License Agreement

COMSOL

COMSOL Software License Agreement

Version: COMSOL 5.6

Contact Information

Visit the Contact COMSOL page at 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 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. Other useful links include:

- Support Center: www.comsol.com/support
- Product Download: www.comsol.com/product-download
- Product Updates: www.comsol.com/support/updates
- COMSOL Blog: www.comsol.com/blogs
- Discussion Forum: www.comsol.com/community
- Events: www.comsol.com/events
- Video Tutorials: www.comsol.com/video
- Support Knowledge Base: 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. 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 Definitions. The following words and phrases shall have the definitions set forth below throughout this Agreement, regardless of whether or not such words or phrases are capitalized:

   a The term "Academic Prices" shall mean the price for which we sell licenses to the Programs to Institutions after applying our educational discount for usage of the Programs that meets the requirements of the Academic Addendum to this Agreement.

   b The term "Agreement" shall mean the terms and conditions contained in this document, delivered upon installation of the Programs.

   c The term "Affiliate" shall mean a legal entity having a relationship with a second legal entity such that the two entities are under common control.

   d The term "Application" shall mean (i) the output that is produced by using the Application Builder feature of the Programs (with or without modification using the COMSOL API) or (ii) the output that is produced by using the COMSOL API to enable interoperability between a Model and an external user interface.

   e The term "ASL" shall mean an academic server license for the Programs having the rights set forth in Section 4 of the Academic Addendum.

   f The term "CKL" shall mean a class kit license for the Programs having the rights set forth in Section 3 of the Academic Addendum.

   g The term "Compiled Application" shall mean the output produced by using the COMSOL Compiler, including the runtime libraries supporting such Applications when compiled.

   h The term "COMSOL API" shall mean the set of commands constituting the Programs' application programming interface, which the Programs will accept when input from a Java program, from a Visual Basic for Applications program with LiveLink™ for

Excel®, or from a MATLAB® program with LiveLink™ for MATLAB® or LiveLink™ for Simulink®, and which enables Model creation or customization of the elements of a Model or Application that are exposed for end use and the addition of functionality.

i The term "COMSOL Client License Agreement" shall mean the electronic end-user license agreement from us that is displayed automatically when you install the COMSOL Client software.

j The term "COMSOL Runtime License Agreement" shall mean the electronic end-user license agreement from us that is displayed automatically the first time a user uses a Compiled Application.

k The term "COMSOL Server License Agreement" shall mean the electronic end-user license agreement from us that is displayed automatically when you install COMSOL Server.

l The term "Confidential Information" shall mean: (i) with respect to our information and information of our suppliers, the Programs, together with any other non-public information learned in connection therewith that should reasonably be considered confidential under the circumstances; (ii) with respect to your information, any and all information and files submitted to us through the web page https://secure.comsol.com/support/confidential or, in the case of items subject to U.S. export control restrictions, to us-export-control@us.comsol.com, that derives actual or potential economic value from being kept confidential.

m The term "Control" shall mean a relationship between one legal entity and a second legal entity whereby (a) the first entity owns a majority percentage of the voting shares of stock of the second entity, (b) the first entity is a shareholder or member of the second entity and has the right to appoint or remove a majority of the board of directors of the second entity, or (c) the first entity is a shareholder or member of the second entity and has the right, pursuant to agreement, to exercise or direct the exercise of a majority percentage of the voting rights in the second entity.

n The term "CPU" shall mean a CPU-locked single user license for the Programs having the rights set forth in Section 2(h)(ii).

o The term "CSL" shall mean a server license for the Programs having the rights set forth in Section 2(h)(iv).

p The term "Documentation" shall mean all instruction manuals, user guides, operating guides, and other reference materials, including Examples, accompanying the Programs or published by us on www.comsol.com for use with the Programs.

q The term "Examples" shall mean samples provided by us for use with the Programs, which we provide either with the Programs in the "applications" and "demo" folders of the directory for your installation of the Programs or through the Application Gallery at www.comsol.com or through the Application Library Update feature of the

Programs. The term "Examples" shall also be deemed to encompass those portions of the Documentation describing the foregoing.

r   The term "Externally Authored Programs" shall mean software programs that we have obtained from other sources and included in the Programs.

s   The term "FNL" shall mean a floating network license for the Programs having the rights set forth in Section 2(h)(iii).

t   The term "Institution" shall mean a degree-granting educational institution.

u   The term "Internal Operations" shall mean use of the Programs only for your internal operations within the Territory and only by employees and on-site independent contractors of (i) you, (ii) your Subsidiaries, (iii) your Subsidiaries' Subsidiaries, (iv) your Parent, (v) your Parent's Parent, or (vi) your Affiliates, and solely to the extent used for your operations and for the performance of consulting or research for third parties who engage you as an employee or independent contractor. For purposes of this definition, independent contractors who are remotely accessing an on-site installation of the Programs, to the extent remote access is permitted for the applicable license type and to the extent the independent contractor is otherwise permitted to be a user by the applicable license type, shall be deemed to be using the Programs on-site.

v   The term "Losses" shall mean 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.

w   The term "Maintenance and Support" shall mean (a) commercially reasonable efforts to provide 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; (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. Notwithstanding the foregoing, in no event shall the term "Maintenance and Support" be deemed to include: (i) installation and maintenance of your operating system; (ii) operating system configuration and hardware support; (iii) cluster or cloud operating system installation; (iv) cluster or cloud configuration and hardware support; (v) the interaction of the Programs with other software programs when used for cloud computing; (vi) the use of the COMSOL API; (vii) the interaction of the Programs with software products in instances where our contractual obligations may prohibit us from supporting that use or interaction; (viii) maintaining the compatibility of the Programs with operating systems or hardware systems not on the market at the time the Programs were released; (ix) the use of the Programs with a license manager other than the one that was delivered by us in conjunction with that version of the Programs; (x) the selection of physics, mesh, solvers, solver settings, ordering of operations, or output formats for any Application or Physics Interface you develop for use with the Programs; (xi) the use of Applications or Physics Interfaces

by you or others; or (xii) use of the runtime libraries included with the Programs, or (xiii) the use by your sublicensees of the CSL or ASL versions of the Programs.

x The term "Model" shall mean the output that is produced by using the Model Builder feature of the Programs and/or by using the COMSOL API to produce functionality that is found in the Model Builder feature of the Programs.

y The term "NSL" shall mean a named single user license for the Programs having the rights set forth in Section 2(h)(i).

z The term "Parent" shall mean a legal entity having a relationship with a second legal entity such that the first entity controls the second entity.

aa The term "Permitted Objective" shall mean understanding the ideas and principles which underlie any element of the Programs.

ab The term "Physics Interface" shall mean the output that is produced by using the Physics Builder feature of the Programs.

ac The term "Programs" shall mean the COMSOL software programs that we deliver to you pursuant to an accepted purchase order and all upgrades and updates thereto and new versions thereof.

ad The term "Residuals" shall mean 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.

ae The term "Submissions" shall mean any and all suggestions you make to us for improvements to the Programs and/or for any new product or service offerings, including ideas, concepts, or other materials communicated to us in connection therewith.

af The term "Subsidiary" shall mean a legal entity having a relationship with a second legal entity such that the first entity is controlled by the second entity.

ag The term "Territory" shall mean the country in which we have delivered a license for the Programs or any broader geographical region that may be reflected on our invoice. For purposes of this definition, the North Atlantic Free Trade Agreement ("NAFTA") member countries shall be treated as a single country.

ah The term "Uninstall" shall mean completely removing the Programs from any and all computers or machines on which they were installed or otherwise rendering such Programs inaccessible such as by destroying a hard drive on which the Programs were installed or recycling a hard drive on which the Programs were installed.

ai The term "Use" shall mean to install, run, use, operate, and perform.

aj The terms "We", "Us", and "Our" shall mean COMSOL AB and its Subsidiaries and Affiliates.

ak The terms "You" and "Your" shall mean the person or entity to whom we grant a license to the Programs and who is responsible for complying with the contractual obligations of this Agreement and ensuring that anyone permitted access to the Programs also complies with such obligations.

2 License Grant. During the term of this Agreement, we grant to you a non-exclusive, non-transferable, limited license to use the Programs, Documentation, and Examples as provided herein. Certain Externally Authored Programs are licensed under different

terms set by the publishers of such Externally Authored Programs, 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/. 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/, for a particular Externally Authored Program shall take precedence for such Externally Authored Program to the extent of any conflict between such terms and these Terms and Conditions.

a Programs. You may license an NSL, a CPU, an FNL, or a CSL 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. Programs licensed under one license type may not be run in integrated use with Programs licensed under another license type.

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, except as expressly provided otherwise in this Agreement with respect to certain of the Externally Authored Programs.

c Examples. Examples 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. Provided that your changes or additions to the Examples are sufficiently substantial to create a derivative work, you then have the right to use, modify, publish, and distribute those modified Examples as part of your derivative work. 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. Furthermore, notwithstanding anything to the contrary herein, any Example containing a notice of third party authorship may not be modified, redistributed, or republished unless there are terms contained in such file expressly allowing such modification, redistribution, and/or republication. Certain examples provided by us are provided under different terms and conditions for use and publication. Such different terms and conditions are identified via a notice in the Application. Any modification, republication, or redistribution of Example Applications, Example Physics Interfaces, or code Examples using the COMSOL API shall comply with Section 3 of this Agreement and any terms and conditions applicable to the Example.

d 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 Externally Authored Programs and other programs for incorporation into our Programs, and you shall have no right, therein, except the expressly limited license rights granted herein.

e 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 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 Applications that require the

Programs to run. Any sublicensing of the CSL version of the Programs is conditioned upon the following:

(i) You must require each sublicensee to accept the COMSOL Server End User License Agreement that is displayed upon first use of the CSL.

(ii) You shall not take any steps to disable or interfere in any way with the automatic delivery of the COMSOL Server End User License Agreement to sublicensees to whom you provide access to the Programs or of notices contained in the "About" section of any Applications you make available to sublicensees of the CSL version of the Programs.

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

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

(v) You shall not sublicense the CSL version of the Programs other than to host and run Applications that you or your sublicensee is authorized to run.

(vi) If you use the CSL version of the Programs to call any third party software, including, but not limited to the Externally Authored Programs, your use of that third party software must comply with all terms and conditions of the license agreement that gives you the right to use such third party software, including, without limitation, any restrictions on how such third party software may be called.

Except as expressly set forth herein, you may transfer your rights hereunder only in accordance with Section 16.

f 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 Section 3, 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. You represent and warrant that you will use only COMSOL software that has been validly licensed to you by us or our authorized distributors or resellers.

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

h Use.

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

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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 be accessed and used via a single encrypted connection providing secure remote access, such as Virtual Private Network or Remote Desktop Protocol (using Network Level Authentication and using encryption), solely for use permitted by this Agreement. The NSL version of the Programs may not be accessed or used over a network or remotely by any other means, may not be accessed or used in client-server mode, and may not be used for cluster computing.

(ii) If you have licensed the CPU version of the Programs, they may be installed and operated on a single designated physical computer, provided the Programs are only accessible to, and operated by, a single licensed user at a time, said user being physically located at the computer. 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 or used for cluster or cloud computing.

(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, either on-site or remotely. You may have as many individuals using the Programs at any given time as the number of concurrent users for which you have purchased FNL licenses for such Programs. If the Programs have the ability to run as client and server on separate computers, the FNL version 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. The FNL version of the Programs (and not the NSL or CPU versions) may be installed on the server of a source of secure remote computing, which may include installation of the license manager server, regardless of whether that source is owned by you or a third party. You may not provide access to the FNL version of the Programs outside the Territory, except in connection with installation of the Programs on the server of a source of secure remote computing capacity, in which case end users accessing the Programs must be restricted to the Territory.

(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, either on-site or remotely. Log-in credentials may not be shared among authorized users of the CSL version of the Programs. In no event may you use the CSL version of the Programs to run more than 4 Applications 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 3, but you 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 Applications. Your use of Applications must comply with all restrictions on Applications set forth in Section 3 and with any terms and conditions specified by the publisher of each Application. The CSL also allows you to distribute the client software licensed under the COMSOL Client License Agreement to authorized users of your CSL installation. The CSL may not be used as a replacement for an NSL, CPU, FNL, or CKL license for the purpose of developing Models or Applications. The CSL may not be used for hosting Applications whose purpose is to load and run Models that were not originally embedded in the Application when developed in the Application Builder.

(v) If the NSL, CPU, and/or FNL versions of the Programs or the CKL or 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.

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

(vii) 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.

(viii) Except with respect to the CSL and ASL version of the Programs and except with respect to Compiled Applications, you may use the Programs only for your internal operations within the Territory, unless otherwise consented to by us in writing.

(ix) The fees for the license granted herein are determined based upon your installation and use of the Programs in the Territory. We may charge you an additional fee for any installation or use of the Programs in any location outside the Territory.

i 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/, 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/, 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 undertake any 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.

j License Manager. You may only use the Programs with the license manager with which the Programs were delivered, and you may not take any action to interfere with or disable such license manager. You may not mechanize or automate the process of checking out or in license seats for one or more Programs and/or components thereof for the purpose of circumventing license management.

k 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.

l 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 wish to send us "covered defense information", as such term is defined in DFAR clause 252.204-7012, or other U.S. governmental information that is restricted by law, you shall do so solely by email to: support@us.comsol.com.

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.

m 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 canceled 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 for the use of the Named User to whom we have issued such trial license. 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 and Support 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 (m) shall prevail over any conflicting provisions in this Agreement.

n 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. 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 2(n) 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.

o Protection and Confidentiality of Your Information. For a period of three years following your disclosure of Confidential Information to us: we will disclose such Confidential Information only on a need-to-know basis to our employees and contractors and not to any other person or entity; we shall use such Confidential Information solely for the purposes for which it is disclosed; and we shall use all reasonable care to keep such Confidential Information confidential consistent with your disclosure of such information to us.

p Exceptions to Confidentiality. The confidentiality obligation set forth in Section 2(o) 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 2(o) 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.

q 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 2(q) 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.

r <u>Submissions.</u> To the extent you make any 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.

s <u>Future Releases.</u> 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.

3 <u>Program Output</u>. Models, Physics Interfaces, Applications, and Compiled Applications produced by the Programs are subject to the following restrictions:

a <u>Models and Physics Interfaces</u>. You may use, publish, distribute, and authorize others to use Models and Physics Interfaces that you create with the Programs worldwide, subject to the terms and conditions of this Agreement.

b <u>Applications</u>:

(i) Creation. We grant you a non-exclusive license, within the Territory in which you are authorized to use the Programs, to create Applications that incorporate user generated files that require one or more of the Programs to run, subject to the terms and conditions set forth in this Agreement.

(ii) Distribution. We grant you a perpetual, non-exclusive, world-wide license to distribute any 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 Applications that you create, provided that you and any distributor or sublicensor of your Applications requires that such Applications be used in conjunction with licensed use of those Programs required by the Applications to run and subject to the terms and conditions set forth in this Agreement or, with respect to use of a CSL by others that you authorize, pursuant to the terms and

conditions of the COMSOL Server End User License Agreement, which will be presented to such users upon first use.

(iii) Use. You may use Applications in conjunction with your licensed use of those Programs required by the Applications to run, subject to the terms and conditions set forth in this Agreement.

(iv) Restrictions. Applications are subject to the following restrictions:

A. No 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. You may offer your Applications under terms and conditions of your choosing, provided that (a) insofar as you distribute or license your Application for use by others any such terms and conditions governing that redistribution or sublicensing are at least as restrictive as paragraph D below, (b) no terms and conditions applicable to any license for your Applications shall alter, amend, conflict with, or purport to terminate this Agreement in any way, and (c) you may not distribute your 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 Application or other software incorporated into, derived from, or distributed with your 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 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 Application or require your customers to obtain the necessary rights to use such third party software programs with your Application; (ii) you must obtain sufficient rights from the publishers of such third party programs to permit the interaction that your Application makes possible between the Programs and such third party programs and to permit any publication, distribution, licensing, and/or sublicensing that you undertake or authorize with respect to your Application; and (iii) you must otherwise comply with the terms and conditions of any license agreement governing such third party programs. In no event shall you distribute your Application in conjunction with any other software program, or allow your 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.

C. All use of our trademarks and third party trademarks in connection with your Application must comply with the then-current version of our trademark guidelines, www.comsol.com/trademarks.

D. To the extent your Application requires any or all of the CAD Import Module, Design Module, LiveLink™ for SOLIDWORKS®, LiveLink™ for Solid Edge®, LiveLink™ for Inventor®, LiveLink™ for AutoCAD®, LiveLink™ for PTC® Creo® Parametric™, LiveLink™ for PTC® Pro/ENGINEER®, LiveLink™ for

Revit®, and/or File Import for CATIA® V5 (the "CAD Interfacing Programs") in order to run:

(1) Such Application must have a graphical user interface ("GUI").

(2) Such 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.

(3) Such Application must not have as a major function computer-aided design ("CAD") or be marketed as competitive to any CAD product.

(4) Such Application must not be marketed as a standalone product for translating input to or output from any CAD product.

(5) In the event we cease offering any of the CAD Interfacing Programs required for your Application to run, your rights to continue to use such Programs for interfacing with your 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.

(6) No 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.

(7) No 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.

(8) No 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 an Application for use in a particular industry.

c Compiled Applications. If your licensed Programs include the COMSOL Compiler, then the following terms and conditions apply:

(i) Creation. We grant you a non-exclusive license, within the Territory in which you are authorized to use the COMSOL Compiler for the sole purpose of creating Compiled Applications from Applications, provided that each Compiled Application complies with the restrictions applicable to Applications and subject to the terms and conditions set forth in this Agreement. Compiled Applications may not be used as a replacement for an NSL, CPU, FNL, or CKL license for the purpose of developing Models or Applications. Compiled Applications may not be used for the purpose of loading and running Models that were not originally embedded in the Application when developed in the Application Builder.

(ii) Distribution. We grant you a perpetual, non-exclusive, world-wide license to distribute any Compiled Applications that you create or that you receive a sublicense to distribute, and we grant you a perpetual, non-exclusive, world-wide license to sublicense the distribution of any Compiled Applications that you create, subject to the terms and conditions set forth in this Agreement.

(iii) Use. You and any sublicensee of yours may use your Compiled Applications on any machine or network, regardless of whether or not that machine or network

contains any version of the Programs, subject to the terms and conditions set forth in this Agreement.

(iv) Restrictions. Compiled Applications are subject to the following restrictions:

A. All restrictions set forth in Section 3(b)(iv) above with respect to Applications shall apply to Compiled Applications.

B. All users of the Compiled Application must be required to accept the COMSOL Runtime License Agreement.

C. You shall not in any way interfere with the delivery of the COMSOL Runtime License Agreement to users of the Compiled Application or of notices contained in the "About" section of a Compiled Application.

D. You may add your own end-user license agreement to a Compiled Application, provided that your end-user license agreement does not conflict with or attempt to supersede any terms and conditions of the COMSOL Runtime License Agreement.

E. You shall not distribute COMSOL runtime libraries found in a Compiled Application, apart from as embedded in that Compiled Application.

d Independent Development. You acknowledge that we may be engaged in independent development in the subject area of any support requests that relate to any Applications or Compiled 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 Application or Compiled Application that you or they have developed or any invention, design, or discovery thereof.

4 License Term. Unless terminated earlier according to this Agreement, this Agreement shall continue either perpetually or for a limited period, as identified in a quotation we issue that you accept, in a purchase order accepted by us or in 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.

5 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.

6 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. 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. 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: us-export-control@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 2(o), you must mark such email with the designation "Confidential Information" in the subject line of the message. You shall be solely responsible for ensuring that all files you send to us in connection with any support request comply with all applicable Export Laws, including with respect to our accessing those files in any locations in which we do business and by our employees, regardless of nationality or residency, unless such requests are submitted as set forth in this Section 6. In the event you are unable to provide us with items relevant to a support request on account of Export Laws, we shall undertake commercially reasonable efforts to address the support request but do not guarantee our ability to do so.

7 <u>Maintenance and Support</u>.

a <u>Term for Maintenance and Support</u>. Unless you have purchased a term license with a Maintenance and Support period expiring prior to the end of the term, Maintenance and Support will terminate upon the earlier of twelve (12) months or the expiration of the term. Notwithstanding the foregoing, termination of the Maintenance and Support period for any one Program shall terminate the period for Maintenance and Support for all other Programs that require that Program in order to run, even if such other Programs were purchased separately. That initial period for Maintenance and Support 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 period for Maintenance and Support 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 period for Maintenance and Support 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.

b <u>Updates and New Versions</u>. All updates to, and new versions of, the Programs that we deliver shall be deemed to be part of the Programs that are licensed pursuant to this

Agreement or any successor version of this Agreement displayed upon installation of such updates to and/or new versions of the Programs.

c <u>Renewal</u>. Maintenance and Support may be renewed, at the then-current price, as long as we offer such services. If you fail to renew Maintenance and Support when due, we may charge you a fee for restarting Maintenance and Support.

d <u>Scope</u>. Maintenance and Support is 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.

e <u>Use of Support Materials</u>. Unless the support request is designated as Confidential pursuant to Paragraph 2(o), 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 and licensors 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.

8 <u>LIMITED WARRANTY</u>.

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 7. Delivery of subsequent versions of or upgrades to the Programs shall not enlarge or restart the Acceptance Period or Warranty Period. IN NO EVENT SHALL THE FOREGOING WARRANTY OBLIGATIONS EXTEND TO SUBLICENSEES OF THE CSL OR ASL VERSIONS OF THE PROGRAMS OR TO SUBLICENSEES OF YOUR COMPILED APPLICATIONS.

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 AB, Tegnérgatan 23, SE-111 40 STOCKHOLM, Sweden. Attn: Sales & Marketing Manager.

d EXCEPT AS EXPRESSLY PROVIDED ABOVE, EXCEPT AS EXPRESSLY SPECIFIED IN SECTION 10, AND EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW, THE PROGRAMS, DOCUMENTATION, EXAMPLES, AND ALL MAINTENANCE AND SUPPORT, PRE-SALES SUPPORT, PROOFS OF CONCEPT, AND ANY OTHER SERVICES OR ITEMS WE MAY PROVIDE ARISING OUT OF OR RELATING TO THIS AGREEMENT 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. FURTHERMORE, EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW, IN NO EVENT SHALL OUR LICENSORS BE RESPONSIBLE FOR ANY WARRANTIES UNDER THIS AGREEMENT.

e 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. YOU ASSUME SOLE RESPONSIBILITY FOR THE SELECTION OF HARDWARE AND DETERMINATION OF SYSTEM CONFIGURATIONS FOR USE WITH THE PROGRAMS, AND WE SHALL NOT BE RESPONSIBLE FOR TESTING THE PROGRAMS FOR THE HARDWARE AND SYSTEM CONFIRGURATIONS YOU MAY CHOOSE. YOU ASSUME SOLE RESPONSIBILITY FOR DETERMINING YOUR RIGHT TO USE AND AUTHORIZE OTHERS TO USE ANY THIRD PARTY DATA THAT YOU IMPORT FOR USE WITH THE PROGRAMS. YOU ACKNOWLEDGE AND AGREE THAT THE PROGRAMS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE IN WHICH THE FAILURE OF THE PROGRAMS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. YOU ACKNOWLEDGE AND AGREE THAT SIMULATION SOFTWARE IS NOT A SUBSTITUTE FOR SAFETY AND EFFICACY TESTING FOR ANY PRODUCT OR PROCESS BEING SIMULATED, AND YOU ASSUME SOLE RESPONSIBILITY FOR SUCH SAFETY AND EFFICACY TESTING.

9 Limitation Of Liability. EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW AND EXCEPT FOR OUR INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 10, 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 10, 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 10, 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.

10 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 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 or relating to Applications or Compiled Applications created by you, used by you, or distributed by you or on your behalf, 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.

11 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.

12 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.

13 Taxes. You shall be liable for any taxes (except those on our net income) due in connection with this Agreement.

14 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. Furthermore and 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 or pertaining in whole or in part to any Program output that you or they have developed or any invention, design, or discovery thereof, then we shall have the right to terminate, effective after thirty (30) days written notice, all licenses granted to you and them. 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.

15 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, 2(d), 2(i), 2(n), 2(o), 2(p), 2(q), 3(a), 3(b)(ii)–(iv), 3(c)(ii)–(iv), 8, 9, 10, 12, 13, 14, 15, 17, 19, and 20 of this Agreement shall survive termination or expiration of this Agreement.

16 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.

17 Personal Data and Privacy. Certain of your interactions with us involve providing us with personal data. For information on what personal data we collect, how we process it, and how you can control the use of your personal data, see https://www.comsol.com/privacy-policy.

18 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.

19 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. If you purchased a license to the Programs in the Americas (including the Caribbean and Canada), 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. Such licensees agree that any dispute, controversy, or claim arising out or relating to this Agreement or the breach, termination, or alleged invalidity thereof shall be subject to exclusive jurisdiction and venue in the state and federal courts in the Commonwealth of Massachusetts and consent to personal jurisdiction therein. If you purchased a license to the Programs outside the Americas, this Agreement shall be governed by and construed in accordance with the laws of Sweden without regard to conflicts of law principles. If you purchased a license outside the Americas, any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination, or alleged invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC"). The Rules for Expedited Arbitrations shall apply to such arbitrations, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The Parties shall keep all information, documentation, materials in whatever form disclosed in the course of such arbitral proceeding confidential and they shall be used solely for the purpose of those proceedings. The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English. For all licensees, 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. 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

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are a governmental user in a jurisdiction whose law restricts your ability to enter into agreements regarding the terms in this Section 19, 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 19. 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. 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. The parties to this Agreement hereby confirm their desire that this Agreement, and any documents relating thereto, be written solely in the English language. Les parties au présent Accord confirment leur volonté que cet Accord, ainsi que les documents s'y rattachant, soient rédigés uniquement en langue anglaise.

20) <u>Entire Agreement</u>. 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, 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, the financial terms of sale, or the rights, obligations, warranties, or liabilities of our licensors. 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 Institutions at 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 verify and review eligibility from time to time. Distribution of Applications produced pursuant to Section 3 of this Agreement, including for profit, shall not be considered commercial usage provided that such 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, the provisions of this Academic Addendum apply to each Program licensed under the Agreement at Academic Prices only to Institutions for NSL, CPU, FNL, CKL, and ASL versions of the Programs, 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. Except as set forth in Section 5 of this Academic Addendum, 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. The CKL version of the Programs may not be used for cluster computing. 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. Log-in credentials may not be shared among authorized users of the ASL version of the Programs. 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 Applications for academic use. Your use of Applications must comply with all restrictions on Applications set forth in Section 3 of this Agreement and with any terms and conditions specified by the publisher of each Application. Unless expressly stated otherwise in the Academic Addendum, the ASL version of the Programs shall be subject to all restrictions applicable to the CSL version of the Programs.

b You may have up to 300 concurrent users for an ASL installation. In no event may any authorized concurrent user use the ASL version of the Programs to run more than 4 Applications at any given time. The ASL version of the Programs may be installed, accessed, and used worldwide, including remotely, subject to the terms and conditions of this Agreement, including, without limitation, compliance with the restrictions set forth in Section 4, but you 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, regardless of their location of access, subject to the following:

(i) You must require each sublicensee to accept this Agreement.

(ii) 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.

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

(iv) 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, www.comsol.com/trademarks.

(v) You shall not authorize use of the ASL version of the Programs other than to host and run Applications that you or your sublicensee is authorized to run.

(vi) If you use the ASL version of the Programs to call any third party software, your use of that third party software must comply with all terms and conditions of the license agreement that gives you the right to use such third party software, including, without limitation, any restrictions on how such third party software may be called.

5 Academic Networked Installation and Use. Except with respect to license files and passcodes for individual computers of CKL student users pursuant to Section 3 of this Academic Addendum, the FNL and CKL versions of the Programs may only be used on a network that is restricted to solely on-campus use, provided, however, that users of the FNL and CKL versions of the Programs may access and use such Programs via an encrypted connection providing secure remote access, such as Virtual Private Network or Remote Desktop Protocol (using Network Level Authentication and using encryption), solely for the purposes permitted by this Academic Addendum. Notwithstanding the

foregoing, nothing in this Section shall prohibit the installation of the FNL version of the Programs on the server of a third party providing secure remote computing capacity in accordance with Section 2(h)(iii) of the Agreement. Furthermore, the NSL version of the Programs licensed at academic prices may be accessed and used remotely for academic purposes and subject to the restrictions on remote access to, and use of, NSL licenses sold at commercial prices.

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. Support cases for licenses purchased at academic prices are not eligible for treatment pursuant to Section 2(o) of the Agreement.