

NUMERICS SOFTWARE GMBH SOFTWARE LICENSE AGREEMENT

Whenever Licensee licenses a software product ("Program" as further defined herein) from Licensor, by signing a License Contract or by accepting an offer or quotation which refers to this Software License Agreement ("Agreement") and in which this Agreement is incorporated by reference, each party has caused this Agreement to be executed by its duly authorized representatives and agrees to be bound by the terms and conditions of this Agreement.

§ 1. DEFINITIONS

- (1) "Affiliate" of a company means any person or other entity directly or indirectly controlling, controlled by, or under common control of such company.
 - (2) "ASC" is that person appointed by Licensee as Licensee's representative and liaison with Licensor for purposes of coordinating Licensee's receipt of CSTE.
 - (3) "Channel Partner" means Licensor's Affiliates or persons or other business entities that are authorized by Licensor to distribute, support, or both distribute and support Program. Any Customer Support obligations of Licensor under this Agreement may be delegated to a Channel Partner at Licensor's discretion.
 - (4) "Designated Site" means Licensee's physical location identified on the License Form and is where the Program(s) is authorized by Licensor to be used.
 - (5) "Effective Date of the Agreement" means the date specified at the bottom of this Agreement
 - (6) "Effective Date of Program" means the date the Program or Program release is made available for use for the Licensee unless otherwise indicated in written form.
 - (7) "Lease License" means a license which has a License Term commencing on the Effective Date of Program and limited in duration for a specified period of time as identified on the License Contract, or if not specified, for a period of one year, and which may renew pursuant to Section 3 below.
 - (8) "License Contract" means any document referencing this Agreement which
 - (i) is signed by the Licensor and Licensee,
 - (ii) incorporates the terms and conditions set forth herein and
 - (iii) sets forth, at a minimum, the Licensee's name, Designated Site, Program name, License Term, and the ASC name and address.
- Each License Contract will be treated as a separate agreement.
- (9) "License Key" means a software licensing management and security tool or other device that Licensor uses to allow Licensee access to the Program(s) and which may have an expiration date.
 - (10) "License Term" means the period of time during which Licensee is authorized to use Program in accordance with the applicable license grant.
 - (11) "Licensee" means the entity identified on the License Contract, including its Affiliates.
 - (12) "Licensor" means NUMERICS Software GmbH¹ unless an Affiliate of NUMERICS Software GmbH is identified as Licensor on the License Contract.
 - (13) "Paid-Up License" means a license that has a License Term commencing on the Effective Date of Program and continuing in perpetuity unless earlier terminated in accordance with the terms of this Agreement.
 - (14) "Program" means the software listed in the applicable License Contract, any accompanying documentation, and any Technical Enhancements to such software.

¹ NUMERICS Software GmbH, Commercial Register: Amtsgericht München, HBR 203203;
Registered Office: Petershausen, Germany; Managing Director: Dr. Thomas Hartmann

(15) “CSTE” or “Customer Support and Technical Enhancements” means the services described in § 8(1) below.

(16) “Academic Use” shall mean use

- (i) by an individual employed by (or, with respect to academic institutions, enrolled in a full-time course of study at) an accredited academic institution organized and operated exclusively for the purpose of teaching,
- (ii) at the location of such academic institution, and
- (iii) for research purposes that do not, directly or indirectly, support any commercial efforts or any commercial enterprise.

§ 2 GRANT

(1) Upon execution of a License Contract by Licensee and upon acceptance and execution of such License Contract by Licensor, Licensor grants to Licensee a non-assignable, nonexclusive, nontransferable right and license, without the right to grant sublicenses, to use each Program set forth on each License Contract entered into hereunder for the License Term. Licensee will use the Program only for Licensee’s own internal data processing purposes and will not make all or any part of any Program available to any third person, including without limitation, providing data processing services, serving as an application service provider, or providing batch processing services. Nothing contained herein will be deemed to convey to Licensee any title, ownership, copyright or any other intellectual property rights in or related to Program, and Licensor reserves all rights in and to the Program which are not expressly granted in writing by Licensor to Licensee. Licensee will not permit the use of the Program by persons other than its employees.

(2) PROGRAM IS MANAGED BY LICENSE KEYS WHICH MAY LIMIT THE PROGRAMS’ USE AND MAY REQUIRE LICENSEE TO OBTAIN NEW LICENSE KEYS FROM TIME TO TIME.

(3) Licensor will provide Licensee access to the Program via License Keys. Licensee will be responsible for installation of the Program. Licensee may make copies of the Program only as are necessary for Licensee’s backup or archival purposes of such Program. The license granted to Licensee by reason of this § 2 applies to all copies of the Program. In no event will Licensee remove or modify any copyright notices or other proprietary markings contained within the Program and will ensure that such notices are reproduced within all copies of the Program.

(4) Licensee accepts full responsibility for the safeguarding of the License Keys provided with the Program. License Keys damaged due to Licensee’s negligence will be replaced; Licensor will have the right to impose reasonable conditions (such as the imposition of a reasonable fee) for the replacement.

(5) Licensee will not modify the License Keys provided with the Program in any way. Except as expressly permitted by this § 2(4) or as required to be permitted by local law, Licensee will not (and will not attempt to nor allow any third party to or attempt to) adapt, alter, amend, modify, reverse engineer, decompile, disassemble or decode the whole or any part of the Program or translate the whole or any part of the Program into another language. To the extent that local law expressly grants or requires Licensor to grant Licensee the right to decompile the Program in order to obtain the information necessary to render the Program interoperable with other computer programs used or to be created by Licensee, Licensor will make such information available to Licensee and Licensee will not decompile (or attempt to do so) the Program without first requesting such information from Licensor. Licensor will have the right to impose reasonable conditions (such as the imposition of a reasonable fee) for making the information available. In order to ensure that Licensee receives the appropriate information, Licensee must first give Licensor sufficient details of Licensee’s objectives and other software concerned. All requests for the appropriate information will be given by notice to be delivered in accordance with the terms of this Agreement. Licensee may not distribute the Program (the whole or any part) to any third party or link or compile the Program to or with any third-party software without Licensor’s prior written permission, which consent Licensor may grant or withhold in its sole discretion.

(6) Licensee acknowledges and agrees that the Program is subject to German laws governing the export and/or re-export of the Program including, but not limited to, the regulations by the German Trading Authorities and all regulations, orders and licenses issued thereunder (collectively the "**Export Laws**"). Licensee warrants that it is and will remain in compliance with all such Export Laws with respect to the Program, and acknowledges that Export Laws may change over time. Licensee additionally warrants that it has not been, and is not currently, debarred, suspended, prohibited or impaired from exporting, re-exporting, receiving, purchasing, procuring, or otherwise obtaining any product, commodity, or technical data regulated by any agency of the German government. In particular, Licensee hereby gives assurance that unless notice is given to Licensor, and prior authorization is obtained as required by the Export Laws, Licensee will not knowingly re-export, directly or indirectly, any Programs or any technical data transferred by Licensor to Licensee to any destination or person or entity in violation of the Export Laws or this Agreement.

§ 3 TERM AND TERMINATION

(1) Lease Licenses are non-cancelable by Licensee (except as set out elsewhere herein), will commence on the Effective Date of Program and will have a term equal to the term specified on the License Contract. The Lease License can be renewed by the Licensee at the then-current renewal fees set by Licensor or Channel Partner unless Channel Partner or Licensor gives prior written notice of their intent to not renew the applicable Lease License prior to the end of the initial or renewal term (as applicable). Licensor may terminate the Lease Licenses in the event that Licensee fails to pay the then-current renewal fees to the Channel Partner or Licensor, as applicable, by the due date for such payment. In the event a Lease License is terminated prior to the end of the term, no refund will be due to Licensee for any portion of the prepaid Lease License fee.

(2) The license for a Paid-up License will commence on the Effective Date of Program and will be perpetual unless terminated as provided in § 3(3) below.

(3) Licensor may immediately terminate this Agreement and any Program license upon any of the following:

- (i) Licensee materially breaches any provision of this Agreement or a License Contract and fails to cure such breach within thirty (30) days of notice of such breach from Licensor or Channel Partner, provided that Licensor may terminate this Agreement and any Program licenses for any material breach by Licensee that is not capable of being cured;
- (ii) Licensee ceases to do business for any reason;
- (iii) Licensee has a receiver or administrator appointed over all or part of its assets;
- (iv) Licensee becomes subject to any bankruptcy, insolvency, reorganization, liquidation or other similar proceedings, which proceedings are not dismissed within fifteen (15) days thereafter;
- (v) the transfer of a majority of Licensee's assets or outstanding voting securities (including, without limitation, by way of merger of Licensee with or into any other person or entity), or the sale of Licensee's business, or any other transaction or series of related transactions in which the security holders of Licensee immediately prior to such transaction(s) do not hold at least a majority of the outstanding voting securities of Licensee immediately after the transaction(s); or
- (vi) any attempted assignment of this Agreement or License Contract by Licensee without prior written approval by Licensor.

(4) If the license for Program granted hereunder is terminated for any reason, Licensee will immediately uninstall the Program from the computer(s) on which it is installed and will certify to Licensor in writing that the Program is uninstalled and all copies thereof have either been destroyed or returned to Licensor or the Channel Partner. Licensee will immediately return to Licensor or the Channel Partner any License Key and confidential information or material provided to Licensee in connection with the Program, unless otherwise specified by Licensor or the Channel Partner.

§ 4 PAYMENT

For sales of licenses of the Program and/or CSTE to Licensee directly by Licensor or its Affiliates or for sales of licenses of the Program and/or CSTE by a non-Affiliated Channel Partner in which Licensor has requested payment be made directly to Licensor or its Affiliates (“Directed Payments”), Licensee agrees to pay the applicable fees within thirty (30) days of receipt of an invoice for such fees from Licensor or its Affiliates. In the event that Licensee does not pay within such time period, Licensor or its Affiliates (as applicable) additionally may charge Licensee interest in an amount equal to 1.5% per month of the unpaid balance. For sales of licenses of the Program and/or CSTE to Licensee by non-Affiliated Channel Partners other than Licensor’s Affiliates, payments other than Directed Payments made by Licensee under this Agreement will be paid to the Channel Partner within the time agreed between the Channel Partner and Licensee. If such period is not specified, then the payment terms shall be consistent with the payment terms set forth above for payments to Licensor and its Affiliates. Fees are exclusive of all value added taxes, sales taxes, use taxes, and the like. Licensee will pay all taxes associated with the Program, exclusive of any tax based on the income of Licensor or the Channel Partner. If claiming a tax exemption, Licensee must provide a valid tax exemption certificate.

§ 5 CONFIDENTIAL INFORMATION

(1) If applicable, Licensee hereby acknowledges that the Program embodies confidential and proprietary information, including trade secrets, owned by Licensor or its Affiliates or suppliers (the “Program Confidential Information”).

(2) Excluding the Program and the Program Confidential Information, the parties agree that any other information disclosed by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) under this Agreement and which is identified in writing as confidential or proprietary (“Other Confidential Information”) and, together with the Program Confidential Information, (“Confidential Information”) will remain the property of the Disclosing Party. If initially disclosed orally or visually, Other Confidential Information must be identified as confidential at the time of disclosure and a written summary thereof, also marked with such a legend, must be provided to the Receiving Party within 15 days of the initial disclosure. Notwithstanding the foregoing to the contrary, reports and/or information related to or regarding Licensor’s or its Affiliates’, suppliers’, or Channel Partner’s business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information even if not so marked or identified. The Receiving Party will use the same degree of care, but not less than reasonable care, to protect the confidentiality of the Disclosing Party’s Confidential Information as it uses to protect its own similar confidential and proprietary information. The Receiving Party agrees that it will not

- (i) use the Disclosing Party’s Confidential Information in any way, for its own account or the account of any third party, except for the exercise of its rights and performance of its obligations under this Agreement, or
- (ii) disclose any such Confidential Information to any party, other than furnishing such Confidential Information to (a) its employees, Affiliates, Channel Partners and consultants who are required to have access to such Confidential Information in connection with the exercise of its rights and performance of its obligations under this Agreement and (b) professional advisers; provided that such employees, Affiliates, consultants, Channel Partners and professional advisers are bound by written agreements or, in the case of professional advisers, ethical duties, respecting such Confidential Information in accordance with the terms of this § 5.

Notwithstanding anything to the contrary contained herein, Licensee agrees that Licensor may disclose Licensee’s Confidential Information to Licensor’s third-party software suppliers solely for the purposes of providing Customer Support for the Program and solely as such issues relate to such third party software suppliers’ components within the Program, provided that any such disclosures are subject to terms and conditions at least as restrictive as those set forth in this § 5.

- (3)** The obligations of § 5(2) will not extend to any information which:
- (i) was lawfully known to Receiving Party prior to receipt from the disclosing party; or
 - (ii) enters the public domain in general through no wrongful act or breach of this Agreement by Receiving Party; or
 - (iii) is received by Receiving Party from a third party having a legal right to disclose such information; or,
 - (iv) is developed independently by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or
 - (v) is required by law, regulation or court order to be disclosed, so long as the Receiving Party notifies the Disclosing Party in writing prior to disclosing the Confidential Information so that the Disclosing Party has an opportunity to seek a protective order or other appropriate remedy from the proper authority.

Receiving Party agrees to cooperate with the Disclosing Party in seeking such order or other remedy or in defining the scope of any required disclosure.

(4) Receiving Party has the burden of proving the exceptions in § 5(3) above.

(5) The obligations of the parties with regard to Other Confidential Information will survive for a period of three (3) years from the date of the first disclosure of such Other Confidential Information.

(6) If the parties have separately entered into a confidentiality agreement regarding the exchange of Other Confidential Information in connection with this Agreement, then the terms of that separate confidentiality agreement will govern the disclosure and use of Other Confidential Information between the parties and not this § 5. Any existing confidentiality agreements between the parties will remain in full force and effect and will not be varied by the terms of this § 5.

§ 6 WARRANTIES; LIMITATION OF REMEDY

(1) Licensor warrants to Licensee that the Program will perform in all material respects as specified in Licensor's most current user's manual ("Manual") applicable to the Program for twelve (12) months from the Effective Date of Program and for the period of time during which Licensee is entitled to receive CSTE for a Program, unless otherwise specified on the applicable License Contract. The warranties provided in this § 6 will only apply to the two (2) most current releases of the Program. This warranty will not apply if Licensor has notified Licensee in writing that Licensor no longer supports the operating system version on which such Program(s) is licensed.

(2) Licensor, its Affiliates, Channel Partners and suppliers do not warrant the accuracy or the applicability of the results obtained from the use of the Program or the Manual. No other documents or oral conversations, statements or representations will be offered by Licensee as evidence to explain, expand, alter, add to or invalidate the express warranties set forth above.

(3) The warranties set forth herein are the sole warranties provided to Licensee and extend only to Licensee itself. Licensor, its Affiliates, Channel Partners and suppliers will not be responsible for any breach of warranty caused by

- (i) modifications (or attempted modifications) to the Program made by or on behalf of Licensee, whether authorized or unauthorized, or
- (ii) any combination of the Program with any other software, or
- (iii) any use of the Program other than in the Designated Site, or
- (iv) use of other than the most current release of the Program and Manual.

(4) THE EXPRESS WARRANTIES SET FORTH IN § 6(1) OF THIS AGREEMENT ARE IN LIEU OF, AND LICENSOR, ITS AFFILIATES, CHANNEL PARTNERS AND SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE PROGRAM OR ANY PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (whether or not Licensor, its Affiliates, Channel Partners and/or its suppliers know, have reason to know, have been advised of, or are otherwise in fact aware of any such purpose), whether alleged to arise by law, by reason

of custom or usage in the trade, or by course of dealing. In addition, Licensor, its Affiliates, Channel Partners and suppliers expressly disclaim any warranty or representation to any person other than Licensee with respect to the Program or any part thereof.

(5) In the event that Program fails to perform in all material respects as warranted in this Agreement, Licensee's sole remedy will be for Licensor, at Licensor's option, to:

- (i) Provide a correction or work-around to correct the breach; or
- (ii) Modify the Program to conform substantially to the Manual; or
- (iii) If the Manual is in error, modify the Manual to accurately reflect the Program's intended functionality and actual operation; or
- (iv) Terminate the license for that Program and/or this Agreement and require Licensee to return the Program to Licensor, in which event Licensor will refund to Licensee a pro rata portion of the amounts paid for such Program(s). For a Paid-Up License, such pro rata calculation will be based on straight-line depreciation over a 36-month period following the applicable delivery date.

(6) LICENSEE'S REMEDIES AS SET FORTH IN THIS PARAGRAPH ARE THE SOLE AND EXCLUSIVE REMEDIES TO WHICH LICENSEE IS ENTITLED FOR BREACH OF WARRANTY.

§ 7 LIMITATION OF LIABILITY AND INDEMNITY

(1) SUBJECT TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR, ITS AFFILIATES, CHANNEL PARTNERS AND SUPPLIERS WILL NOT BE LIABLE TO LICENSEE OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OR LOSSES. Except for Licensor's indemnification obligations set forth in § 7(1) of this Agreement and for Licensor's material breach of § 5, in no event will Licensor's, its Affiliates', Channel Partners' and suppliers' aggregate liability to Licensee exceed, in the case of a Paid-Up License, the License Fee initially paid for such Paid-Up License (not including any CSTE fees or other fees) or, in the case of a Lease License, the License Fee paid for such Lease License during the preceding twelve (12) months. Licensee acknowledges that given all the circumstances, the limits on Licensor's liability are reasonable because of, among other things, the likelihood that without those limitations the amount of damages awardable to Licensee for a breach by Licensor or Channel Partner of this Agreement may be disproportionately greater than the license fees paid or payable for the Program. For the avoidance of doubt, Licensee is entirely responsible for keeping full back up copies of its software, data and database configurations in accordance with best industry practice. The foregoing limitations of liability apply regardless of whether or not the parties have been advised of the likelihood of such damages or losses and regardless of the theory of liability.

(2) Each of Licensor's, its Affiliates', Channel Partners' and suppliers' employees, agents, and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in this § 7 in that person's own name and for that person's own benefit, as if the words "and their employees, agents, sub-contractors, and suppliers" followed the words "Licensor, its Affiliates, Channel Partners and suppliers" wherever it appears in this § 7.

(3) Notwithstanding anything to the contrary in this Agreement, neither party limits its liability (if any) to the other party for any matter which it would be illegal for that party to exclude or to attempt to exclude its liability, but nothing in this clause confers any right or remedy upon the other party to which it would not otherwise be entitled.

(4) The Program is a mathematical analysis tool intended to assist Licensee in Licensee's development and design processes and requires considerable skill and judgment for its correct use and for the interpretation of the computed results. The Program is not intended to be nor is it a substitute for rigorous and comprehensive prototype or other testing by Licensee of products prior to production and sale.

(5) Licensee agrees to defend, indemnify and hold Licensor and its Affiliates, Channel Partners and suppliers, along with its and their officers, directors, employees and agents, (collectively, the "Indemnified Parties") harmless from and against all losses, damages, liability (including from the Indemnified Parties' negligence with respect to the Program and support thereof) incurred by such Indemnified Parties (including reasonably attorneys' fees) as a result of

Licensee's use of the Program; provided, however that such indemnification obligations will not extend to

- (i) claims for which Licensor is required to indemnify Licensee under § 7
- (ii) claims for Licensor's breach of § 5 or
- (iii) claims arising out of Licensor's willful misconduct.

§ 8 CUSTOMER SUPPORT AND TECHNICAL ENHANCEMENTS (CSTE)

(1) CSTE will consist of

- (i) reasonable telephone, e-mail or web-based support respecting the use of the Program ("Customer Support"); and
- (ii) Program releases or corrections within the Program specification at the time of lease or purchase of the Program provided by Licensor without additional charge to CSTE customers ("Technical Enhancements").

Licensor may limit the provision of Customer Support to the ASC specified in the License Contract or applicable other contract. In such event the ASC will provide first-level support to all of Licensee's users permitted to use the Program under the terms of this Agreement. Licensee may change the ASC at any time upon written notice to Licensor or the Channel Partner, as applicable. Customer Support will be provided by Licensor or its designee in Licensor's discretion. Technical Enhancements will be provided by Licensor at such times as determined solely by Licensor.

(2) For a Lease License, the annual CSTE fee is included in the Lease License fee.

(3) For a Paid-up License, telephone, email or web-based support assistance for Program installation will be provided without charge for twelve (12) months from the Effective Date of Program. In consideration for payment of the CSTE fees required by Licensor or Channel Partner, as applicable, CSTE for a Paid-Up License will be provided by the Channel Partner or Licensor, as applicable. CSTE will automatically renew at the prior year's CSTE rate plus an increase consistent with the increase in the price of the Program for which such CSTE fees are being paid for a renewal term equal to the duration of the immediately preceding initial or renewal term (as applicable) unless Licensee, Channel Partner, or Licensor gives prior written notice of its intent to terminate CSTE prior to the end of the initial or renewal CSTE term (as applicable). Notice to not renew shall be deemed given by Licensee if Licensee does not issue a purchase order to Licensor or the Channel Partner for the CSTE prior to the expiration of the then-current CSTE term. Licensor may terminate CSTE in the event that Licensee fails to pay the then-current CSTE fees to the Channel Partner or Licensor, as applicable, by the due date for such payment. In the event CSTE is terminated prior to the end of the term, no refund will be due to Licensee for any portion of the prepaid CSTE fee.

(4) Licensor and the Channel Partner will have no obligation to provide CSTE:

- (i) for other than the two most recent commercially available releases of each Program;
- (ii) for any Program that has been altered, damaged or modified by Licensee or on Licensee's behalf unless such modification was done by Licensor or parties acting on its behalf;
- (iii) for any applications, models or other customizations provided by Licensor or by Channel Partner on Licensor's behalf as part of a consulting services engagement; or
- (iv) for any problems caused by Licensee's negligence or use of the Program other than in accordance with the Manual and this Agreement.

(5) Licensor may, from time to time, post notices of Errors in Program on its holding company's website (<http://www.numerics.de>) or in such other manner as Licensor may decide in its sole discretion upon providing notice on this website. The ASC will promptly notify all of Licensee's users of the Program of Errors in the Program.

(6) In the event that CSTE is discontinued by Licensee, Licensor shall have no obligation to permit reinstatement of CSTE on such Program.

§ 9 MISCELLANEOUS

(1) All notices required in this Agreement will be given by one party to the other using the contact information indicated on the License Contract, unless a change thereof previously has been given in writing to the party giving the notice.

(2) Licensee will not assign this Agreement or individual Program license to any third party by operation of law, or in bankruptcy, or otherwise without prior written consent of Licensor. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns and permitted transferees.

(3) If Licensor grants Licensee a license for Academic Use (Academic Research License) the Licensee acknowledges and agrees that the use of the Program is bound to the restrictions defined in §1(16). Further, Licensee agrees that the Program(s) licensed for Academic Use will not be used for competitive analyses.

(4) The provisions of §§ 2(4), 2(5), 3(4), 4, 5, 6(5), 6(6), 7 and 9 will survive termination of this Agreement or any individual Program license.

(5) This Agreement may be executed in any number of counterparts (including electronically scanned and e-mailed PDF copies, faxed copies and any similarly signed and electronically transmitted copies), each of which will be deemed to be an original and all of which will constitute together one and the same agreement.

(6) The rights and obligations of the parties hereto will be governed by the substantive law the Federal Republic of Germany, excluding the United Nations Convention on the International Sale of Goods and choice of law provisions.

(7) The parties hereto consent to the venue and jurisdiction of the federal and state courts maintaining jurisdiction over Petershausen, Bavaria, Germany for purposes of any legal proceedings arising under or relating to this Agreement.

(8) If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect

- (i) the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (ii) the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

(9) Any failure of any party to enforce any of the provisions of this Agreement will not be construed as a waiver of such right of the party thereafter to enforce each and every such provision.

(10) The benefits and burdens of, and risk of loss and damage to, Licensee's copy of the Program(s) will remain with Licensor until the Program is received (physically or electronically) by Licensee or any of Licensee's employees.

(11) This Agreement, the applicable License Form and any exhibits, appendices or amendments that incorporate the Agreement by reference, constitute the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Except as specifically provided herein, this Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of the parties. Unless otherwise specified, or except to the extent expressly defined in the License Contract, the terms and conditions contained in the Software License Agreement will take precedence over any conflicting provisions contained in any appendix, exhibit or amendment incorporating the Software License Agreement by reference. No purchase order, procurement agreement or any other standardized business forms issued by Licensee, and even if such purchase order, procurement agreement or other standardized business forms provides that it takes precedence over any other agreement between the parties, shall be effective to contradict, modify, or delete from the terms of this Agreement in any manner whatsoever. Any acknowledgment, written or oral, of any such purchase order, procurement agreement or standardized business form is not recognized as a subsequent writing and will not act as acceptance of such terms.

(12) The parties have required that this Agreement and all documents relating thereto be drawn up in English.