



UNIVERSITY SOFTWARE LICENSE AGREEMENT

This SOFTWARE LICENSE AGREEMENT is entered into between Fluent Inc., having its principal offices at 10 Cavendish Court, Lebanon, New Hampshire 03766 (referred to herein as “Fluent”), and _____ (referred to herein as “Client”).

WHEREAS, Fluent and Client wish to enter into a license agreement whereby Fluent will provide certain computational fluid dynamics computer software, related documentation and supporting services to Client; and

WHEREAS, this Software License Agreement, together with Supplement A attached hereto (collectively referred to herein as the “Agreement”), shall form the basis of an agreement pursuant to which Client will license computer software from Fluent in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into and shall be deemed a part of this Agreement and in consideration of the mutual promises set forth herein, Fluent and Client agree as follows:

1. DEFINITIONS

1.1 Software

The term “Software” shall mean the computer program(s) listed on Supplement A and materials provided by Fluent for use in connection with the computer program(s).

1.2 Active Process

The term “Active Process” shall mean the pre-processing, calculating, or post processing elements of the Software.

1.3 CPU

The term “CPU” shall mean the computer(s) listed on Supplement A on which the Software will be installed.

1.4 Facility

The term “Facility” shall mean the location(s) listed on Supplement A where the users of the Software will be located.

1.5 License Fee

The term “License Fee” shall mean the amount listed on Supplement A paid by Client for the license.

1.6 Initial Period

The term “Initial Period” shall mean the first twelve-month period of the license.

1.7 Renewal Period

The term “Renewal Period” shall mean the twelve-month period of the license after the Initial Period or subsequent renewal periods.

1.8 Improvements

The term "Improvements" shall mean all modifications, refinements, and enhancements that Fluent elects to incorporate into and make a part of the Software and does not price or market separately.

2. LICENSE

Fluent hereby grants to Client and Client hereby accepts a non-transferable, non-exclusive license to use the Software in accordance with the terms of this Agreement. The Client is licensed to simultaneously run the number of Active Processes on the CPU and at the Facility listed on Supplement A. Client may request a redesignation of CPU provided such redesignated CPU is comparable with the replaced CPU. Client may also request redesignation of the Facility if Client maintains an office at the proposed new Facility and such Facility is located within the same country. Any redesignation of CPU and/or Facility shall be effective upon receipt by the Client of Fluent's written consent thereto. Such consent shall not be unreasonably withheld.

3. DELIVERY

Upon receipt by Fluent of a duly executed copy of this Agreement and a related purchase order, Fluent shall deliver the Software by computer link or in the form of CD ROM, diskette, or magnetic tape.

4. INSTALLATION

Fluent shall provide installation support and program checkout to Client. Installation support shall be provided by telephone, by computer link or by mail at Fluent's sole discretion. Client shall provide the assistance of a systems programmer in connection with the installation and checkout of the Software at no charge to Fluent. Computer time required for installation and checkout will be furnished by Client at no charge to Fluent.

Fluent reserves the right to include license manager software or other security mechanisms within the Software. These security mechanisms will limit the number of Active Processes that can be run concurrently and will disable the Software at the end of the Initial Period or subsequent Renewal Period(s).

5. SOFTWARE MAINTENANCE

5.1 Maintenance

During the term of this Agreement Fluent shall: (a) Provide Client with any known problem solutions relating to the currently supported version of the Software as such solutions become known to Fluent; (b) Provide Client with all Improvements **at renewal**; and (c) Furnish **limited** telephone support to individual users provided that the user has completed the required training course. Support will be available during normal business hours of the supporting Fluent office in the form of counsel and advice on use and maintenance of the software. Additional consulting support will be provided at Fluent's standard consulting rates.

5.2 Modifications by Client

Maintenance is only provided for unmodified Software. Client agrees to pay Fluent at Fluent's standard consulting rates for maintenance, service, or support which result from: (a) modifications or extensions to

the Software made by Client, (b) Client's failure to implement Fluent supplied changes as described in section 5.1, or (c) failure or error of Client's CPU.

5.3 Installation of Software Improvements

Client shall install all Improvements in a timely manner. Failure of Client to install Improvements may render Software unusable and Client shall assume all risks that arise as a consequence thereof.

6. LICENSE TERM, FEES AND PAYMENT

This Agreement shall commence on the date signed by Fluent and terminate at the end of the Initial Period. This Agreement will automatically extend for a Renewal Period unless either party provides written notice of intent to terminate at least ninety days prior to the end of the Initial or Renewal Period. License Fees may be revised by Fluent upon no less than one hundred and twenty (120) days written notice prior to the end of the Initial or any Renewal Period of this Agreement.

Client shall pay Fluent the License Fee set forth in Supplement A for the use of the Software. The License Fee for the Initial Period and for each Renewal Period is an annual commitment. If Client terminates the license prior to the expiration of the Initial Period or Renewal Period, the Client remains responsible for the stated fees for the remainder of the license period.

Invoices shall be due and payable by Client net thirty (30) days from date of invoice. Amounts past due shall be subject to an interest charge of one and one-half percent (1.5%) per month on the past due balance.

The following costs are not included in the License Fee and shall be paid separately by the Client: (a) sales, use, excise or similar taxes; (b) import or export duties, (c) shipping and handling charges, or any other costs not normally incidental to the sale of Software by Fluent.

7. OWNERSHIP, PROPRIETARY RIGHTS, AND RESTRICTIONS ON USE OF SOFTWARE

7.1 Ownership of Software

Client acknowledges that the Software is either the property of Fluent or the property of a third party from whom Fluent has licensed distribution rights. The Software, the Software names, logos and other support materials provided under this Agreement are either copyrighted, trademarked, or subject to trade secrecy laws. Client shall not remove any identification or notices of such proprietary restrictions from the Software. The techniques, algorithms, and processes contained in the Software constitute trade secrets and/or proprietary information and will be protected by Client against disclosure in at least the same manner Client protects its own trade secrets or the trade secrets of others from whom it licenses similar products. The confidentiality provisions of this Section 7 shall survive the termination of this Agreement.

7.2 Restrictions on Use of the Software

Software may be used only by Client and only on the CPU and at the Facility listed in Supplement A. The Software shall not be sold, sublicensed, marketed, leased or in any way conveyed to a third party without Fluent's prior written consent. Client shall not use the Software to do consulting for other parties. Client shall acknowledge the use of FLUENT in presentations, reports or other documents that display results obtained through the use of FLUENT.

7.3 Rights to Copy, Merge or Modify

Client may copy and modify Software in machine readable form for the purpose of merging it into other program material to form an updated work, provided that, upon termination of this Agreement, the Software will be completely removed from the updated work. The use of any portion of the Software included in an updated work shall only be on the CPU and at the Facility listed in Supplement A and shall remain subject to all other terms of this Agreement.

8. LIMITED WARRANTY, LIMITATION OF LIABILITY, AND INDEMNITY

8.1 Limited Warranty

Fluent represents and warrants that, to the best of its knowledge and belief, the Software does not infringe upon or violate any trade secret, U.S. or **[name of Client's country]** patent, or copyright of any third party. Fluent's entire liability and obligation with respect to such infringements or claims of infringement is set forth in section 8.3. Fluent further represents and warrants that it has the unconditional right to license the Software as set forth in this Agreement. Fluent warrants that, at the time of delivery, the Software will be in good operating condition and will conform in all essential respects to Fluent's published specifications. Fluent does not warrant that use of the Software will be uninterrupted or error-free.

THE FOREGOING LIMITED WARRANTY IS THE SOLE WARRANTY OF FLUENT TO CLIENT AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.2 Limitation of Liability

Notwithstanding anything contained herein to the contrary, Fluent's entire liability and Client's sole remedy shall be, at Fluent's option, limited to either (a) repair or replacement of the Software that does not meet Fluent's Limited Warranty or (b) annual license fee. Fluent shall have no liability whatsoever if this Agreement has terminated.

In no event will Fluent be liable to Client for any lost profits, incidental, special, exemplary, punitive, indirect, or other consequential damages, even if Fluent knows or has been advised of the possibility of such damages, or for any damages caused by Client's failure to perform its responsibilities under this Agreement.

8.3 Indemnity

Fluent agrees to defend, indemnify and hold Client harmless against any liability or claim that the Software was created in part by violation of or violates the trade secrets of a third party or infringes a U.S. or **[name of Client's country]** patent or copyright, and will pay resulting costs, damages and attorney's fees finally awarded, provided that: (a) Client promptly notifies Fluent of any such claim; (b) Client at Fluent's expense (except for the value of employees of Client) provides Fluent with all information and assistance necessary to defend or settle such liability or claim; and (c) Fluent has sole control of the defense and all related settlement negotiations.

If such liability or claim occurs, or in Fluent's opinion is likely to occur, Client agrees to permit Fluent, at Fluent's option and expense but without obligation to do so, either to procure for Client the right to continue using the Software or to replace or modify the Software so that it becomes noninfringing and provides, as is reasonably possible under the circumstances, the same capability as before.

This states the entire obligation of Fluent with respect to infringement or claims of infringement of patents, copyrights, and trade secrets.

Client agrees to defend, indemnify and hold Fluent harmless against any liability or claim made against Fluent or Client arising from Client's use of the software except a claim for patent or copyright infringement.

9. TERMINATION

If Client fails to pay any amount due hereunder, or if either party commits a material breach hereof, and such failure or breach is not cured within twenty (20) days after receiving written notice from the non-defaulting party, such non-defaulting party shall have the right, at its option, to terminate this Agreement. The defaulting party shall be liable for all costs and expenses, including attorney's fees, incurred to enforce this Agreement.

If this Agreement is terminated for any reason, the license granted herein shall be terminated. Within twenty (20) days after termination, Client shall destroy, or at Fluent's request, return to Fluent all copies of the Software and all supporting materials provided by Fluent and shall provide Fluent with a certificate of such destruction. The provisions set forth in Sections 7, 8 and this Section 9 shall survive the termination of this Agreement.

10. MISCELLANEOUS

10.1 Entire Agreement

This Agreement and any supplements attached hereto constitute the entire agreement between the parties concerning the subject matter hereof and no waiver or modification shall be valid unless in writing and signed by the parties. The terms and conditions of this Agreement shall govern over any terms and conditions contained in any purchase order submitted by the Client regardless of any words to the contrary.

10.2 Assignment

This Agreement may not be assigned or transferred, nor the rights granted hereunder sublicensed by Client, without the written consent of Fluent.

10.3 To Breach Not Waiver

No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

10.4 Governing Law

This Agreement shall be governed by the laws of the state of New Hampshire and applicable federal statutes, and all actions hereunder shall be brought in a federal or state court of competent jurisdiction in New Hampshire.

10.5 Notices

Any notices required under this Agreement shall be given by first class mail, postage prepaid (with return receipt requested) at the addresses set forth above.

10.6 Use of Client's Name

Client agrees to the use of its name from time to time in listings of Fluent's past or current customers.

10.7 Severability

If any part of this Agreement shall be held illegal, unenforceable, or in conflict with any law, the validity of the remaining portions shall not be affected hereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized representatives who personally warrant their authority to so act, and this Agreement shall be effective the date signed by Fluent herein below.

AGREED TO AND ACCEPTED:

Client: _____

Fluent Inc.

By: _____

By: _____

Typed Name: _____

Typed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____