

This licence agreement is a legal agreement between you and The Numerical Algorithms Group Limited (company number 01249803) of Wilkinson House, Jordan Hill Road, Oxford OX2 8DR (**NAG**) for any software made available to you (including but not limited to a Purchase, Trial or Beta Testing) by NAG (**Software**), which includes computer software, the data supplied with it, the associated media, printed materials and online (**Documentation**).

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR COMPANY AND EMPLOYER AND YOU WARRANT THAT YOU HAVE THE AUTHORITY TO DO THE SAME. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, NAG IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND YOU MUST DISCONTINUE THE ORDERING PROCESS NOW BY CLICKING ON THE "REJECT" BUTTON BELOW. IN THIS CASE THE ORDERING PROCESS WILL BE TERMINATED.

The Numerical Algorithms Group Limited reserves the copyright and all other intellectual property rights worldwide ("**Intellectual Property Rights**") in all material which it supplies. Computer software supplied by The Numerical Algorithms Group Limited and any accompanying documentation is proprietary and its use is governed by the terms set out below.

## **AGREED TERMS**

### **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this licence agreement.

**Annual Licence:** an annually renewable Licence (as defined at clause 2.1) granted in the case of a Purchase and renewable on the anniversary of the date of the Order.

**Beta Testing:** Use of the Software by you for the testing and evaluation of the Software prior to its commercial release by NAG.

**Development Licence:** a licence which permits the Use of the Software.

**Maintenance Release:** release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a new version of the Software which is publicly marketed and offered for purchase by NAG as a new product.

**Modification:** any Maintenance Release.

**Order:** the order, order form or such other confirmation of order submitted by you to NAG for a Purchase, Trial or Beta Testing.

**Perpetual Licence:** a Licence (as defined at clause 2.1) granted in the case of a Purchase for the full period of the copyright in the Software.

**Purchase:** the purchase and Use of the Software more particularly described in the Order by you from NAG.

**Runtime Licence:** an agreement which permits you to assign a licence to use the Software as part of a specific derivative work created under a Development Licence. You can assign the licence on a single-named-user, single-named-system basis (unless specified otherwise in the Order) and are responsible for keeping accurate records of all licences assigned. NAG may inspect such records on request. Once assigned, the licence cannot be reassigned without NAG's written agreement.

**Software:** the computer programs (including any Modification) being the subject of a Purchase, Trial or Beta Testing by you from NAG during the subsistence of this Licence.

**Specification:** the specification of the Software set out in the Order.

**Trial:** Use of the Software by you for a trial period.

**Use of the Software:** the installation of the Software, operation of the Software and any other action that may be considered as use, all of these being restricted to use of the Software in object code form solely on the computer(s), in the environment(s) and at the site(s) as agreed between NAG and you for the purpose of processing your data for the normal business purposes of you (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of you, or in the case of an academic establishment, your students).

1.2 The headings do not affect the interpretation of this licence agreement.

### **2. DURATION**

2.1 In consideration of:

- (a) NAG's offer to you for the Use of the Software subject to these terms and conditions; and
- (b) in the case of a Purchase, payment of the licence fee by you to NAG in accordance with clause 3; and
- (c) in the case of Beta Testing, the provision of feedback in accordance with clause 4,

NAG grants to you a non-exclusive licence to use the Software (the "**Licence**"):

- (a) in the case of a Purchase, as a Perpetual Licence or as an Annual Licence as specified in the Order;
- (b) in the case of a Trial, for a period of 30 days ("**Trial Period**"); and
- (c) in the case of Beta Testing, for a period of 30 days ("**Beta Testing Period**").

2.2 You warrant that in the event that this Licence is not in respect of a Trial or Beta Testing, you have purchased or have already licensed the Software under a valid licence agreement and you agree to indemnify NAG fully in respect of any losses NAG may incur as a result of any failure by you to have so purchased or obtained the appropriate licence of the Software.

- 2.3 This licence agreement prevails over any inconsistent terms or conditions contained in, or referred to in, the Order or Specification, or implied by law, trade, custom, practice or course of dealing.
- 2.4 You may not use the Software other than as specified in this licence agreement without the prior written consent of NAG and you acknowledge that additional fees may be payable on any change of use provided by NAG. For the avoidance of doubt, this Licence is a single user development licence for a single user system and it is not a Runtime Licence unless specifically detailed on the order form. In the event that you wish to procure a Runtime Licence, you shall enter into a separate Runtime Licence with NAG and pay to NAG the relevant fee for the same.
- 2.5 You may make back-up copies of the Software as may be reasonably necessary for its lawful use. You shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying. You shall make such information available to NAG on request.
- 2.6 You have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except as permitted by law, unless NAG is prepared to carry out such action at a reasonable commercial fee and you shall request NAG to carry out such action before undertaking any such reduction.
- 2.7 You have no right to sub-licence or to assign the benefit or burden of the Licence in whole or in part, or to allow the Software to become the subject of any charge, lien or encumbrance.
- 2.8 NAG may sub-licence, assign, charge or otherwise transfer any of its rights or obligations under the Licence, provided it gives written notice to you of any sub-licence, assignment, charge or other transfer.

### 3. FEES ON A PURCHASE

3.1 In respect of a Purchase:

- (a) quotations are given by NAG on the basis that no licence shall come into existence except on the acceptance of these conditions by you. Any quotation is valid for a period of 30 days from its date unless otherwise stated, provided that NAG has not previously withdrawn it;
- (b) you shall pay to NAG the relevant licence fee as agreed between you and NAG ("**Fee**");
- (c) all sums payable under the licence agreement are exclusive of VAT, for which you shall be responsible;
- (d) if you fail to pay any amount payable by you under the Licence, NAG shall be entitled (but not obliged) to charge you interest on the overdue amount, payable by you forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of National Westminster Bank Plc. Such interest shall accrue on a daily basis and be compounded quarterly. NAG reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (e) time for payment shall be of the essence of this licence agreement.

### 4. FEEDBACK ON BETA TESTING

4.1 In respect of Beta Testing, it is expressly acknowledged and agreed that you:

- (a) shall provide to NAG reasonable comments and feedback on the Software, including but not limited to usability, bug reports and test results, and shall notify NAG of all problems and suggestions for improvements and enhancements ("**Enhancement Suggestions**") which come to your attention during the Beta Testing Period; and
- (b) hereby assign to NAG all right, title and interest to any Enhancement Suggestions and all property rights therein including without limitation all Intellectual Property Rights.

### 5. MODIFICATIONS

NAG shall inform you of any Modifications and shall offer to sell such Modifications to you on the terms on which they are generally made available to other customers or users by NAG.

### 6. NAG'S WARRANTIES AND LIMITS OF LIABILITY

6.1 In respect of a Purchase, NAG warrants that the Software will conform in all material respects to the Specification for a period of 90 days from the date of the Licence ("**Warranty Period**"). If, within the Warranty Period, you notify NAG in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification and such defect or fault does not result from you, or anyone acting with your authority, having amended the Software or used it outside the terms of the Licence, for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by NAG, NAG shall, at NAG's option, do one of the following:

- (a) repair the Software; or
- (b) replace the Software; or
- (c) terminate the Licence immediately by notice in writing to you and refund any of the Fee paid by you as at the date of termination (less a reasonable sum in respect of your use of the Software to the date of termination) on return of the Software and all copies thereof,

provided you provide all the information that may be necessary to assist NAG in resolving the defect or fault, including sufficient information to enable NAG to re-create the defect or fault.

6.2 In respect of a Purchase, Trial or Beta Testing, it is acknowledged and agreed that:

- (a) for the avoidance of doubt and without prejudice to the generality of the exclusions provided at clause 6.2(c), NAG does not warrant that the use of the Software will be uninterrupted or error-free.
- (b) you accept responsibility for the selection of the Software to achieve its intended results.

- (c) all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- (d) Except as expressly stated in clause 6.2(e):
  - (i) NAG's liability, whether under the Licence, these conditions or any collateral contract, for loss of or damage to your tangible property caused by the negligence of NAG, its officers, employees, contractors or agents, shall not exceed a sum equal to:
    - (A) in respect of a Purchase, the amount of the Fee; and
    - (B) in respect of a Trial or Beta Testing, £10.00.
  - (ii) subject to clauses 6.2(d)(i) and 6.2(e) NAG shall have no liability for any losses or damages which may be suffered by you (or any person claiming under or through you), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
    - (A) special damage even though NAG was aware of the circumstances in which such special damage could arise;
    - (B) loss of profits;
    - (C) loss of anticipated savings;
    - (D) loss of business opportunity;
    - (E) loss of goodwill;
    - (F) loss of data;
  - (iii) you agree that, in entering into the Licence, you did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in the Licence and NAG shall have no liability otherwise than pursuant to the express terms of these conditions.
- (e) The exclusions in clause 6.2(d) shall apply to the fullest extent permissible at law, but NAG does not exclude liability for death or personal injury caused by the negligence of NAG, its officers, employees, contractors or agents; for fraud or fraudulent misrepresentation; for breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or for any other liability which may not be excluded by law.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 You acknowledge and agree that you shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Licence.
- 7.2 NAG shall indemnify you against any liability incurred by you as a result of any claim or action brought against you alleging that the possession, use, development, modification or maintenance of the Software (or any part thereof) in accordance with the terms of the Licence infringes the UK Intellectual Property Rights of a third party ("**Infringement Claim**"). For the avoidance of doubt, clause 7.2 shall not apply where the Infringement Claim in question is attributable to possession, use, development, modification or maintenance of the Software (or any part thereof) by you other than in accordance with the terms of the Licence or use of a non-current release of the Software.
- 7.3 Clause 7.2 is conditional on:
  - (a) you notifying NAG in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
  - (b) you not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of NAG, which consent shall not be unreasonably withheld or delayed; and
  - (c) NAG having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and you giving NAG all reasonable assistance in connection with those negotiations and such litigation at NAG's request and expense.
- 7.4 If any Infringement Claim is made, or in NAG's reasonable opinion is likely to be made, against you, NAG may at its sole option and expense:
  - (a) procure for you the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this Licence; or
  - (b) modify the Software so that it ceases to be infringing; or
  - (c) replace the Software with non-infringing software.
- 7.5 In respect of a Purchase, if NAG modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 6.1 and you shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of the Licence been references to the date on which such modification or replacement was made.

## 8. TERMINATION

- 8.1 Either party may terminate the Licence:
  - (a) in the case of an Annual Licence, on giving not less than 3 months' written notice to terminate prior to the anniversary of the Order (otherwise, if such notice is not given, the Annual Licence shall automatically renew and the relevant Fee shall be payable by you to NAG on the anniversary of such Order); and

- (b) in the case of a Trial or Beta Testing, immediately at any time on giving written notice to terminate to the other.
- 8.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Licence without liability to the other immediately on giving written notice to the other, if the other:
- (a) is in material or persistent breach of any of the terms of the Licence and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
  - (b) is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction; or
  - (c) in the case of a Purchase, fails to pay any amount due under this Licence on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment.
- 8.3 In the case of Beta Testing, the Licence shall terminate automatically upon the earlier of:
- (a) the initial commercial release by NAG of a generally available version of the Software; or
  - (b) on the expiry of the Beta Testing Period.
- 8.4 In the case of a Trial, the Licence shall terminate automatically on the expiry of the Trial Period.
- 8.5 Termination by either party in accordance with the rights contained in clause 8 and clause 12.1 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.
- 8.6 On termination for any reason:
- (a) all rights granted to you under the Licence shall cease;
  - (b) you shall cease all activities authorised by the Licence;
  - (c) you shall immediately destroy or return to NAG (at NAG's option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to NAG that you have done so; and
  - (d) in the case of a Purchase:
    - (i) you shall immediately pay to NAG any sums due to NAG under the Licence; and
    - (ii) NAG shall not be liable to pay to you any refund of any Fee, or any part of any Fee, paid by you to NAG.
- 9. FORCE MAJEURE**
- 9.1 No party shall be liable to the other for any delay or non-performance of its obligations under the Licence arising from any cause beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion.
- 9.2 For the avoidance of doubt in respect of a Purchase nothing in this clause 9 shall excuse you from any payment obligations under the Licence.
- 10. CONFIDENTIALITY AND PUBLICITY**
- 10.1 The terms of the Licence are confidential and may not be disclosed by either party without the prior written consent of the other.
- 10.2 Subject to clause 10.1 above, either party may disclose to any third party that the Software is licensed to you by NAG and you may refer to the Software when publishing research work carried out by you, provided always that it is made clear in such publications that the Software is licensed to you by NAG.
- 10.3 The provisions of clause 10 shall remain in full force and effect notwithstanding termination of the Licence for any reason.
- 11. DISPUTE RESOLUTION**
- 11.1 If any dispute arises in connection with this licence agreement ("**Dispute**"), directors or other senior representatives of the parties with authority to settle the Dispute will, within 30 days of a written request from one party to the other, meet in a good faith effort to resolve the Dispute.
- 11.2 If the Dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR Notice**") to the other party to the Dispute requesting mediation. A copy of the request should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR Notice.
- 11.3 No party may commence any court proceedings in relation to any Dispute until it has attempted to settle the Dispute by mediation and either the mediation has terminated, the Dispute has not been settled within 90 working days from the appointment of the mediator, or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 12. EXPORT CONTROL REGULATIONS**
- 12.1 The Software may not be used for any activities which are prohibited in countries which are proscribed from time to time by the Export Control Regulations of the United Kingdom or the United States of America. If NAG or you become aware of a breach, or the Use of the Software or its export causes a breach of the Export Control Regulations, the Licence shall terminate immediately and the provisions of clauses 8.5 and 8.6 shall apply.

**13. WAIVER**

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

**14. SEVERABILITY**

If any provision of the Licence is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

**15. AMENDMENTS**

Any amendment, waiver or variation of the Licence shall not be binding on the parties unless set out in writing, expressed to amend the Licence and signed by or on behalf of each of the parties.

**16. THIRD PARTY RIGHTS**

No term of the Licence is intended to confer a benefit on, or to be enforceable by, any person who is not a party to the Licence.

**17. NOTICES**

Any notice required to be given pursuant to the Licence shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in the Order or any order made by you with NAG. Notices may be sent by first-class mail or fax, provided that faxes are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed faxes shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out in this clause 17.

**18. ENTIRE AGREEMENT**

This Licence contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

**19. GOVERNING LAW AND JURISDICTION**

This Licence, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.