

**End User License  
and  
Support and Maintenance  
Terms  
03-07-2014**

These terms apply to all end user licenses for this software and to all support and maintenance services relating to this software - including support and maintenance services bought by the licensee subsequent to and independent of the transaction, according to which the licensee acquired his license for the software.

These terms do not apply to the extent, the licensor granting the license to the licensee and/or the provider of the support and maintenance services ("Licensor") has agreed to deviations from the terms.

However, clause 2, 3, 4, 5, 6, 7, 8, 9, 12, 16, and 20 can under no circumstances be deviated from and shall always apply, unless the Danish company MOSEK ApS in writing has explicitly consented to the specific deviations.

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## **INITIAL PROVISIONS**

### **1 Definitions**

#### **1.1 THE SOFTWARE**

means the modules of the MOSEK mathematical optimization software, for which the licensee has been granted a license.

#### **1.2 REHOST**

A license is REHOSTED when Licensor provides a new license file for a new host ID – e.g. because the licensee wants to transfer the license to another computer, or because the host ID of the original computer has been changed.

#### **1.3 ERROR**

means a material verifiable and reproducible failure of THE SOFTWARE to conform in all material respects to the features and functions as described in the relevant documentation.

#### **1.4 WORKAROUND**

means a suggested set of actions or recommendations intended, when properly implemented, to restore the functionality of THE SOFTWARE or to provide equivalent or similar functionality.

#### **1.5 THE EFFECTIVE DATE**

means the date, on which the license for THE SOFTWARE was granted to the licensee.

#### **1.6 THE SUPPORT AND MAINTENANCE PERIOD**

The period, for which a licensee with a commercial floating license or a commercial server license has paid the annual support and maintenance fee periodically invoiced by Licensor at the request of Licensee.

## **OPERATIVE PROVISIONS**

### **2 Commercial Floating License**

- 2.1** A commercial floating license is a nonexclusive software end user license, according to which the licensee is entitled to receive and use an object code copy of the licensed software for an unlimited period.
- 2.2** A commercial floating license shall be considered to be granted, when Licensor has issued the invoice for the license.

### **3 Commercial Server License**

- 3.1** A commercial server license is a nonexclusive software end user license, according to which the licensee is entitled to receive and use an object code copy of the licensed software on a server for an unlimited period. The commercial server license is locked to the server, meaning that it can only be used on that. If there are multiple user accounts on the server, they will all be able to use the software under the same license.
- 3.2** A commercial server license shall be considered to be granted, when Licensor has issued the invoice for the license.

### **4 Free Academic Institution License**

- 4.1** A free academic institution license is a nonexclusive software end user license, where the licensee must be an academic institution - i.e. a university or the like on which students can get at least a bachelor degree (normally after 3 years studying) - and according to which the academic institution is entitled to receive and use an object code copy of the licensed software for academic education and research purposes only. It is granted for a limited number of months and may be renewed. It is a floating license with a limitation on the number of users. The number of users is agreed on a case by case basis.
- 4.2** A free academic institution license shall be considered to be granted, when the licensee has accepted these terms and has been provided with the license

file, which is needed for activating the license.

- 4.3** For administrative efficiency purposes Licensor shall have the right to limit the number of persons entitled to contact Licensor about support and maintenance issues to 2 contact persons.

## **5 Free Personal Academic License**

- 5.1** A free personal academic license is a nonexclusive software end user license, where the licensee must be a student studying at an academic institution or an employee working at an academic institution - i.e. a university or the like on which students can get at least a bachelor degree (normally after 3 years studying) - and according to which the licensee is entitled to receive and use an object code copy of the licensed software for academic education and research purposes only. The normal term of a free personal academic license is 90 days. It may, however, be prolonged for one or more periods of up to 90 days. The license is personal.

- 5.2** A free personal academic license shall be considered to be granted, when the licensee has accepted these terms and has been provided with the license file, which is needed for activating the license.

## **6 Trial License**

- 6.1** A trial license is a nonexclusive software end user license, which gives the licensee the right to evaluate an object code copy of the licensed software for a trial period not exceeding thirty (30) days, and which forbids the licensee to use the licensed software for any other purposes including commercial purposes.

- 6.2** A trial license shall be considered to be granted, when the licensee has accepted these terms and has been provided with the license file, which is needed for activating the license.

## **7 Stand in Computer License**

**7.1** A stand in computer license gives Licensee the right (notwithstanding what is stated in clause 8)

- a) to get an extra license file for a (stand in) server / computer,
- b) to run the software on that computer while the server(s) / computer(s) normally used is/are inoperative and
- c) to test the operability of the extra license file on the (stand in) server / computer up to once a month.

**7.2** Stand in computer licenses are only offered to licensees with commercial floating license(s) / commercial server license(s). Their term cannot go beyond the term of THE SUPPORT AND MAINTENANCE PERIOD. Stand in computer licenses are additional licenses and are not included in the ordinary support and maintenance.

**7.3** Licensor shall have the right to require the licensee to enable the report log file feature of the Flexlm/FLEXnet license system and to provide Licensor with copies of the log files at reasonable intervals - at least once a year.

**7.4** A stand in license is typically granted for periods ending on a 31<sup>st</sup> December and may be renewed. It may be granted and accepted by means of an email exchange.

**7.5** Licensor shall be entitled to terminate a stand in computer license any time at 12 months' notice.

## **8 Right to Use one Copy per License Only and No Right to Sub-license etc.**

**8.1** The licensee acquires the right to use the delivered (downloaded) object code copy of THE SOFTWARE only and does not acquire any rights of ownership. One license gives the licensee the right to run one copy of THE SOFTWARE on one computer. If the licensee wishes simultaneously to run

more than one copy, he must acquire the corresponding number of extra licenses.

- 8.2 Notwithstanding the above subclause a commercial server license gives the licensee the right to run an unlimited number of copies of THE SOFTWARE on one server and on that server only.
- 8.3 The licensee shall be prohibited from sublicensing and otherwise letting third parties use THE SOFTWARE.

## 9 License System and License Files

- 9.1 Licensors have embedded the Flexlm/FLEXnet license system in THE SOFTWARE in order to make it possible to control A) that end users do not use more copies on more computers than they are entitled to B) that end users do not use the software for longer time than the duration of the license and C) that end users only can get access to modules and functionality, for which Licensees have a license. The licensee is forbidden to tamper with the license system.
- 9.2 Because of the Flexlm/FLEXnet license system a license file is required for activating the licensee's license.
- 9.3 When the license is a *commercial floating license* or a *free academic institution license* the Flexlm/FLEXnet license system must be linked to specific servers/computers or dongles belonging to the licensee. The computer(s), on which the licensee wishes to run THE SOFTWARE, must be connected to the server/computer or dongle, to which the Flexlm/FLEXnet license system becomes linked. When the licensee has provided Licensors with the necessary information about the server/computer or dongle, to which the Flexlm/FLEXnet license system is to become linked (e.g. host ID), Licensors will without undue delay provide the licensee with the necessary license file. By means of this file the license system can be linked to the server/computer or dongle in question and the license can be activated.
- 9.4 When the license is a *commercial server license* the Flexlm/FLEXnet license system must be linked to a specific server. When the licensee has provided Licensors with the necessary information about the server, to which the Flexlm/FLEXnet license system is to become linked (e.g. host ID), Licensors

will without undue delay provide the licensee with the necessary license file. By means of this file the license system can be linked to the server in question and the license can be activated.

**9.5** Even though *free personal academic licenses* and *trial licenses* are not linked to any specific servers/computers or dongles, certain information requested by Licensors must be provided by the licensee. Without undue delay after receipt thereof, Licensors will send the licensee the necessary license file.

**9.6** The licensees will be provided with the entire MOSEK mathematical optimization software with all functionalities and all the relevant documentation. The license file should only activate those modules, for which the licensee has a license, and the licensee shall not be considered to have any rights whatsoever to excess modules, for which the licensee does not have a license.

## **10 REHOSTING**

**10.1** During the SUPPORT AND MAINTENANCE PERIOD commercial floating licenses and commercial server licenses, for which the invoiced support and maintenance fee has been paid, can free of charge be REHOSTED an unlimited number of times.

**10.2** Other commercial floating licenses and commercial server licenses can free of charge be REHOSTED once.

**10.3** Licensors will provide new license file(s) after receipt of the information necessary for generating the file(s).

## **11 Support and Maintenance**

**11.1** During THE SUPPORT AND MAINTENANCE PERIOD, licensees with commercial floating licenses / commercial server licenses will be provided with the following support and maintenance services:

- a) Hotline telephone and email assistance and advice, which during Licensors' normal business hours and in English will provide qualified technical help in using THE SOFTWARE.
- b) Receiving and handling documented error reports in English and re-



sponding to such error reports in English.

- c) Using reasonable efforts either to correct ERRORS reported in English or to suggest alternative approaches in order to bypass them (WORKAROUNDS). Correction of ERRORS will be limited to the latest main-version of THE SOFTWARE (e.g. 7 or 8) and the preceding main version.
- d) Providing technical information about THE SOFTWARE in English.
- e) Providing new releases and versions of THE SOFTWARE - with one license file per license for which support and maintenance has been paid.
- f) Furnishing a new license file free of charge, whenever the license is to be REHOSTED in accordance with the above REHOSTING clause.

**11.2** Licensor shall not be obliged to correct all errors reported but will respond to error reports in the way described above. Furthermore, Licensor will take all English error reports into consideration when developing new releases and versions.

**11.3** When a licensee as a part of support and maintenance services gets a new release or version of THE SOFTWARE, a new version of these terms may be embedded in the new software release or version. The new version of these terms shall apply to support and maintenance services provided thereafter. The new version of these terms shall not apply to the software license, which shall continue to be governed by the terms embedded in THE SOFTWARE on THE EFFECTIVE DATE, and no new warranty period shall start just because the licensee gets a new software release or version.

**11.4** Licensor will under normal circumstances - but without assuming any legal support obligations - provide end users with free academic institution licenses, free personal academic licenses and trial licenses with the following support services relating to the latest main-version of THE SOFTWARE (e.g. 7 or 8):

- a) Hotline email assistance and advice which during Licensor's normal business hours and in English will provide qualified technical help in using THE SOFTWARE.
- b) Receiving and handling documented error reports in English and - at

the sole discretion of Licensor - responding to such error reports in English.

- c) Providing technical information about THE SOFTWARE in English.

## **12 Back Up, Copying, Sublicensing etc.**

The licensee shall not be entitled to copy, modify, reverse engineer, disassemble or decompile THE SOFTWARE, unless otherwise expressly stipulated elsewhere in these terms. The licensee shall, however, be entitled to make copies of THE SOFTWARE for back up purposes. The licensee shall be prohibited from sublicensing and otherwise transferring the use of THE SOFTWARE to third parties, unless otherwise expressly stipulated elsewhere in these terms.

## **13 License and Maintenance Fees and Terms of Payment**

- 13.1** Free academic institution licenses, free personal academic licenses and trial licenses as well as support provided in connection with such licenses are free of charge.
- 13.2** The fees and terms of payment relating to commercial floating licenses, commercial server licenses and support and maintenance provided in connection with such licenses are those which the licensee agree with Licensor and which appear from Licensor's invoices to the licensee.

## **14 Sales Taxes**

If any sales taxes are imposed by reason of the license granted or support and maintenance services provided under these terms, the licensee agrees to pay such taxes. Furthermore, the licensee agrees to pay all import duties, taxes and dues imposed outside the country, in which Licensor is domiciled, in connection with payment of license fees and/or support and maintenance fees and/or the transfer of THE SOFTWARE.

## **15 Confidentiality**

- 15.1** All confidential information relating to the license or support and maintenance, which one of the parties discloses to the other party, shall by the receiving party be treated confidentially as long as the information is still confidential, provided the disclosing party at the time of disclosure in a durable way has designated the information to be confidential.
- 15.2** Licensor will neither for PR purposes nor for any other purposes publish the names of end users with commercial floating licenses and commercial server licenses. Licensor shall be entitled to publish the names of end users with free academic institution licenses.

## **16 Evaluation of Output Data**

Sophisticated mathematical optimization modelling is not an exact science. Sophisticated mathematical optimization software cannot be completely error free. Furthermore, the quality of the output from mathematical optimization software is heavily dependent on the quality of the input which the licensee feeds into the software. For these reasons it is a must that the licensee evaluates the quality of the output data generated by THE SOFTWARE in accordance with generally accepted standards for such evaluations. *Should the licensee fail to evaluate the generated output data properly, the licensee must himself bear all losses which could have been avoided, had the output been duly evaluated. Neither Licensor nor the developer of THE SOFTWARE can be made responsible for such losses.*

## **17 Warranties and *DISCLAIMER OF WARRANTIES***

- 17.1** Licensor warrants end users with commercial floating licenses and commercial server licenses for a period of 90 days after THE EFFECTIVE DATE that they will be satisfied with THE SOFTWARE.
- 17.2** Licensor does not warrant that operation of THE SOFTWARE will be uninterrupted or error free.
- 17.3** Licensor warrants Licensees with commercial floating licenses and commercial server licenses that during THE SUPPORT AND MAINTENANCE PERIOD the support and maintenance services will be in accordance with generally accepted sound international industry standards and practices.

- 17.4** Licensor warrants that THE SOFTWARE does not infringe third parties' intellectual property rights under the laws of the country where the licensee is domiciled. This warranty does not extend to infringement of rights which the licensee at THE EFFECTIVE DATE knew or should have known.
- 17.5** Licensor represents and warrants that Licensor has the right to grant all the rights and licenses granted herein. Licensor represents and warrants that THE SOFTWARE does not comprise any (third party) open source software, free software or the like which according to applicable license conditions (for example Apache License, BSD license, GNU General Public License, GNU Lesser General Public License, MIT License, Eclipse Public License and Mozilla Public License) will require the licensees a) to disclose or (re)distribute source code versions or object code versions of any software derived from or developed by means of THE SOFTWARE or b) to grant third parties licenses for such derived or developed software."
- 17.6** *The above warranties are in lieu of all other warranties whether express or implied including implied warranties of merchantability and fitness for a particular purpose.*

## REMEDIES

### **18     ***LIMITATION OF BOTH PARTIES' LIABILITY and EXCLUSIVE REMEDIES*****

- 18.1** Should a licensee with commercial floating licenses or a commercial server license not - as warranted by Licensor - be satisfied with THE SOFTWARE, the licensee shall during the first 90 days after THE EFFECTIVE DATE be free to recover the paid license and support and maintenance fees in full, provided the licensee has a) discontinued use of THE SOFTWARE, b) destroyed all copies of the license file, c) returned everything received from Licensor. *This is the licensee's sole remedy for breach of that warranty.*
- 18.2** If Licensor is unable within reasonable time to perform support and maintenance services to a licensee with commercial floating licenses or commercial server licenses substantially as warranted, the licensee shall have the right:

- a) To demand re-performance of the services without undue delay.
- b) To terminate the support and maintenance subscription and recover the part of the support and maintenance fee, which proportionately corresponds to the remaining part of the current support and maintenance period.

**18.3** In the event that Licensor believes that THE SOFTWARE infringes intellectual property, against which Licensor has warranted, Licensor shall have the right at Licensor's option:

- a) to modify THE SOFTWARE to become non-infringing and
- b) to obtain for the licensee a license to continue the licensee's use of THE SOFTWARE.

**18.4** If i) the licensee's right to use THE SOFTWARE gets appreciably restricted because of third parties intellectual property rights, against which Licensor has warranted, and ii) MOSEK does not modify THE SOFTWARE or obtain a license from the third party in question in accordance with the above clause, the licensee shall have the right to a) terminate the license and discontinue use of THE SOFTWARE, b) destroy all copies of the license file, c) return everything received from Licensor and d) recover any license fee paid by the licensee to Licensor for the license written down over a 3 years period.

**18.5** Should one of the parties breach his obligations, he shall compensate the other party for the economic damage caused by the breach to the extent it is due to negligence. If THE SOFTWARE infringes a third party's intellectual property covered by Licensor's warranty against such infringements, Licensor shall only indemnify the licensee damages which the licensee may be liable to pay the third party because of the infringement if the licensee forthwith notifies Licensor in writing of the claim and Licensor gets the opportunity to participate in the defence and agree to any settlements.

**18.6** *In no event - except in case of gross negligence - shall any of the parties be liable for any indirect, incidental, special or consequential damages, including loss of profits, revenue, data or use incurred by the other party or any third party whether in action of contract or tort even if the party or any other person has been advised of the possibility of such damages.*

- 18.7** *Licensor's liability for damages shall in no event - except in case of gross negligence – exceed the license / support and maintenance fee received by Licensor for the relevant license / support and maintenance period.*
- 18.8** *Licensor shall in no event be liable for losses which could have been avoided if the licensee had used the latest release of the latest version of THE SOFTWARE provided by Licensor to those customers who subscribe for support and maintenance.*
- 18.9** Should the licensee substantially violate his obligations, the license and THE SUPPORT AND MAINTENANCE PERIOD shall automatically terminate.
- 18.10** *The licensee's sole remedies relating to THE SOFTWARE and support and maintenance shall regardless of negligence - except gross negligence - be the remedies specified in this provision, unless other remedies are explicitly provided for elsewhere in these terms.*

## **19 General Notice of Breach of Contract**

- 19.1** If one of the parties wishes to exercise any remedies against the other party because of the other party's breach of contract, he must give notice to the other party specifying the nature of the violation without undue delay after he has discovered the violation or he ought to have discovered it.
- 19.2** To the extent a party's claim relates to goods or services supplied by the other party, the notice must be delivered not later than one year after the date, on which the goods or services were supplied.

## **MISCELLANEOUS PROVISIONS**

### **20 Transferability**

The rights granted to the licensee according to these terms are personal to the licensee and may not be transferred to third parties - except to transferees belonging to the same group of companies as the licensee.

## **21 Purchase Orders, Order Confirmations and Similar Documents**

Any purchase orders, confirmations of orders and similar documents issued by one of the parties and relating to the subject matter of these terms shall be considered to be issued and accepted for invoicing and payment purposes only - even if they state the opposite and are accepted by the other party without reservations. However, to the extent it is clearly anticipated in these terms that such documents shall be issued in order to specify quantities, prices and the like, such documents shall be decisive with respect to such matters.

## **CHOICE OF LAW AND DISPUTE RESOLUTION**

### **22 Choice of Law**

These terms are governed by Danish law.

### **23 Venue**

**23.1** Any dispute, controversy or claim arising under, out of or relating to this agreement and any subsequent amendments of this agreement - including, without limitation, its formation, validity, binding effect, interpretation, performance, breach, expiration or termination, as well as non-contractual claims and product liability claims - shall depending on the subject matter of the dispute be settled by the City Court of Copenhagen or the Danish Maritime and Commercial High Court. If both courts are competent in relation to a subject matter, the suing part shall be free to choose between the 2 courts.

**23.2** This clause shall not restrict the parties' right to have disputes about intellectual property rights and trade secrets - including cases about infringement of intellectual property rights and misappropriation of trade secrets - settled by other courts which according their own rules of competence can decide such cases. This clause shall, likewise, not restrict the parties' right to request interim measures to be taken by other courts which according their own rules of competence can take such interim measures.