

# MODELON END USER LICENSE AGREEMENT

## PREAMBLE

THIS AGREEMENT IS BETWEEN **MODELON AB**, LOCATED AT IDEON SCIENCE PARK, SE-223 70 LUND, SWEDEN (HEREINAFTER “MODELON”), AND THE LEGAL ENTITY THAT HAS ENTERED INTO THIS AGREEMENT AS LICENSEE (HEREINAFTER “LICENSEE”).

MODELON PROVIDES LICENSED PROGRAMS. LICENSEE MAY ORDER LICENSES FOR ANY LICENSED PROGRAMS BY ACCEPTING THESE GENERAL TERMS AND ANY APPLICABLE APPENDICES.

EACH PARTY ACTS EXCLUSIVELY IN ITS OWN NAME AND ON ITS OWN BEHALF WITH RESPECT TO THE RIGHTS AND OBLIGATIONS PURSUANT TO THIS AGREEMENT.

YOU UNDERSTAND THAT, IF YOU PURCHASED THE SOFTWARE PROGRAM FROM AN AUTHORISED RESELLER OF MODELON, THAT RESELLER IS NOT MODELON’S AGENT AND IS NOT AUTHORISED TO MAKE ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES, STATUTORY OR OTHERWISE, ON MODELON’S BEHALF NOR TO VARY ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT.

## 1. DEFINITIONS

**Agreement** means this agreement, which is comprised of these General Terms, any Appendices and the Quote.

**Anniversary Date of the License** is the anniversary date of Effective Date of the License.

**Appendix** means an appendix to these General Terms.

**Modelon** means Modelon AB, a Swedish “aktiebolag” with its registered office at Ideon Science Park, SE-223 70 Lund, Sweden.

**Documentation** means, at any time, the current user documentation in any form or media as made available by Modelon for use in connection with Licensed Programs.

**Modelon Group Company** means Modelon or any Modelon Affiliate.

**Modelon Affiliate** means any company controlling, controlled by or in common control with Modelon..

**Effective Date of the License** means, for any license for a Licensed Program, the date on which the Licensed Programs, and if required License Keys, are considered by Modelon to have been delivered to the Licensee.

**Error** means a material malfunction in the performance of a Licensed Program, as performance is described in its Documentation, and which is reported in accordance with the applicable support policy and reproducible by Modelon.

**Export Option** means a Licensed Program option that allows and enables the creation of Library Derivative Work that operates without License Keys or License Management System.

**General Terms** means these general terms and conditions.

**Library Derivative Work** means work in source or binary form that Licensee has derived from Licensed Libraries (including, without limitation, by incorporating, translating, or modifying, in whole or in part, any such Licensed Libraries), and which may incorporate substantial additional intellectual property and/or know-how compared with the Licensed Libraries, and which in source code or human readable format is either (i) dependent on Licensed Libraries, or (ii) automatically generated by Licensed Programs, and which would constitute copyright infringement if made without Modelon's authorization. For the avoidance of doubt, a Licensee work in binary form incorporating in whole or in part one or more Licensed Libraries provided with the Licensed Programs shall be considered as a Library Derivative Work of said one or more Licensed Libraries.

**License Keys** means unique authorization code(s) accepted by the License Management System which enable the use of the Licensed Programs.

**License Management System** means the license control and distribution software that accompanies the Licensed Programs and limits its use in accordance with this Agreement.

**Licensed Libraries** means the part of Licensed Programs licensed with the purpose of use for Licensee to create Library Derivative Work.

**Licensed Program** means (i) any data processing program for which a license is ordered by and provided to Licensee pursuant to a Quote, consisting of a series of instructions or databases in machine readable form including Licensed Libraries, (ii) associated Documentation, (iii) Maintenance Delivery and (iv) Releases. Licensed Programs do not include Third Party Software.

**Machine(s)** means computer equipment i) belonging to Licensee or under its sole control or supervision, ii) located on Licensee’s premises (provided when applicable that employees of Licensee may occasionally use laptop computers or other

mobile devices outside Licensee's premises) and iii) on which the Licensed Programs are executed.

**Maintenance Delivery** means a periodic delivery of a Licensed Program which mainly includes the correction of Error(s) for a given Release, if and when made generally available to the market.

**Object Code** means computer-programming code, substantially or entirely in binary form, which is directly executable by a computer.

**Quote** means a document containing a quote for Licensed Programs made to Licensee by Modelon including details on license model and payment regime and that is signed or otherwise accepted by Licensee and Modelon.

**Release** means a periodic update of the same version of a Licensed Program if and when made generally available to the market.

**Site** means the agreed physical location(s) of the Machine(s) where the Licensed Program(s) are licensed, installed and executed, and unless specified otherwise in this Agreement or Quote, is the premises of the Licensee.

**Specific Terms for Third Party Software** shall mean the specific terms and conditions applicable to Third Party Software licensed to Licensee to be used in connection with or within the Licensed Programs, published on Modelon's website, [www.modelon.se/ThirdPartyTerms](http://www.modelon.se/ThirdPartyTerms), as modified from time to time.

**Support Service** means the maintenance, enhancement and/or other support services referred to in Section 3 of these General Terms.

**Third Party Software** shall mean software components or software products that may be delivered together with the Modelon products but that is not included in the Licensed Programs.

**Users** means (a) Licensee's employees, or (b) individual employees of Licensee's consultants or subcontractors who access the Licensed Programs on Machines and work for the exclusive internal needs of Licensee.

## 2. GRANT OF RIGHT AND LICENSE BY MODELON

**2.1 Grant.** Upon the Effective Date of the License, and subject to the terms and conditions of this Agreement, Modelon grants Licensee a non-exclusive, non-transferable license to use the Licensed Programs and Library Derivative Works on Machines at the defined Site and at the maximum usage and/or number of Users, as set out in the Quote. Licensee has no right to sublicense. The Licensed Programs may only be operated by Users for Licensee's internal use and in accordance with their Documentation and this Agreement. As long as the corresponding license for the Licensed Programs is valid, Modelon grants Licensee a non-exclusive, non-transferable license to prepare Derivative Works of the Licensed Libraries only. Customer may distribute such Library Derivative Works to third parties exclusively in Object Code form.

**Export Option.** If available, and as specified in the Quote or an Appendix as an Export Option, Licensee may use certain elements of the Licensed Programs without License Keys and License Management System.

**Third Party Software.** Certain Licensed Programs may contain Third Party Software to which certain Specific Terms for Third Party Software apply. The current Specific Terms for Third Party Software may be found at [www.modelon.se/ThirdPartyTerms](http://www.modelon.se/ThirdPartyTerms). Licensee warrants that it has full knowledge of such Specific Terms for Third Party Software, and agrees to be bound by and to comply with such terms

**2.2 Restrictions.** Licensee is not authorized to use the Licensed Programs to compare, benchmark, or develop competitive software code for use by Licensee, or general distribution to any third party, whether in whole or part, whether as standalone products or as components, and whatever the means of such distribution (including without limitation through the Internet or as Internet-based services).

Except to the extent permitted by this Agreement or applicable law, Licensee shall not modify, adapt, reverse engineer, decompile, disassemble, or otherwise translate all or part of the Licensed Programs.

**2.3 Copies.** Licensee may make the necessary number of copies of the applicable Licensed Program for installation and one copy for back-up per Machine in support of Licensee's authorized use as described above.

## 3. DELIVERY AND SUPPORT SERVICES

Obligations described in this Section 3 may be undertaken by a partner to Modelon.

**3.1 Delivery.** Within a reasonable period of time after Modelon's acceptance of a corresponding order, and only for the first order of a Release of a Licensed Program under each operating system, Modelon, as applicable, will deliver to Licensee one (1) copy of such Licensed Program, or make the Licensed Programs available electronically.

**3.2 Support Service.** Modelon or any third party which may be designated by Modelon, as applicable, will provide Support Services for Licensed Programs from the Effective Date of the License, subject to payment by Licensee of all applicable charges, as follows and as further detailed below:

- Licensee shall be entitled to receive Maintenance Deliveries and Releases for the Licensed Programs.

- Licensee may report Errors related to the Releases identified as supported on Modelon's Support Services website to Modelon. In any case, each Release will be supported for a minimum period of twelve (12) months from the date such Release has been made publicly available.

- Modelon shall be the primary point of contact of Licensee for collecting, qualifying, and managing Licensee's incident reports. In the event Modelon appoints a third party to be such primary contact, that third party shall be responsible for redirecting the reports of incidents qualified as Errors to Modelon. Modelon may terminate Support Service for any Licensed Program starting twelve (12) months after the announcement date of the withdrawal of such Licensed Program from marketing.

## 4. PRICE AND PAYMENT

**4.1** In consideration of the rights, licenses and services provided hereunder, Licensee shall pay the charges applicable to each

license of Licensed Programs and, at the price identified in the Quote pursuant to which Licensee made its order.

- 4.2 All prices are exclusive of taxes. Licensee shall be responsible for payment of any and all taxes, duties, excises, import VAT or similar charges of any nature whatsoever that are levied, assessed, charged, withheld, or collected for or in connection with Licensed Programs provided hereunder or otherwise arising in connection with this Agreement, but excluding taxes based on Modelon's net income. If Licensee is or may be required under any law or regulation of any governmental entity or authority, domestic or foreign, to withhold or deduct any portion of any payment due to Modelon pursuant to this Agreement, then the sum payable to Modelon will be increased by the amount necessary to yield to Modelon an amount equal to the sum it would have received had no withholdings or deductions been made.

## 5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 The ownership and all intellectual property rights in the Licensed Programs and associated Documentation belong exclusively to Modelon or its licensors. Modelon and/or its licensors shall retain all title, copyright and other intellectual property rights in the Licensed Programs and all modifications, enhancements or other works derivative of the Licensed Programs.
- 5.2 Licensee shall preserve and reproduce any copyright, patent and trademark notices which may appear in the Licensed Programs and Documentation on all copies thereof, in whole or part. Licensee shall keep full, true and accurate records of all copies of the Licensed Programs and associated Documentation, which records shall be available for audit by Modelon.
- 5.3 Licensee shall not provide, disclose or transmit any Licensed Program, nor any results of tests or benchmarks related to any Licensed Program, or copy thereof, in whole or in part, without the prior written consent of Modelon, except to Users within the limits of the rights granted under this Agreement. Licensee shall take appropriate action with Users, to ensure that Licensee complies with its obligations under this Agreement.
- 5.4 Licensee recognizes that the methodologies, techniques, expressions, ideas and concepts contained in or expressed within the Licensed Programs and associated Documentation are proprietary information or trade secrets of Modelon or other owner.

## 6. INFRINGEMENT

- 6.1 Modelon shall indemnify and hold the Licensee harmless against any liability, cost, loss or expense resulting from a third party claim alleging that the Licensed Program or any portion thereof, infringes any copyright, patent, trade secret or other intellectual property right of such third party, provided that:
- a) Modelon shall be entitled to defend the action on behalf of the Licensee at its own expense, including the right to select legal representation;
  - b) Modelon is given prompt written notice of such a claim;

- c) the Licensee provides Modelon with all reasonably requested assistance in defending the claim; and
- d) the Licensee has not entered into any negotiations with the third party.

Such indemnification is limited to costs, damages and expenses (including reasonable legal fees) finally awarded against Licensee by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Modelon arising out of such claim.

- 6.2 The foregoing indemnification does not extend to any claim resulting from modification, adaptation or combination of the Licensed Program with other material (whether or not allowed within the remaining terms of this Agreement), to the extent that the claim would not otherwise have arisen.

## 7. WARRANTIES, LIMITATION AND DISCLAIMER OF WARRANTIES

- 7.1 Subject to continuing payment of the applicable charges, Modelon warrants for 90 days from delivery to Licensee (the "Warranty Period") that the Release of any Licensed Programs will materially conform to its Documentation, provided that it is properly used in the operating environment specified by Modelon. If such Release of the Licensed Program does not conform, Modelon will attempt to make the Licensed Program perform as warranted. Modelon may request Licensee to install a Maintenance Delivery or a new Release for such performance. If after sixty (60) days from notice by Licensee of the non-conformity received within the Warranty Period, Modelon has not provided a conforming Licensed Program, Licensee's exclusive remedy and Modelon's entire liability for any breach of such warranty is for Licensee to terminate the license related to the non-conforming Licensed Program within thirty (30) days after such sixty (60) period and obtain a refund of paid charges for such Licensed Program.
- 7.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS FOR THE LICENSED PROGRAMS OR SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE, TITLE OR NON-INFRINGEMENT.
- 7.3 Except to the extent required by applicable law, Modelon does not warrant that the functions of Licensed Programs will meet Licensee's requirements or will enable it to attain the objectives Licensee has set for itself, or that they will operate in the combination or environment selected for use by Licensee, or that the operation of the Licensed Programs will be uninterrupted or free of Errors.

## 8. LIMITATION OF LIABILITY

- 8.1 MODELON'S LIABILITY TO LICENSEE, FOR ANY CLAIMS IN ANYWAY ARISING FROM OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER BASED IN CONTRACT OR OTHER THEORY OF LIABILITY IS LIMITED AS FOLLOWS:
- 8.2 All legal actions against Modelon must be filed with the appropriate judicial jurisdiction within two (2) years after the cause of action has arisen.
- 8.3 MODELON'S LIABILITY FOR DIRECT DAMAGES SHALL NOT EXCEED IN THE AGGREGATE THE AMOUNT

CORRESPONDING TO CHARGES PAID BY LICENSEE TO MODELON IN THE PRECEDING TWELVE MONTH PERIOD PRIOR TO THE OCCURRENCE OF THE CAUSE OF ACTION GIVING RISE TO THE CLAIM FOR THE USE OF THE LICENSED PROGRAM WHICH CAUSED THE DAMAGES.

8.4 MODELON SHALL NOT HAVE ANY LIABILITY IN RESPECT OF ANY CLAIMS FOR INDIRECT DAMAGES, INCLUDING CLAIMS FOR LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF DATA, WHETHER OR NOT MODELON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 9. EXPORT AND REEXPORT LAWS AND REGULATIONS

Export to Licensee of Licensed Programs and Documentation is subject to all applicable countries' export and re-export laws and regulations. Licensee shall provide Modelon with all necessary assistance for any application for such authorizations, licenses and other approvals, or other documentation related to the export or re-export of Licensed Programs. Modelon shall have no liability whatsoever towards Licensee if such authorizations, licenses or approvals are not obtained. Licensee shall not export or re-export, either directly or indirectly, Licensed Programs or Documentation when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval. Licensee hereby certifies to Licensor that the Licensed Programs ordered hereunder will not be used in any nuclear, chemical, biological, weapons or missile delivery systems and will not be diverted to any country, company or individual that is prohibited by the applicable export laws of any country.

## 10. TERM AND TERMINATION

### 10.1 Term and Termination of this Agreement

10.1.1 This Agreement shall come into force on the Effective Date of the License in respect of the first License ordered by Licensee and shall remain in full force and effect until the expiration of all licenses granted under this Agreement, unless terminated as provided hereunder.

10.1.2 Either Modelon or Licensee may terminate this Agreement and/or any licenses granted under this Agreement, if the other is in material breach of any of its obligations and has failed to remedy such breach within one (1) month of receipt of written notice. The termination will not prejudice the rights and remedies of the non-breaching parties.

### 10.2 Termination of access to Support Service by Licensee:

Licensee may terminate access to Support Service for perpetual licenses, subject to the following conditions: (i) Licensee shall notify thereof Modelon at least one month prior to the Anniversary Date of the License, and (ii) such termination shall apply to Support Services related to all licenses of a given Licensed Program held by Licensee. In such case (i) Licensee shall have no further obligation to pay the Support Services fees related to the corresponding Licensed Programs, (ii) Licensee shall duly certify in writing to Modelon that all copies, whether in whole or in part, of all Releases of the Licensed Programs and associated Documentation other than those of the latest Release of the Licensed Programs installed by Licensee, have been duly

destroyed or returned to Modelon and (iii) Support Service for such Licensed Programs will terminate at the expiration of the then current term. Subject to payment by Licensee of the then applicable process charge, Modelon will deliver the license keys necessary for Licensee to operate its perpetual licenses. Modelon shall have no further obligation to provide any service or deliver any Release in support of any such licenses, including for operation of the licenses in their hardware or software environment. Licensee may reinstate access to Support Service, provided such reinstatement is activated for all licenses of a given Licensed Program held by Licensee, and Licensee pays a reinstatement charge of an amount equal to one hundred and fifty percent (150%) of all Support Service fees that would have been due from the date of termination of access to the Support Services to the date of reinstatement of such Support Services.

### 10.3 Termination by Licensee of licenses for Licensed Programs

Licensee may terminate any license to any Licensed Program ordered under a time limited license, by providing written notice to Modelon one (1) month prior to the Anniversary Date of the License, failing which such license shall automatically renew. For perpetual licenses, notice may be provided by Licensee at any time.

10.4 **Effect of Termination.** Upon expiration or termination of this Agreement, or of any licenses granted, Licensee shall immediately destroy or return all copies of the terminated or expired Licensed Programs and associated Documentation in their entirety and shall no longer have access to Support Services. Expiration or termination of this Agreement, or of any license or Support Services, shall not relieve Licensee of its obligation to pay all fees that have accrued or are otherwise owed by Licensee under this Agreement. Licensee shall not be entitled to any refund or credit for early cancellation or termination of any licenses or services for convenience.

## 11. MISCELLANEOUS

11.1 **Notices.** All notices required hereunder shall be communicated in English and shall be personally delivered or sent by certified or registered mail or reputable express courier service, addressed to the parties at their addresses first mentioned above, or at such other address as either party may designate to the other by notice served as hereby required, or contained in the relevant order form, or sent by facsimile transmission to the facsimile machine telephone number provided by the receiving party.

11.2 **Force majeure.** Neither Party hereto shall be liable for any default in the performance of its obligations under this Agreement resulting from (i) a case of force majeure as defined by Swedish law and construed by Swedish courts and (ii) the following causes: strikes (whether previously announced or not), war (declared or not), riots, governmental action, acts of terrorism, acts of God (fire, flood, earthquake, etc.).

11.3 **Severability.** In the event any part of this Agreement (other than the provision obliging Licensee to make payment) is found to be invalid, illegal or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid, illegal or unenforceable part was originally deleted.

11.4 **Transfer, Assignment & Subcontract.** Licensee shall not subcontract, assign, delegate or otherwise transfer (including without limitation, by way of merger or contribution) any or all of its rights, duties, benefits or obligations under this Agreement, or sublicense Licensed Programs to any third party. Without the consent of the Licensee, Modelon shall have the right to assign

all or part of the rights and obligations of Modelon hereunder to any third party, but shall ensure that any such assignment shall not affect the accrued rights of the Licensee hereunder.

Licensee acknowledges and agrees that the paragraph immediately above shall not prevent, restrict or otherwise limit in any manner, Modelon's rights to seek equitable remedies, including injunctive relief before any competent court in any jurisdiction.

**11.5 Amendments & Non-Waiver.** No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing by both parties. A Party's failure at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce such provision.

**11.10 Survival.** Provisions in this Agreement which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such expiry or termination, including Sections 5, 6, 7 and 8.

**11.6 Audit.** During the term of this Agreement, Licensee shall establish and maintain accurate information records relating to the use, and when applicable, destruction of the Licensed Programs, and keep such records available for a period of three (3) years after the term of this Agreement. During the term of this Agreement and for a period of three (3) years thereafter, Modelon shall have the right at any time, at its own expense and under reasonable conditions of time and place, to audit and copy these records

**11.7 Order of Precedence.** In the event of contradiction between any Appendix and conditions contained in these General Terms, the provisions of the Appendix shall prevail.

**11.8 Entire Agreement.** This Agreement is the complete agreement between the parties relating to the subject matter hereof and supersedes all prior and contemporaneous proposals, agreements, understandings, representations, purchase orders and communications, whether oral or written. Except as expressly permitted herein, this Agreement may be modified only by written amendment signed by the parties and no other act, document, usage or custom shall be deemed to amend or modify this Agreement, including but not limited to Licensee's terms and conditions. Licensee's purchasing terms and conditions shall not in any way supersede, modify, vary or otherwise supplement the terms of this Agreement.

**11.9 Governing law and jurisdiction.** The Agreement shall be governed and construed solely in accordance with the laws of Sweden.

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered at the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC). Where the amount in dispute does not exceed EUR 100 000 the SCC's Rules for Expedited Arbitrations shall apply. Where the amount in dispute exceeds EUR 100 000 the Arbitration Rules of the SCC shall apply. Where the amount in dispute exceeds EUR 100 000 but not EUR 1 000 000, the Arbitral Tribunal shall be composed of a sole arbitrator. Where the amount in dispute exceeds EUR 1 000 000 the Arbitral Tribunal shall be composed of three arbitrators. The amount in dispute includes the Claimant's claims in the Request for Arbitration and any counterclaims in the Respondent's reply to the Request for Arbitration. The place of arbitration shall be Lund, Sweden and the language shall be English. The parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause (including any information disclosed during such proceedings as well as any decision or award that is made or declared during such proceedings) will be kept confidential.