FNL License purchased at Academic Prices outside the Institution as long as the usage is restricted to the thesis or the diploma work. If there is a conflict between the terms in this Addendum and the Agreement, the Addendum provisions shall control.
- 3 Class Kit Option.** The CKL version of the Programs may be installed and used by up to 30 students and teachers for the sole purpose of teaching in an ordinary course, provided the Programs are used in classrooms for instructional purposes only by enrolled students meeting classroom requirements for courses and study offered by the Institution and by teachers of such courses. Students may use the CKL Programs for homework use, and teachers may use the Programs for the purpose of lesson preparation. All non-classroom use is limited to a single designated individually-owned computer for each such student or teacher during the period of the academic year when the applicable class is in session and solely for class purposes. When a student is not enrolled in the applicable class or the class ends, the student must remove all copies of the Programs from his or her computer. Any other use, including academic research, is expressly prohibited.

#### **4 Academic Server License.**

- a** The ASL version of the Programs may be installed on an individual computer or in a central location on a single dedicated network server or on the server of a third party providing secure remote computing capacity through which the Programs are made accessible for academic use permitted under this Agreement. You may use the ASL version of the Programs to perform cluster computing. With respect to a network installation, the Programs may also be installed on individual computers, as long as the individual installations are controlled by the license manager on the network server. Any transfer of the license manager for the Programs from one computer to another shall be conditioned upon proof to our satisfaction that the license manager was uninstalled from the first computer. The ASL license permits you to use the Programs for the sole purpose of hosting and running Licensee Applications for academic use. Your use of Licensee Applications must comply with all restrictions on Licensee Applications set forth in the Licensee Application Addendum and with any terms and conditions specified by the publisher of each Licensee Application.
- b** You may have up to 300 concurrent users for an ASL installation, and each authorized concurrent user may have up to 4 sessions of a Program in use at any given time. The ASL version of the Programs may be installed, accessed, and used worldwide, subject to the terms and conditions of this Agreement, including, without limitation, compliance with the restrictions set forth in Section 4, but the purchaser of the ASL license must reside in the same territory in which the ASL license was sold. Authorized users of the ASL version of the Programs include students, faculty, and staff of your institution and of any other academic institution, subject to the following:
  - (i) In no event shall a number of concurrent sessions of the Programs be run at a single time in excess of 4 sessions per authorized concurrent user.
  - (ii) Each authorized user must accept this Agreement.
  - (iii) You shall not take any steps to disable or interfere in any way with the automatic delivery of this Agreement to authorized users to whom you provide access to the Programs.
  - (iv) Any terms and conditions set by you or others for the use of Licensee Applications you make available for use in conjunction with the Programs shall not alter, amend, conflict with, or purport to terminate this Agreement.
  - (v) When referring to trademarks of ours or of any third party in connection with opening an installation of the ASL version of the Programs to use by students, faculty, or staff of other institutions, you must comply with the then-current version of our trademark guidelines, <http://www.comsol.com/trademarks>.
  - (vi) You shall not authorize use of the ASL version of the Programs other than for hosting and running Licensee Applications by persons authorized to use those Licensee Applications.
  - (vii) You consent to our notification to our licensors of the fact that you have made the ASL version of the Programs available for use outside your institution and of the terms on which the ASL version of the Programs have been made available for use outside your institution.

- 5 Academic Networked Installation and Use. The FNL and CKL versions of the Programs may only be used on a network that is restricted to solely on-campus use.
- 6 Class Kit Limited Rights. By selecting the CKL, the Institution and any users of the CKL agree to the Terms and Conditions of the Agreement and this Academic Addendum for use of the CKL for the academic use set forth in Section 3 of this Academic Addendum. The Institution is responsible for ensuring that the total number of students and teachers for each Program in the CKL does not exceed 30. The Institution shall also be responsible for, and shall assign a central administrator the task of, accurately counting, controlling, and administering the use of the CKL, including without limitation, restricting its use to on-campus computing facilities and limiting its use to the academic use set forth in Section 3 of this Academic Addendum.
- 7 Academic Server License Limited Rights. By selecting the ASL, the Institution and any users of the ASL agree to the Terms and Conditions of the Agreement and this Academic Addendum for use of the ASL for the academic use set forth in Section 4 of this Academic Addendum. The Institution is responsible for ensuring that the total number of authorized concurrent users of each Program in the ASL does not exceed 300. The Institution shall also be responsible for, and shall assign a central administrator the task of, accurately counting, controlling, and administering the use of the ASL, including without limitation, limiting its use to the academic use set forth in Section 4 of this Academic Addendum.
- 8 Support. Support requests for the CKL shall be made by the teachers or the central administrator of the CKL. Support requests for the ASL shall be made by the central administrator of the ASL.

# Licensee Application Addendum

This is an Addendum to the COMSOL Software License Agreement and Academic Addendum, if applicable, (the “Agreement”), and the Terms and Conditions of this Addendum are incorporated therein. Each capitalized term used but not defined herein shall have the meaning ascribed to it in the Agreement. This Licensee Application Addendum applies to the use of certain tools (together with accompanying documentation and examples), including the Physics Builder, the Application Builder, and the COMSOL Application Programming Interface, that we make available to create interfaces and other applications that require any Program to run (“Licensee Applications”). Your use of any such tools is governed by the Agreement, as modified by the provisions below, each of which shall be deemed to be material provisions of the Terms and Conditions.

- 1 Creation of Licensee Applications.** We grant you a non-exclusive license, within the Territory in which you are authorized to use the Programs, to create Licensee Applications that incorporate user generated files that require any Programs to run, subject to the terms and conditions set forth in this Licensee Application Addendum.
- 2 Distribution.** We grant you a fully paid, perpetual, non-exclusive, world-wide license to distribute any Licensee Applications that you create or that you receive a sublicense to distribute, and we grant you a fully paid, perpetual, non-exclusive, world-wide license to sublicense the distribution of any Licensee Applications that you create, subject to the terms and conditions set forth in this Licensee Application Addendum.
- 3 Use of Licensee Applications.** You and any distributor or sublicensor of your Licensee Applications must require that any user of Licensee Applications be a licensed user of those Programs required by the Licensee Application. Use of your Licensee Applications with any Programs required by those Licensee Applications is permitted only to the extent that the end user is a licensed user of those Programs.
- 4 Restrictions.**
  - a** No Licensee Application may be marketed, distributed, or licensed for use in competition with us or any of the Programs or as a general purpose multiphysics simulation package.
  - b** No Licensee Application may have as a major function computer-aided design (“CAD”) or be marketed as competitive to any CAD product.
  - c** All Programs required by any Licensee Application to run must be licensed solely pursuant to the version of this Agreement applicable to the installation of the Programs that will host and run such Licensee Application. You may offer your Licensee Applications under terms and conditions of your choosing, provided that (a) insofar as you permit redistribution or sublicensing the use of your Licensee Application any such terms and conditions governing that redistribution or sublicensing are at least as restrictive as Section 4 of this Licensee Application Addendum, (b) no terms and conditions applicable to any license for your Licensee Applications shall alter, amend, conflict with, or purport to terminate this Agreement in any way, and (c) you may not distribute your Licensee

Application under any version of the General Public License, the Lesser/Library General Public License, the Artistic License, the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Source License, the Common Public License, or any other license that requires, as a condition of use, modification, or distribution, that your Licensee Application or other software incorporated into, derived from, or distributed with your Licensee Application (i) be disclosed or distributed in source code form; (ii) be licensed by the user to third parties for the purpose of making and/or distributing derivative works; or (iii) be redistributable at no charge. If your Licensee Application requires third party software programs to operate, then (i) you must either obtain the necessary rights to distribute such third party software programs with your Licensee Application or require your customers to obtain the necessary rights to use such third party software programs with your Licensee Application; and (ii) your use of such third party programs must comply with the terms and conditions of any license agreement governing such third party programs. In no event shall you distribute your Licensee Application in conjunction with any other software program, or allow your Licensee Application to be used in conjunction with any other software program, where that other software program is licensed under terms that alter, amend, conflict with, or purport to terminate this Agreement in any way. If you embed your Licensee Application with one or more of the Programs in a hardware device for distribution, we shall be entitled to conduct an audit of your records during customary business hours for the purpose of ensuring your compliance with this Subsection (c).

- d** All use of our trademarks and third party trademarks in connection with your Licensee Application must comply with the then-current version of our trademark guidelines, <http://www.comsol.com/trademarks>.
- e** To the extent your Licensee Application requires any or all of the CAD Import Module, Design Module, LiveLink™ *for* SOLIDWORKS®, LiveLink™ *for* Solid Edge®, LiveLink™ *for* Inventor®, LiveLink™ *for* Autodesk®, LiveLink™ *for* PTC® Creo® Parametric™, LiveLink™ *for* PTC® Pro/ENGINEER®, and/or LiveLink™ *for* Revit® (the “CAD Interfacing Programs”) in order to run:
  - (i) Such Licensee Application must have a graphical user interface (“GUI”).
  - (ii) Such Licensee Application, when run in integrated use with any of the Programs, must be substantially functionally identical to those Programs, although substantial portions of the Programs’ GUI may be removed or modified.
  - (iii) Such Licensee Application must not be marketed as a stand-alone product for translating input to or output from that CAD software.
  - (iv) In the event we cease offering any of the CAD Interfacing Programs required for your Licensee Application to run, your rights to continue to use such Programs for interfacing with your Licensee Application shall be limited to the term of the license you have purchased and to the version of the third party CAD product with which such CAD Interfacing Programs are compatible.
- f** No Licensee Application may be marketed, distributed, or licensed as an alternative means for any third party to access the functionality of any third party

software program to which any of the Programs interface or as a replacement for any such third party software program to which any of the Programs interface.

- g** No Licensee Application may contain any application programming interface functions that rename any functions of any third party software program with which any of the Programs interface without adding additional value.
- h** No Licensee Application may be marketed, distributed, or licensed for use in violation of any applicable law. You shall be solely responsible for any governmental approvals needed to market, distribute, or license a Licensee Application for use in a particular industry.

**5** Maintenance and Support of Licensee Applications. Our maintenance and support obligations will not extend to the use of Licensee Applications by you or others. Any maintenance or support of Licensee Applications shall be provided, if at all, by the creator or publisher of those Licensee Applications or persons they engage to perform that service. Our maintenance and support obligations will not extend to helping you with the selection of physics, mesh, solvers, solver settings, ordering of operations, or output formats for any Licensee Application you develop for use with the Programs.

**6** Disclaimer of Warranties. IN ADDITION TO THE DISCLAIMERS OF WARRANTIES SET FORTH IN SECTION 6 OF THE TERMS AND CONDITIONS, EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW, WE AND OUR LICENSORS, DISTRIBUTORS, AND RESELLERS DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE FITNESS OF THE PROGRAMS FOR YOUR LICENSEE APPLICATIONS OR ANY USE OF YOUR LICENSEE APPLICATIONS BY YOU OR ANYONE ELSE, THE SUITABILITY OF THE PROGRAMS FOR YOUR LICENSEE APPLICATIONS AND THE COMPATIBILITY OF ANY LICENSEE APPLICATIONS YOU MAY CREATE, DISTRIBUTE, OR USE WITH ANY FUTURE VERSION OF THE PROGRAMS.

**7** Limitation of Liability. IN ADDITION TO THE PROVISIONS OF SECTION 7 OF THE TERMS AND CONDITIONS, EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW AND EXCEPT AS SET FORTH IN SECTION 8 OF THE TERMS AND CONDITIONS, IN NO EVENT SHALL WE OR OUR LICENSORS, DISTRIBUTORS, OR RESELLERS BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FROM THIRD PARTY CLAIMS, LOSS OF PROFITS, DATA, INVASION OF PRIVACY, FAILURE TO MEET ANY DUTY SUCH AS GOOD FAITH OR REASONABLE CARE, NEGLIGENCE, OR ANY OTHER LOSS, EVEN IF WE OR THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY USE OF THE PROGRAMS IN CONNECTION WITH THE CREATION OR USE OF ANY LICENSEE APPLICATIONS OR FOR ANY CLAIMS BY YOU OR ANY THIRD PARTY ARISING OUT OF OR RELATING TO THE USE OF ANY LICENSEE APPLICATIONS.

**8** Indemnification. In addition to the indemnification obligations set forth in Section 8 of the Terms and Conditions, you agree to indemnify, defend, and hold

harmless us and our parents, subsidiaries, affiliates, successors, distributors, and resellers, and each of their officers, directors, employees and representatives, against and from any and all Losses arising out of or in connection with any and all third party claims arising out of or relating to any Licensee Applications created by you, used by you, or distributed by you or on your behalf. If you are a governmental user in a jurisdiction which limits your ability to enter into indemnification agreements, then the foregoing indemnification obligation shall apply only to the extent permitted by applicable law.

- 9 **Independent Development.** You acknowledge that we may be engaged in independent development in the subject area of any support requests that relate to any Licensee Applications created by you, used by you, or distributed by you or on your behalf and that we have no obligation to limit or restrict the assignment of personnel based on their involvement in fulfilling any such support requests. On behalf of yourself and your parent companies, subsidiaries, and affiliates, you covenant and agree not to bring any legal proceeding and not to lend any assistance in the bringing of any legal proceeding alleging that any current or future software products that we distribute infringe any intellectual property rights of yours or theirs in any Licensee Application that you or they have developed or any invention, design, or discovery thereof. Without limiting any other remedies available to us, if you or any of your parent companies, subsidiaries, or affiliates bring any legal proceeding alleging that any current or future software products that we distribute infringe any intellectual property rights of yours or theirs in any Licensee Application that you or they have developed or any invention, design, or discovery thereof, then all licenses granted to you and them pursuant to this Agreement shall terminate immediately.

