

# **End User License and Support and Maintenance Terms 16-10-2009**

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 end user subsequent to and independent of the transaction, according to which the end user acquired his license for the software

These terms do not apply to the extent, the licensor granting the license to the end user 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.

## **INITIAL PROVISIONS**

### **1 Definitions**

#### **1.1 THE SOFTWARE**

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

**1.2 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.

**1.3 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.

**1.4 THE EFFECTIVE DATE**

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

**OPERATIVE PROVISIONS****2 Commercial License**

**1.1** A commercial license is a nonexclusive software end user license, according to which the end user is entitled to receive and use an object code copy of the licensed software for commercial and other purposes and for an unlimited period.

**1.2** A commercial license shall be considered to be granted, when Licensor has issued the invoice for the license.

### **3 Academic License**

- 1.1** An academic license is a nonexclusive software end user license, where the end user 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 end user is entitled to receive and use an object code copy of the licensed software for academic education and research purposes only.
- 1.2** An academic license shall be considered to be granted, when Licensor has issued the invoice for the license.
- 1.3** 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.

### **4 Free Academic License**

- 1.1** A free academic license is a nonexclusive software end user license, where the end user 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 end user 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 academic license is 30 days. It may, however, be prolonged for one or more periods of up to 30 days. The license is personal.
- 1.2** A free academic license shall be considered to be granted, when the end user has accepted these terms and has been provided with the license file, which is needed for activating the license.

### **5 Trial License**

- 1.1** A trial license is a nonexclusive software end user license, which gives the end user 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 end user to use the licensed software for any other purposes including commercial

purposes.

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

## **6 Preview License**

- 1.1 A preview license is a nonexclusive software end user license, which gives the end user the right to evaluate a functionally restricted object code copy of the licensed software (a preview version), and which forbids the end user to use the licensed software for any other purposes including commercial purposes.
- 1.2 A preview license shall be considered to be granted, when the end user has accepted these terms and has downloaded THE SOFTWARE from Licensor's homepage, or Licensor in another way has provided the end user with a copy of THE SOFTWARE.

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

- 1.1 The end user 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 end user the right to run one copy of THE SOFTWARE on one computer. If the end user wishes simultaneously to run more than one copy, he must acquire the corresponding number of extra licenses.
- 1.2 The end user shall be prohibited from sublicensing and otherwise letting third parties use THE SOFTWARE.

## **8 License System and License Files**

- 1.1 Licensor has 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 the they are entitled to B) that end users do not use the software for longer time than the duration of their licenses and C) that end users only can get access to modules and functionality, for which they have a license. The end user is forbidden to tamper with the license sys-

tem.

- 1.2 Because of the Flexlm/FLEXnet license system a license file is required for activating the end user's license.
- 1.3 When the license is a commercial license or an academic license the Flexlm/FLEXnet license system must be linked to specific servers/computers or dongles belonging to the end user. The computer(s), on which the end user 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 end user has provided Licensor 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) and Licensor's invoice for the license fee has been paid, Licensor will without undue delay provide the end user 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.
- 1.4 The above clause shall also apply to free academic licenses - except that there is no invoice to be paid - unless Licensor decides to grant the license without requiring the license system to become linked to a specific server/computer or dongle.
- 1.5 Even though a trial license is not linked to any specific server/computer or dongle, certain information requested by Licensor must be provided by the end user. Without undue delay after receipt thereof, Licensor will send the end user the necessary license file.
- 1.6 The license file needed for activating a preview license is embedded in the software. Because of this, no separate license file is required.
- 1.7 The end user 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 end user has a license, and the end user shall not be considered to have any rights whatsoever to excess modules, for which the end user does not have a license.

## 9 Stand In Computer License

- 1.1 A stand in computer license gives the end user the right to get an extra li-

cense file for a (stand in) server/computer and to run THE SOFTWARE on that computer while the server/computer normally used is inoperative.

**1.2** A stand in computer license is only available for the end user, if

- a) the end user has more than 5 commercial licenses for the PTS module (the base system), and
- b) there is a current support and maintenance agreement for the licenses.

**1.3** Licensor shall have the right to require the end user to enable the report log file feature of the Flexlm/FLEXnet license system and to provide Licensor with a copy of the log file at reasonable intervals - at least once a year. If the end user does not want to comply with such a request, Licensor may refuse to grant a stand in computer license to the end user.

**1.4** The duration of stand in licenses follows the duration of the corresponding support and maintenance agreements.

## **10 Rehosting**

If the end user wishes to rehost THE SOFTWARE on another server/computer, Licensor will free of charge provide him with the necessary new license file. The end user can only exercise this free rehosting right once, unless the end user has a current support and maintenance agreement, in which case further rehosting rights is a part of the support and maintenance services.

## **11 Support and Maintenance**

**1.1** If the end user has a current support and maintenance agreement, Licensor will provide the following support and maintenance services relating to the from time to time latest release of the latest version of THE SOFTWARE:

- a) Hotline telephone 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 responding 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).
- d) Providing technical information about THE SOFTWARE in English.
- e) Providing new releases and versions of MOSEK'S SOFTWARE - with one license file per license for which there is a current support and maintenance agreement.
- e) Distribution of new releases and versions of THE SOFTWARE.
- f) Furnishing a new license file free of charge, whenever the end user rehosts THE SOFTWARE on another server/computer.

**1.2** 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.

**1.3** When the end user as a part of the 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 end user gets a new software release or version.

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

The end user shall not be entitled to copy, modify, reverse engineer, disassemble or decompile THE SOFTWARE, unless otherwise expressly stipulated elsewhere in these terms. The end user shall, however, be entitled to make copies of THE SOFTWARE for back up purposes. The end user 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**

**1.1** Student, trial and preview licenses are free of charge.

- 1.2** The fees and terms of payment relating to other licenses and support and maintenance are those which the end user have agreed with Licensor and which appear from Licensor's invoice to the end user.

## **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 end user agrees to pay such taxes. Furthermore, the end user 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**

- 1.1** 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.
- 1.2** Licensor will neither for PR purposes nor for any other purposes publish the names of end users with commercial licenses. Licensor shall be entitled to publish the names of end users with academic 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 end user feeds into the software. For these reasons it is a must that the end user evaluates the quality of the output data generated by THE SOFTWARE in accordance with generally accepted standards for such evaluations. *Should the end user fail to evaluate the generated output data properly, the end user 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***

- 1.1** Licensor warrants end users with commercial or academic licenses for a period of 90 days after THE EFFECTIVE DATE that they will be satisfied with THE SOFTWARE. Licensor does not warrant that operation of THE SOFTWARE will be uninterrupted or error free.
- 1.2** Licensor warrants for as long as the end user has a support and maintenance agreement in force that the support and maintenance services will be in accordance with generally accepted sound international industry standards and practices.
- 1.3** Licensor warrants that THE SOFTWARE does not infringe third parties' intellectual property rights under the laws of the country where the end user is domiciled. This warranty does not extend to infringement of rights which the end user at THE EFFECTIVE DATE knew or should have known.
- 1.4** *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***

- 1.1** Should the end user not - as warranted by Licensor - be satisfied with THE SOFTWARE, the end user 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 end user has a) discontinued use of THE SOFTWARE, b) destroyed all copies of the license file, c) returned everything received from Licensor. *This is the end user's sole remedy for breach of that warranty.*
- 1.2** If Licensor is unable within reasonable time to perform support and maintenance services substantially as warranted, the end user shall have the right:

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

**1.3** 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 end user a license to continue the end user's use of THE SOFTWARE.

**1.4** If the end user's right to use THE SOFTWARE gets restricted because of third parties intellectual property rights, against which Licensor has warranted, the end user shall have the right to a) discontinue use of THE SOFTWARE, b) destroy all copies of the license file, c) return everything received from Licensor and d) recover the license fee paid by the end user to Licensor for THE SOFTWARE written down over a 5 years term from THE EFFECTIVE DATE.

**1.5** Should one of the parties breach his obligations, he shall compensate the other party for the economical 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 end user damages which the end user may be liable to pay the third party because of the infringement if the end user forthwith notifies Licensor in writing of the claim and Licensor gets the opportunity to participate in the defence and agree to any settlements.

**1.6** 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.

**1.7** Licensor's liability for damages shall in no event - except in case of gross

negligence - exceed the amount received by Licensor for the particular transaction which gives rise to the liability.

- 1.8** Licensor shall in no event be liable for losses which could have been avoided if the end user had used the latest release of the latest version of THE SOFTWARE provided by Licensor to those customers who have support and maintenance agreements.
- 1.9** Should the end user substantially violate his obligations, the license shall automatically lapse forthwith.
- 1.10** The end user'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**

- 1.1** 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.
- 1.2** 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 end user according to these terms are personal to the end user and may not be transferred to third parties - except to transferees belonging to the same group of companies as the end user.

## **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**

- 1.1** 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 Copenhagen District Court or Copenhagen Maritime and Commercial Court. If both courts are competent in relation to a subject matter, the suing part shall be free to choose between the 2 courts.
- 1.2** 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.