

MSC Software Belgium SA
(Free Field Technologies Division)

Software License Agreement
(Rev April 2015)

MSC SOFTWARE BELGIUM SA (“MSC”), ACTING THROUGH ITS FREE FIELD TECHNOLOGIES DIVISION, IS WILLING TO LICENSE THE SOFTWARE (defined below) TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS LICENSE AGREEMENT (“AGREEMENT”).

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE SELECTING THE “**I ACCEPT**” BUTTON BELOW THIS AGREEMENT. BY SELECTING THE “**I ACCEPT**” BUTTON OR BY INSTALLING, ACCESSING, OR OTHERWISE COPYING OR USING ALL OR ANY PORTION OF THE SOFTWARE, (i) YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT, AND A CONTRACT IS FORMED BETWEEN MSC AND EITHER YOU PERSONALLY, IF YOU OBTAIN THE SOFTWARE FOR YOURSELF, OR THE COMPANY OR OTHER LEGAL ENTITY FOR WHICH YOU ARE OBTAINING THE SOFTWARE; AND (ii) YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ACT ON BEHALF OF AND BIND SUCH LEGAL ENTITY (IF ANY) OR YOURSELF. YOU MAY PRINT THIS AGREEMENT BY SELECTING “**PRINT**” BELOW.

IF YOU DO NOT AGREE OR DO NOT WISH TO BIND YOURSELF OR THE ENTITY YOU REPRESENT: (A) DO NOT INSTALL, ACCESS, OR OTHERWISE COPY OR USE THE SOFTWARE; AND (B) SELECT THE “**I REJECT**” BUTTON BELOW THIS AGREEMENT.

IF YOU INSTALL, ACCESS, OR OTHERWISE COPY OR USE ALL OR ANY PORTION OF THIS SOFTWARE WITHOUT ENTERING INTO THIS AGREEMENT OR OTHERWISE OBTAINING WRITTEN PERMISSION OF MSC, YOU ARE VIOLATING COPYRIGHT AND OTHER INTELLECTUAL PROPERTY LAW. YOU MAY BE LIABLE TO MSC AND ITS LICENSORS FOR DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PENALTIES.

SOFTWARE OBTAINED FROM THIRD PARTIES THAT HAVE NOT BEEN AUTHORIZED OR ALLOWED BY MSC, DIRECTLY OR INDIRECTLY, TO SUPPLY SOFTWARE IS LIKELY TO HAVE BEEN MADE AVAILABLE IN VIOLATION OF MSC’S RIGHTS.

1 DEFINITIONS.

1.1 “**Authorized Users**” means as follows:

1.1(a) Except as set forth in 1.1(b) below, if Customer is a company or other legal entity, “Authorized Users” means Customer’s: (i) employees, and (ii) contractors working on Customer’s premises who are not competitors of MSC (or MSC’s affiliate, MSC Software Corporation) and have agreed in writing to use restrictions and confidentiality obligations no less restrictive than those set forth in this Agreement;

1.1(b) If Customer is an academic entity licensing the Software under an *Academic License*, “Authorized Users” shall have the meaning as set forth in Section 3.4.1 below; and

1.1(c) If Customer is an individual, then the Customer is the “Authorized User”.

1.2 “**Customer**” means either you personally, if you obtain the Software for yourself, or the company or other legal entity for which you are obtaining the Software.

1.3 “**Customer Computer(s)**” mean the Customer computer for which MSC issues authorization codes. The Customer Computer runs the license manager program accompanying the Software and is sometimes referred to herein as the “license server”.

1.4 “**Documentation**” means the user manuals and other written user documentation, in any form and on any media, provided by MSC for use with the Software.

1.5 “**Installation Site**” means the Customer facility identified in the Order Schedule (or other writing signed by an authorized representative of MSC) where the Customer Computer resides.

1.6 “**Lease License**” means a license of short-term duration (often a year). The specific license term of any Lease License acquired by Customer shall be set forth in the Order Schedule, and if not specified shall be one (1) year, subject to

termination as set forth in this Agreement. Unless otherwise stated in the Order Schedule, for a Lease License, Maintenance during the license term is included as part of the Lease License.

- 1.7 “**Maintenance**” means software maintenance and technical support as described in Section 5 of this Agreement.
- 1.8 “**Order Schedule**” means MSC’s *form* Order Schedule or any other agreed upon order document or form (e.g., a mutually agreed to MSC Proposal document) which sets forth, among other things, the applicable modules of the Software, and the type and quantity of licenses (and/or Maintenance) acquired by Customer.
- 1.9 “**Paid-up License**” means a license which has a term beginning on the date specified in the Order Schedule (and if no date is specified, then the date the Software is made available to Customer) and continuing perpetually, subject to termination as set forth in this Agreement.
- 1.10 “**Reseller**” means a reseller or distributor authorized by MSC to market, distribute and/or support the Software.
- 1.11 “**Software**” means the computer program in which this Agreement is embedded or that is delivered prepackaged with this Agreement.

Additional terms with specific meanings are defined near where they first appear in this Agreement.

- 2 **GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement, MSC grants to Customer, and Customer accepts from MSC, a non-sublicensable, non-exclusive, non-transferable license to install and use the Software (together with accompanying Documentation, if any), solely for Customer's own internal use. This license shall be in accordance with the limitations of the applicable license type(s) and in the quantities Customer has validly acquired. In no event may Customer exceed the number of licenses validly acquired, or access or use modules of the Software to which Customer has no valid license, or use the Software or Documentation following termination or expiration of the applicable license term. The license term(s) (duration) shall be as specified in the Order Schedule, subject to early termination as set forth in this Agreement. MSC’s license grant is conditioned on Customer’s continuous compliance with the licenses limitations, restrictions and other terms in this Agreement. If Customer violates any of these limitations, restrictions or other terms, the license grant will automatically and immediately terminate. MSC may also terminate this license grant upon notice to Customer if MSC does not receive, when due, the full fees and charges due to MSC for the Software and/or Maintenance. Further, MSC may also terminate this license grant if Customer makes a general assignment for the benefit of its creditors, is the subject of an involuntary bankruptcy petition, or is otherwise subject to insolvency or dissolution proceedings unless Customer is released from such proceedings within ninety (90) days. Any usage of the Software or Documentation outside the scope of the applicable license grant or otherwise not in accordance with this Agreement constitutes an infringement of MSC’s intellectual property rights and well as a material breach of this Agreement.

Customer acknowledges that the Software consists of multiple separately licensable modules (e.g., Actran Acoustics, Actran VibroAcoustics, Actran AeroAcoustics). In addition to any other limitations or restrictions set forth in this Agreement, any license or other rights granted to Customer under this Agreement does not extend to any Software modules (or related materials) for which (a) Customer has not lawfully acquired a valid license, or (b) Customer has not paid (and continued to pay) the applicable fees. Customer acknowledges that any such Software modules (and related materials) are included on media or via download for convenience of the licensing mechanism used by MSC, and inclusion does not in any way authorize, expressly or impliedly, a right to use such modules (or related materials).

No license is granted under the terms of this Agreement if Customer did not lawfully acquire the Software from MSC or from a third party who has been permitted or authorized by MSC either directly or indirectly to supply the Software.

3 LICENSE TYPES.

- 3.1 **Network (Floating) Licenses:** If Customer acquires a *Local Network License, Country Network License, or Regional Network License*, access to and use of the Software will be controlled by a single Customer Computer (license server) and Authorized Users may access and use the Software on client machines served by the license server, provided that access to and use of the Software at any one time does not exceed the number of floating licenses acquired by Customer for the Software. In addition, Customer shall strictly comply with the following restrictions: (i) if Customer acquires a *Local Network License* (also sometimes referred to simply as a *Network License*), the Software may only be accessed or used by Authorized Users at the Installation Site solely on Customer machines located at the Installation Site and served by the Customer Computer (license server), or if Customer’s local area network is shared by a grouping of Customer facilities, then by Authorized Users at any Customer facility within ten (10) miles of the Installation Site solely on Customer machines located at such Customer facilities and served by the Customer Computer (license server); (ii) if Customer acquires a *Country Network License*, the Software may only be accessed or used by Authorized Users at Customer facilities located within the country where the Installation Site is located solely on Customer machines located at such Customer facilities and served by the Customer Computer (license server); or (iii)

if Customer acquires a **Regional Network License**, the Software may only be accessed or used at Customer facilities located in the MSC-designated “Region” (e.g., the Americas, EMEA, Asia/Pacific) in which it was acquired solely on Customer machines located at such Customer facilities and served by the Customer Computer (license server). Any network (floating) license acquired by Customer hereunder shall be deemed a Local Network License, unless it is expressly identified in the Order Schedule as a “Country” or “Regional” Network License.

- 3.2 **Evaluation License:** If Software is licensed to Customer under an **Evaluation License**, Customer agrees that, NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT: (i) Customer may use such Software solely for non-production evaluation purposes (use for any other purposes, including without limitation, use in a production environment is strictly prohibited); (ii) the term (duration) of the evaluation license shall be as set forth in the Order Schedule or as otherwise specified by MSC in writing; (iii) such Software is provided on an “as is” basis, with no warranties of any kind; and (iv) MSC has no obligation to provide any Maintenance for such Software. In addition to any other rights, MSC may terminate any no-charge Evaluation License at any time.
- 3.3 **Demonstration License:** If Software is licensed to Customer under an **Demonstration License**, Customer agrees that, NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT: (i) Customer may use such Software solely for non-production demonstration purposes (use for any other purposes, including without limitation, use in a production environment is strictly prohibited); (ii) the term (duration) of the demonstration license shall be as set forth in the Order Schedule or as otherwise specified by MSC in writing; (iii) such Software is provided on an “as is” basis, with no warranties of any kind; and (iv) MSC has no obligation to provide any Maintenance for such Software. Software licensed under a **Demonstration License** is to be used solely to demonstrate the Software, on a one-on-one basis, to end users or potential end users who are not competitors of MSC (or MSC’s affiliate, MSC Software Corporation), subject to any additional restrictions set forth in this Agreement and the Order Schedule. In addition to any other rights, MSC may terminate any no-charge Demonstration License at any time.
- 3.4 **Academic License:** If Software is licensed to an academic entity (Customer) under an **Academic License**, Customer agrees that, NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT:
 - 3.4.1 For Academic Licenses, “**Authorized Users**” means Customer’s employees (faculty and academic staff) and enrolled students who are authorized by Customer to use the Software for Customer’s Academic Internal Use in accordance with this Agreement, and to the extent permitted by the license type acquired. Customer shall at all times be responsible for its Authorized Users’ compliance with this Agreement.
 - 3.4.2 Customer may use Software provided under Academic Licenses solely for non-commercial, Academic Internal Use. For the purposes of this Agreement, “**Academic Internal Use**” means the use of the Software by Authorized Users for the purpose of: (i) in the case of employees, performing software administration, teaching, and noncommercial academic research in their ordinary course as Customer’s employees; and (ii) in the case of enrolled students, meeting requirements of courses and study offered by the Customer. Any other use is expressly prohibited.
 - 3.4.3 In addition to any other restriction or limitation set forth in the Agreement, MSC expressly prohibits use of the Academic Licenses for the following: (i) any training or instructional activity for non-degree seeking students; (ii) any training or instructional activity for any third party that may be a licensee of the Software under separate agreement with MSC; (iii) any commercial purpose, including but not limited to, commercial processing, paid-for consulting, or processing the work of any Customer affiliates; or (iv) developing software for sale or license.
 - 3.4.4 IF CUSTOMER ACQUIRES MAINTENANCE FOR AN ACADEMIC LICENSE, CUSTOMER SHALL DESIGNATE IN WRITING A “DESIGNATED CONTACT” (“DC”) AS PERMITTED BY MSC. THE DC SHALL BE KNOWLEDGEABLE FULL-TIME STAFF REPRESENTATIVE OF CUSTOMER AND SERVE AS A FOCAL POINT FOR ADMINISTRATING AND RESOLVING ALL CUSTOMER REQUESTS FOR TECHNICAL SUPPORT. THE DC SHALL USE BEST EFFORTS TO SOLVE CUSTOMER PROBLEMS OR ISSUES RELATED TO THE SOFTWARE PRIOR TO CONTACTING MSC (OR RESELLER, AS APPLICABLE). MSC (AND RESELLER, IF ANY) HAVE NO OBLIGATION TO PROVIDE TECHNICAL SUPPORT TO AUTHORIZED USERS OF THE SOFTWARE; ANY TECHNICAL SUPPORT TO WHICH CUSTOMER IS ENTITLED TO UNDER MAINTENANCE SHALL BE PROVIDED SOLELY TO THE DC.
- 3.5 **Non-Production License.** If Software is licensed to Customer under a **Non-Production License** (such as a *Beta* license), Customer agrees that, NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT:

- (i) Customer may use Non-Production Software for non-production evaluation purposes only. Use in a production environment is strictly prohibited;
- (ii) Non-Production Software is provided on an "as is" basis, with no warranties of any kind. CUSTOMER ACKNOWLEDGES THAT NON-PRODUCTION SOFTWARE IS STILL IN DEVELOPMENT AND IS PROVIDED FOR EVALUATION PURPOSES AND MAY CONTAIN SIGNIFICANT ERRORS, DEFECTS, OR BUGS, AND THAT THE SOFTWARE MAY NOT FUNCTION AS INTENDED. MSC RESERVES THE RIGHT NOT TO MARKET OR RELEASE A COMMERCIAL VERSION OF THE SOFTWARE;
- (iii) MSC has no obligation to provide any support or other assistance for Non-Production Software;
- (iv) Customer agrees to evaluate the Non-Production Software and report such evaluation to MSC at times and in a manner agreed to by the parties. Notwithstanding any other provision in this Agreement, MSC shall have the exclusive right to use ideas, information, understandings, and concepts derived from Customer's evaluation of the Non-Production Software without restriction and without compensating Customer therefor; AND
- (v) The period of evaluation – the “license term” for a Non-Production License – shall begin upon delivery of such Non-Production Software (and any required authorization codes) to the Licensee, and shall end at the earlier of: (i) the date of general availability of the Software, as determined by MSC; (ii) expiration of the applicable Non-Production Software authorization codes; or (iii) the date the Non-Production License is terminated by MSC. MSC may, at any time, terminate a Non-Production License for any reason and without cause.

4 RESTRICTIONS AND PROTECTIONS.

- 4.1 Customer acknowledges that the Software and its structure, organization and source code constitute and contain valuable trade secrets of MSC (and its suppliers, as applicable). Accordingly, Customer shall not: (i) reverse-engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software, or allow any third party to do the foregoing, except to the extent explicitly permitted by applicable law without possibility of contractual waiver; (ii) modify, adapt, alter, translate or create derivative works from the Software or Documentation; (iii) sublicense, rent, loan, lease, sell, or otherwise transfer all or part of the Software or Documentation to any third party except as expressly permitted under this Agreement; (iv) allow any third party to access or use the Software on a service bureau, application service provider, time-sharing, or similar basis; (v) disable, modify or circumvent the license management system provided with the Software; (vi) remove, alter, or obscure any proprietary notices, labels, or marks from the Software or Documentation; (vii) disclose results of any Software benchmark tests without MSC's prior written consent, or use the Software or Documentation in connection with the development of any competing product or service; (viii) disclose or display (except as may be expressly permitted under a Demonstration License), or permit access to or use of the Software or Documentation by persons other than Authorized Users using the Software and Documentation within the scope of the license acquired by Customer; (ix) otherwise use or copy the Software or Documentation except as expressly permitted under this Agreement; or (x) access or use modules of the Software for which Customer has no valid license. Customer agrees to notify MSC immediately of any unauthorized access to or use of the Software.
- 4.2 Customer may copy the Software as reasonably required in conjunction with permitted use under this Agreement and for backup purposes. Any such copies made by Customer must reproduce and include, in exact form, all proprietary rights notices. Customer shall maintain records of the location of each copy of the Software, and the location and identity of the computers on which the Software is installed.
- 4.3 The Software and Documentation, and all worldwide intellectual property rights therein, are and remain the property of MSC (and its suppliers, as applicable). Nothing in this Agreement will be deemed to convey to Customer any title, ownership, or other intellectual property rights in or related to the Software or Documentation, and Customer agrees not to assert any such rights. All rights in and to the Software and Documentation not expressly granted to Customer in this Agreement are reserved by MSC (and its suppliers, as applicable).
- 4.4 Upon fifteen (15) days written notice, MSC may audit Customer's installation and use of the Software and Documentation. Customer shall cooperate with MSC's audit and provide reasonable assistance and access to information. MSC shall not be responsible for Customer's costs incurred in cooperating with the audit.
- 4.5 Customer acknowledges that the obligations of Customer under this Section 4 are of a special and unique character which gives them peculiar value to MSC for which MSC cannot be reasonably or adequately compensated in damages in the event Customer breaches such obligations. Customer therefore agrees that injunctive relief is an appropriate

remedy for such breach or threatened breach. Such relief shall be in addition to, and not in lieu of, any other rights or remedies in law or equity to which MSC may be entitled.

5 MAINTENANCE.

- 5.1 If Customer acquires Maintenance for Software, then during the applicable Maintenance term and subject to the terms and conditions of this Agreement, MSC will (directly, or through a Reseller) provide Customer with error corrections, patches, updates and subsequent releases of the Software (and updated Documentation), if any, that MSC, in its sole discretion, makes generally available at no additional charge to its end-users who are on Maintenance. Maintenance shall not entitle Customer to any release, option, module, or future product, which MSC, in its sole discretion, licenses separately or offers for an additional fee. MSC is under no obligation to develop any future programs or functionality.
- 5.2 Further, if Customer acquires Maintenance for Software, then during the applicable Maintenance term and subject to the terms and conditions of this Agreement, MSC (or its Reseller, as applicable) will provide Customer with technical support via telephone, email and/or any other means MSC, in its sole discretion, makes generally available from time to time under technical support. Technical support is provided only for the then-current major release and the immediately preceding major release (as designated by MSC) of the Software, running unaltered, and on an appropriate hardware and operating system configuration, as specified in the applicable Documentation. Technical support is limited to reasonable assistance in response to Customer's technical support inquiries regarding: (i) Software installation, (ii) Software errors, and (iii) general questions regarding the usage of Software features. Technical support does not include training, consulting, on-site services, or the provision of engineering judgment for a customer-specific simulation. Upon MSC's request, Customer shall provide information required by MSC to verify that Customer and the specific license are entitled to technical support. To allow MSC to properly address technical issues, MSC may request that Customer provide files and other materials and information.
- 5.3 To the extent MSC provides or makes available to Customer any additional materials under Maintenance, including any corrections, patches, updates or subsequent releases of the Software (and/or updates to Documentation) any such additional materials may include or be subject to other terms in addition to or different from the terms set forth in this Agreement, and Customer agrees to comply with such terms, or (b) if there are no other terms for such additional materials, they will be subject to the same terms (including, without limitation, the licenses and other terms of this Agreement) as the Software and Documentation to which such additional materials apply.
- 5.4 If Customer acquires Maintenance, the term for Maintenance shall be set forth in the Order Schedule. In the event that Maintenance expires or was not originally purchased, upon the commencement of Maintenance a reinstatement fee will be assessed in accordance with MSC's then current policies. Unless otherwise agreed to by the parties in writing: (i) annual Maintenance renewal, if any, will be at MSC's then-current Maintenance prices, and (ii) to purchase any Maintenance, Customer is required to purchase Maintenance for all Software Customer has licensed from MSC. In addition to any other remedies available to MSC, MSC reserves the right to refuse to provide Maintenance if Customer is overdue on any payment obligation to MSC.
- 5.5 MSC's sole and exclusive liability, and Customer's sole and exclusive remedy, for a failure to meet any obligation under Maintenance and failure to cure such deficiency after thirty (30) days written notice will be that Customer may terminate Maintenance for the Software involved and receive a pro-rata return of any Maintenance fees paid for the remaining unused Maintenance period of the Software involved.

6 ORDER AND DELIVERY.

- 6.1 MSC reserves the right, in its sole discretion, to accept or reject any Customer order.
- 6.2 MSC reserves the right to deliver the Software and Documentation either by making them available to Customer for electronic download or by physical delivery. Where the Software and Documentation are made available to Customer for electronic download, MSC is under no further delivery obligation under the Order Schedule, whether physical or otherwise. For electronic delivery, the delivery date shall be when the Software is made available to Customer electronically.
- 6.3 Where physical shipment is made, MSC shall ship (or cause to be shipped) one copy of the Software media and one set of Documentation in the form generally available. The Software will be deemed delivered upon shipment. Unless otherwise agreed to in writing by the parties, MSC will determine the method of shipment. Additional shipping, handling, insurance fees may apply for physical shipments.

7 INSTALLATION AND AUTHORIZATION CODES.

- 7.1 Customer may, to the extent reasonably necessary for permitted usage of the Software, install the Software on Customer's client machine(s) located at the Installation Site (or in the case of a Country Network License or Regional Network License, at other permitted Customer facilities within the scope of the applicable license type), as long as use

of the Software is controlled by the Customer Computer (license server). Customer shall be responsible for installation of the Software and all associated costs. Customer may only relocate the Customer Computer with MSC's prior written consent.

- 7.2 THE SOFTWARE MAY REQUIRE AUTHORIZATION CODES (also known as "LICENSE KEYS") TO RUN. ANY SUCH REQUIRED AUTHORIZATION CODES WILL BE ISSUED IN ACCORDANCE WITH MSC'S THEN-CURRENT LICENSE MANAGEMENT POLICY. Customer shall provide MSC with the host identifier and any other information reasonably required by MSC for each Customer Computer to permit MSC to generate the necessary authorization codes. MSC has no obligation to provide authorization codes for any version of the Software which has been replaced by a more recent version.
- 7.3 MSC reserves the right to charge MSC's then-current standard hardware transfer fees whenever MSC, in response to a Customer request, generates and delivers to Customer replacement authorization codes due to a change to the Customer Computer. Prior to any such delivery, Customer shall complete, sign and submit MSC's standard hardware transfer request form. MSC has no obligation to provide replacement authorization codes for changes to the Customer Computer if: (i) the applicable Software is not covered by Maintenance; (ii) the Software is not supported on the proposed substitute computer; or (iii) if Customer is in breach of this Agreement.

8 WARRANTY; LIMITATIONS.

- 8.1 MSC warrants that the Software when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system platform supported by MSC) will conform substantially to its associated Documentation for a period of ninety (90) days from the initial delivery date. Any claim by Customer of a breach of this warranty must be made in writing and within ninety (90) days of the delivery date.
- 8.2 EXCEPT AS EXPRESSLY STATED IN SECTION 8.1 OF THIS AGREEMENT AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, NEITHER MSC NOR ANY SUPPLIER OF MSC MAKE ANY WARRANTIES OF ANY KIND, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, MAINTENANCE, SERVICES OR OTHER MATERIALS PROVIDED UNDER THIS AGREEMENT. MSC FURTHER EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. MSC MAKES NO WARRANTY THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.
- 8.3 Customer's exclusive remedy, and MSC's sole liability, for Software that does not meet the warranty set forth in Section 8.1 will be, at MSC's option: (i) to correct the non-conforming Software within a reasonable time so that it conforms to the warranty; (ii) to replace the non-conforming Software with another MSC software offering of substantially similar functionality; or (iii) if neither (i) or (ii) is commercially feasible, permit Customer to terminate the license as to the non-conforming Software and refund of the license fees and associated, unused Maintenance fees actually paid to MSC for the non-conforming Software. MSC will have no responsibility or obligation under the foregoing warranty or otherwise with respect to: (a) any Software that has been modified by anyone other than MSC, or (b) failure of the Software caused by Customer or its agents through accident, abuse or misapplication.

9 LIMITATION OF LIABILITY.

- 9.1 Customer acknowledges that the Software along with the Documentation, Maintenance and any services provided hereunder are only an aid in Customer's development of Customer's products and is not intended as a substitute for sound engineering judgment. MSC will not be liable in any manner whatsoever for the data output obtained through use of the Software. Customer shall, at its own expense, indemnify, defend and hold MSC harmless from and against any claim(s) brought against MSC by a third party arising out of, or related to, Customer's use of the data output obtained from use of the Software.
- 9.2 NEITHER MSC NOR ITS SUPPLIERS OR AFFILIATES WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOST DATA, SAVINGS, PROFITS OR REVENUES) ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, MAINTENANCE, SERVICES, OTHER MATERIALS OR THIS AGREEMENT, EVEN IF MSC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR CLAIM. MSC'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, MAINTENANCE, SERVICES, OTHER MATERIALS AND THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL BE LIMITED TO AND WILL IN NO EVENT EXCEED THE AMOUNT ACTUALLY RECEIVED BY MSC FOR THE ITEM THAT IS THE SUBJECT MATTER OF, OR IS DIRECTLY RELATED TO THE CAUSE OF ACTION. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT BY

CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUED. TO THE EXTENT ANY APPLICABLE LAW LIMITS THE SCOPE OF THIS SECTION 9.2., THIS AGREEMENT SHALL BE INTERPRETED TO CONFORM TO SUCH LAW IN A MANNER THAT LIMITS MSC'S LIABILITY TO THE FULLEST EXTENT ALLOWED BY LAW.

10 TERMINATION.

10.1 Upon termination of the license grant, Customer shall (i) immediately cease using the Software and Documentation and promptly uninstall and erase the Software and Documentation (and related authorization codes) from all Customer computers, and (ii) destroy all Software (and related authorization codes) and Documentation or, upon request by MSC, return all the Software and Documentation to MSC or the company from which they were acquired. MSC reserves the right to require Customer to certify and/or show satisfactory proof that all copies of the Software and Documentation have been uninstalled and that all MSC Software and Documentation have been destroyed or returned. Termination of any license grant shall not relieve Customer from any obligation accrued on or before the date of termination. Provisions that survive termination include those in Sections 5.5, 7.3, 9, 10, 11, 12, 13, 14 and others which by their nature are intended to survive.

11 INTELLECTUAL PROPERTY INDEMNITY.

11.1 MSC shall, at its own expense and subject to the terms of this Agreement indemnify, defend and hold Customer harmless from and against any claim(s) brought against Customer by a third party alleging that the Software or any portion thereof as furnished under this Agreement and used within the scope of the licenses granted to Customer infringes any copyrights or patents, or violates any trade secrets; provided that Customer gives MSC: (i) prompt written notice of such claim; (ii) assistance and information reasonably requested by MSC; and (iii) the sole authority to defend and settle such claim.

11.2 Notwithstanding the provision of Section 11.1, MSC shall have no liability for any infringement arising from: (i) the integration or combination of the Software together with other software, materials or products not integrated or combined by MSC, if the infringement would have been avoided in the absence of such integration or combination; (ii) the use of other than a current unaltered release of the Software available from MSC, if the infringement would have been avoided by the use of the then-current release; (iii) modifications to the Software that were not authorized by MSC or were undertaken at the request of or direction of Customer; or (iv) Customer's use of the Software in a manner that does not comply with this Agreement.

11.3 If the Software becomes, or in MSC's opinion is likely to become, the subject of an infringement claim, MSC may, at its sole option and expense, either: (i) substitute non-infringing software of substantially similar functionality; (ii) modify the infringing Software so that it no longer infringes but remains substantially similar in functionality; (iii) obtain for Customer, at MSC's expense, the right to continue use of such Software; or (iv) if none of the foregoing is commercially feasible, MSC will take back the Software involved, and grant Customer a refund or credit for the unused portion of the license fee and associated unused Maintenance fees actually paid to MSC for the Software involved, using a straight line amortization over sixty (60) months from initial delivery for Paid-up License(s). THIS SECTION 11 STATES MSC'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

12 EXPORT. Customer shall comply with all applicable European Union, United States and local export control laws and regulations and further agrees not to export or re-export the Software, Documentation, technical data or other deliverables provided under this Agreement without: (i) MSC's prior written approval and (ii) obtaining, at Customer's sole cost and expense, any required authorization from the applicable governmental authority as may be required by law. Upon MSC's request, Customer shall promptly cooperate with MSC and provide MSC with any end-user certificates, affidavits, letters of assurance, or other documents reasonably requested by MSC in connection with the exporting or importing of any products or services under this Agreement.

13 US GOVERNMENT USE. If Customer is a branch or agency of the U.S. Government or is licensing the Software on behalf of the U.S. Government ("Government"), the following provisions apply to this Agreement. If the Software is supplied to the Department of Defense ("DoD"), it is classified as "Commercial Computer Software" under clause 252.227-7014 of the DoD Supplement to the Federal Acquisition Regulations ("DFARS") (or any successor regulations) and the Government is acquiring only the license rights granted herein (the license rights customarily provided to non-Government users). If the Software is supplied to any unit or agency of the U.S. Government other than the DoD, it is classified as "Restricted Computer Software" and the Government's rights in the Software are defined in clause 52.227-19 of the Federal Acquisition Regulations ("FAR") (or any successor regulations) or, in the case of NASA, in clause 18.52.227-86 of the NASA Supplement to the FAR (or any successor regulations).

14 MISCELLANEOUS.

- 14.1 This Agreement constitutes the complete agreement between MSC and Customer with respect to the subject matter hereof. The terms of this Agreement shall supersede and prevail over any conflicting terms in any purchase order or other customer-issued instrument. Customer specifically agrees that any customer-generated pre-printed terms included or referenced in any purchase order or other customer-issued instrument shall not apply. No MSC Reseller, agent or employee is authorized to make any amendment to this Agreement, unless such amendment is in writing and signed by a duly authorized representative of MSC.
- 14.2 This Agreement shall be construed and disputes hereunder shall be settled under the substantive laws in force in: (a) the State of California (United States), if the Customer is licensing the Software for use anywhere in North, Central or South America (collectively, "Americas"); or (b) Belgium, if the Customer is licensing the Software for use other than in the Americas. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- 14.3 The Software may be accompanied by or contain certain third party software, including open source software (collectively, "Third Party Software"), for which MSC is required to pass-through to its licensees certain additional terms and conditions and/or notices. Such required Third Party Software terms and conditions and/or notices are provided at <http://www.fft.be/thirdpartysoftware> or any other successor site designated by MSC. Customer agrees to be bound by and comply with the applicable Third Party Software terms and conditions, if any. Hardcopies of the Third Party Software terms and conditions may be printed from the foregoing site. THIRD PARTY SOFTWARE IS PROVIDED "AS-IS," WITHOUT WARRANTIES OR LIABILITY OF ANY KIND BY MSC.
- 14.4 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. However, Customer may not assign or transfer, by operation of law or otherwise, this Agreement (or any of the licenses or other rights or obligations hereunder), without MSC's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. MSC may assign or transfer this Agreement. MSC may subcontract a service, or any part of it, to subcontractors selected by MSC, provided MSC will remain responsible to Customer for such subcontractor's performance in accordance with this Agreement.
- 14.5 If any provision of this Agreement is invalid, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement. The parties further agree to substitute a valid provision for the invalid provision which most closely approximates the intent and economic effect of the invalid provision.
- 14.6 Ambiguities, inconsistencies, or conflicts in this Agreement, will not be strictly construed against the drafter of this Agreement; rather, they will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting. The section headings in this Agreement are for convenience only and will not be of any effect in constructing the meaning of the Sections.
- 14.7 MSC will not be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from acts of God, supplier delay or other causes beyond MSC's reasonable control.
- 14.8 All notices will be in writing. Notices permitted or required under this Agreement shall be delivered personally (including courier service), by certified or registered mail, return receipt requested, or by confirmed facsimile transmission. Notices shall be effective upon receipt. If notice is sent to MSC, it shall be directed to the attention of the **Legal Department**.
- 14.9 Customer acknowledges and agrees that any and all consulting services performed or to be performed by MSC for Customer are independent of Customer's purchase and use of the Software licenses. Customer further agrees that payment for Software licensed hereunder is in no way dependent or in any other way associated with the commencement, completion or delivery of consulting services.
- 14.10 The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations.