



License agreement

Arcast 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. ANY THIRD PARTY HIRED TO INSTALL THE PROGRAMS ON BEHALF OF THE PURCHASER OF A LICENSE THERETO WHO CLICKS HIS/HER ACCEPTANCE OF THESE TERMS AND CONDITIONS UPON INSTALLATION HEREBY REPRESENTS AND WARRANTS THAT HE/SHE IS AUTHORIZED BY THE PURCHASER OF THE LICENSE TO ACCEPT SUCH TERMS AND CONDITIONS ON THE PURCHASER'S BEHALF.

1. License Grant

During the term of this License Agreement ("Agreement"), COMSOL AS ("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 Arcast software ("Programs") and documentation with examples therefor ("Documentation") as provided herein. Certain third party programs ("Third Party Programs") are sublicensed under different terms set by the publishers of such Third Party Programs, as set forth in the about.txt file that is included with the Programs. Any terms contained or referenced in the about.txt file 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. 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.

b. Examples

Certain examples, such as sample analysis files and sample configuration files, are provided by us for use with the Programs and may be used as a starting point in creating your own work and modified to form part of that work, in connection with authorized use of the Programs. You may use, modify, publish, and distribute those modified examples in connection with your authorized use of the Programs. You shall comply with all laws applicable to your activities, and you shall disclaim all warranties on behalf of us and limit our liability as set forth in this

Agreement in connection with your redistribution or republication of examples or modified examples.

c. Ownership

The Programs are licensed and not sold. 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 those parties who have licensed Third Party Programs and other programs for incorporation into our Programs, 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 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. 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 a Named Single User License (“NSL”), the Programs may be installed and operated on up to five (5) individually designated physical computers, including multicore/multiprocessor 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.

(ii) If you have licensed a Multi-User License (“MUL”), the Programs may be installed using a single license file for use by as many individual users designated to us as “Named Users” of that MUL for which you have purchased usage rights. You may replace each individual Named User of a MUL provided that you designate each replacement Named User to us. For each designated Named User of a MUL, the Programs may be installed and operated on up to five (5) individual physical computers, including multicore/multiprocessor computers, provided the Programs are only accessible to, and operated by, such single designated Named User 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 the Programs being 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 shall be responsible for ensuring that the number of installations of the Programs for the MUL do not exceed the number of permitted Named User installations as described herein.

(iii) 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.

(iv) You may use the Programs only for your internal operations. For the purposes of this Agreement, “internal operations” means use of the Programs by your employees and 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, all subject to the requirement that Named Users be designated.

(v) 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.arcast.no/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.arcast.no/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.

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 of any type. 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(m) 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. 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.

n. 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. Absent any such earlier termination, 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 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 European Union export control laws or other (U.S., E.U., and non-U.S., non-E.U.) 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. You represent and warrant that neither you nor any person or entity you permit to use the Programs under this Agreement is located in or is a permanent resident of any country subject to any U.S. or other embargo or any country that is specially designated by the U.S. government as a “terrorist supporting” country and that neither you nor any person or entity you permit to use the Programs under this Agreement is on any U.S. government list of prohibited or restricted parties.

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) commercially reasonable efforts to provide support by telephone 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; (c) issuance of replacement license files to enable changes in use of the Programs, including changes in hardware running the Programs, to the extent permitted by the applicable license type; and (d) 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. All updates to the Programs that we deliver shall be deemed to be part of the Programs that are licensed pursuant to this Agreement. 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 prereleases such as alphas or betas. For this purpose, separate versions are defined by a change in a digit within the first decimal place within the version number or a change in letters appended thereto. Maintenance services do not include installation and maintenance of your operating system, operating system configuration and hardware support, cluster or cloud operating system installation, and cluster or cloud 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. Maintenance does not include maintaining the compatibility of the Programs with operating systems or hardware systems not on the market at the time the Programs were released. Unless you specify otherwise in the contents of a support request, you agree that any materials provided by you to us in connection with a support request may be retained and used by us and our contractors 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. YOU ACKNOWLEDGE THAT WE MAY PROVIDE SUPPORT FOR MULTIPLE CUSTOMERS WORKING ON SIMILAR PROJECTS, THAT WE MAY REUSE GENERALIZED INFORMATION REGARDING THE USAGE OF THE PROGRAMS REVEALED IN A SUPPORT CASE THAT IS NEITHER SPECIFIC TO ANY PROJECT OR PROCESS OF YOURS NOR RECOGNIZABLE OR TRACEABLE TO YOU, AND THAT WE ARE UNDER NO OBLIGATION TO RESTRICT THE ASSIGNMENT OF ANY PERSONNEL. ANY FILES OR PROOFS OF CONCEPT OR CONTRIBUTIONS THERETO THAT WE SUPPLY THROUGH SUPPORT, INCLUDING ANY PRE-SALES SUPPORT THAT WE MAY PROVIDE, IF ANY, AND ANY MATERIALS WE SUPPLY, IF ANY, IN CONNECTION WITH ANY WORKSHOPS, WEBINARS, AND TRAINING COURSES ARE PROVIDED "AS IS AND WITH ALL FAULTS"; AND WE DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, DESIGN, OPERATION, LACK OF VIRUSES, ABSENCE

OF ERRORS, ACCURACY OR COMPLETENESS OF OUTPUT, LACK OF NEGLIGENCE, SECURITY, AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE HAVE BEEN INFORMED OF SUCH A PURPOSE) AND WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

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”). The Programs shall be deemed to be “delivered” for purposes of the foregoing warranties upon commencement of the initial software maintenance period as set forth in Section 5. 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 workaround of major defects within a reasonable time, or (ii) if such correction or workaround 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 AS, Postboks, 5673, Torgarden, 7485 TRONDHEIM, Norway.
- 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, ABSENCE OF ERRORS, ACCURACY OR COMPLETENESS OF OUTPUT, LACK OF NEGLIGENCE, SECURITY, AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE OR OUR LICENSORS, DISTRIBUTORS OR RESELLERS HAVE BEEN INFORMED OF SUCH A PURPOSE) AND WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE. YOU ASSUME SOLE RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE, AND RESULTS OBTAINED FROM THE PROGRAMS. FURTHERMORE, EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW, IN NO EVENT SHALL OUR LICENSORS BE RESPONSIBLE FOR ANY WARRANTIES UNDER THIS AGREEMENT.

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. FURTHERMORE, EXCEPT TO THE EXTENT REQUIRED BY LAW, IN NO EVENT SHALL OUR LICENSORS BE RESPONSIBLE FOR ANY DAMAGES OF ANY NATURE ARISING OUT OF OR RELATING TO THIS AGREEMENT. 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(d), 1(e), 7, 8, 10, 11, 13, 15, 16, and 17 of this Agreement 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. An arbitral forum or court of competent jurisdiction is hereby empowered to modify the invalid or unenforceable provision to make it valid and enforceable. This Agreement, and all disputes arising out of it or relating thereto, shall be governed by and construed in accordance with the laws of Norway, without regard to conflicts of laws principles. Any dispute, controversy, or claim arising out or relating to this Agreement or the breach, termination, or alleged invalidity thereof shall be finally settled by arbitration in accordance with the Rules of the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce in force at the time. The parties agree that the seat of the arbitration forum shall be Trondheim, Norway. While certain portions of the Programs have been obtained by us from our licensors, we are solely responsible for providing licenses to the Programs, and our licensors have no responsibility for providing such licenses to you, no obligations with respect to maintenance or support for the Programs or for addressing claims regarding the Programs, and have made no warranties regarding the Programs. Our licensors are third party beneficiaries of this Agreement and shall have the right to enforce its provisions.

17. Entire Agreement

This Agreement and the applicable Addenda hereto (if relevant), together with any pricing, terms of payment, identification and quantification of Programs to be delivered, method and location of delivery, territory, and term set forth on our invoice or order acknowledgement, 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, 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 and all such terms are hereby objected to and rejected. 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.