

SOFTWARE LICENSE AGREEMENT

(Web Version August 22, 2011)

Whenever Licensee licenses software products ("Program(s)" as further defined herein) from Licensor, a License Form will be executed which will refer to this Software License Agreement ("Agreement") and which will be incorporated therein by reference. By signing a License Form, each party has caused this Agreement to be executed by its duly authorized representatives and agrees to be bound by the terms and conditions of this Agreement.

1. DEFINITIONS

- A. "Affiliate" of a company means any person or other entity directly or indirectly controlling, controlled by, or under common control of such company.
- B. "ASC" is that person appointed by Licensee as Licensee's representative and liaison with Licensor for purposes of coordinating Licensee's receipt of TECS.
- C. "Channel Partner" means Licensor's Affiliates or persons or other business entities that are authorized by Licensor to distribute, support, or both distribute and support Program(s). Any Customer Support obligations of Licensor under this Agreement may be delegated to a Channel Partner at Licensor's discretion.
- D. "Class3 Error" means an error which allows the program execution to complete and yield results that may be wrong but not easily identifiable as incorrect.
- E. "Contract User(s)" means an individual or entity, not a regular employee of Licensee, who is engaged to perform Licensee's internal data processing services.
- F. "Designated Network" means the network identified on the License Form or, if not indicated on the License Form, the machine information specified in the License Key.
- G. "Designated Site" means Licensee's physical location identified on the License Form and is where the Program(s) is authorized by Licensor to be used.
- H. "Effective Date of the Agreement" means the date specified in the upper right hand corner of the first page of the License Form next to the words "Effective Date."
- I. "Effective Date of Program(s)" means the date specified in the License Key unless otherwise indicated on the License Form for the applicable Program(s).
- J. "LAN" means the Designated Network(s); provided, however, that in order to qualify as a LAN, such Designated Network must be a local area network which is accessed and used only at the Designated Site or from Licensee's facilities within a 25-mile (40 km) radius of the Designated Site and within the same country as the Designated Site.
- K. "Lease License" means a license which has a License Term commencing on the Effective Date of Program(s) and limited in duration for a specified period of time as identified on the License Form, or if not specified, for a period of one year, and which may renew pursuant to Section 3 below.
- L. "License Form" means any document referencing this Agreement which (i) is signed by the Licensor and Licensee, (ii) incorporates the terms and conditions set forth herein and (iii) sets forth, at a minimum, the Licensee's name, Designated Site, Program(s) name, Number of Tasks, License Term, and the ASC name and address. Each License Form will be treated as a separate agreement.
- M. "License Key" means a software licensing management and security tool or other device that Licensor uses to allow Licensee access to the Program(s) and which may have an expiration date.
- N. "License Term" means the period of time during which Licensee is authorized to use Program(s) in accordance with the applicable license grant.
- O. "License Type" means the type of the license granted for use of the Program(s), as identified on the License Form. If the License Form does not specify the License Type, the License Type will be deemed to be LAN.
- P. "Licensee" means the entity identified on the License Form, including its Affiliates.
- Q. "Licensor" means ANSYS, Inc. unless an Affiliate of ANSYS, Inc. is identified as Licensor on the License Form.
- R. "Paid-Up License" means a license that has a License Term commencing on the Effective Date of Program(s) and continuing in perpetuity unless earlier terminated in accordance with the terms of this Agreement.
- S. "Program(s)" means the software listed in the applicable License Form, any accompanying documentation, and any Technical Enhancements to such software.
- T. "TECS" or "Technical Enhancements and Customer Support" means the services described in Section 9(a) below.

2. GRANT

- (a) Upon execution of a License Form by Licensee and upon acceptance and execution of such License Form by Licensor, Licensor grants to Licensee a nonassignable, nonexclusive, nontransferable right and license, without the right to grant sublicenses, to use each Program(s) set forth on each License Form entered into hereunder for the number of simultaneous tasks or active processes ("Number of Tasks"), for the License Term, and within the scope of the License Type, as each is specified on the License Form. Licensee will use the Program(s) only for Licensee's own internal data processing purposes and will not make all or any part of any Program(s) available to any third person other than Contract Users, including without limitation, providing data processing services, serving as an application service provider, or providing batch processing services. Licensee's use of each Program(s) will be restricted to the Designated Site set forth on the applicable License Form. Changes of the Designated Network are permitted only with the prior written consent of Licensor and payment of any administration fees. Nothing contained herein will be deemed to convey to Licensee any title, ownership, copyright or any other intellectual property rights in or related to Program(s), and Licensor reserves all rights in and to the Program(s) which are not expressly granted in writing by Licensor to Licensee. Licensee will not permit the use of the Program(s) by persons other than its employees and its Contract Users. Licensee is responsible for ensuring that the Contract Users (i) use the Program(s) only to perform internal data

processing services for Licensee and (ii) agree to and comply with the terms of this Agreement. Licensee is responsible for the use of the Program(s) by all Contract Users.

- (b) PROGRAM(S) ARE MANAGED BY LICENSE KEYS WHICH MAY LIMIT THE PROGRAM(S)' USE AND REQUIRE LICENSEE TO OBTAIN NEW LICENSE KEYS FROM TIME TO TIME.
- (c) Licensor will provide Licensee access to the Program(s) via a License Key(s). Licensee will be responsible for installation of the Program(s). Licensee may make copies of the Program(s) only as are necessary for Licensee's back-up or archival purposes of such Program(s). The license granted to Licensee by reason of this Section 2 applies to all copies of the Program(s). In no event will Licensee remove or modify any copyright notices or other proprietary markings contained within the Program(s) and will ensure that such notices are reproduced within all copies of the Program(s).
- (d) Licensee will not modify the License Key provided with the Program(s) in any way. Except as expressly permitted by this Section 2(d) or as required to be permitted by local law, Licensee will not (and will not attempt to nor allow any third party to or attempt to) adapt, alter, amend, modify, reverse engineer, decompile, disassemble or decode the whole or any part of the Program(s) or translate the whole or any part of the Program(s) into another language. To the extent that local law expressly grants or requires Licensor to grant Licensee the right to decompile the Program(s) in order to obtain the information necessary to render the Program(s) interoperable with other computer programs used or to be created by Licensee, Licensor will make such information available to Licensee and Licensee will not decompile (or attempt to do so) the Program(s) without first requesting such information from Licensor. Licensor will have the right to impose reasonable conditions (such as the imposition of a reasonable fee) for making the information available. In order to ensure that Licensee receives the appropriate information, Licensee must first give Licensor sufficient details of Licensee's objectives and other software concerned. All requests for the appropriate information will be given by notice to be delivered in accordance with the terms of this Agreement. Licensee may not distribute the Program(s) (the whole or any part) to any third party (excluding Contract Users) or link or compile the Program(s) to or with any third party software without Licensor's prior written permission, which consent Licensor may grant or withhold in its sole discretion.
- (e) Licensee acknowledges and agrees that the Program(s) are subject to U.S. laws governing the export and/or re-export of Program(s) including, but not limited to, the Export Administration Regulations, regulations promulgating financial transaction restrictions administered by the Office of Foreign Asset Controls of the U.S. Department of the Treasury, the International Emergency Economic Powers Act, the United States Export Administration Act, the United States Trading with the Enemy Act, and all regulations, orders and licenses issued thereunder (collectively the "**Export Laws**"). Licensee warrants that it is and will remain in compliance with all such Export Laws with respect to the Program(s), and acknowledges that Export Laws may change over time. Licensee additionally warrants that it has not been, and is not currently, debarred, suspended, prohibited or impaired from exporting, re-exporting, receiving, purchasing, procuring, or otherwise obtaining any product, commodity, or technical data regulated by any agency of the government of the United States. In particular, Licensee hereby gives assurance that unless notice is given to Licensor, and prior authorization is obtained as required by the Export Laws, Licensee will not knowingly re-export, directly or indirectly, any Programs or any technical data transferred by Licensor to Licensee to any destination or person or entity in violation of the Export Laws or this Agreement.

3. TERM AND TERMINATION

- (a) Lease Licenses are non-cancelable by Licensee, will commence on the Effective Date of Program(s), will have a term equal to the term specified on the License Form, and at the end of the then-current term will automatically renew at the then-current renewal fees set by Licensor or Channel Partner, as applicable, for a renewal term equal to the duration of (as applicable) the immediately preceding License Term (provided that the term may be extended or shortened by mutual agreement in any given renewal term for that License Term in order to make the License Term coterminous with the term of other Lease Licenses or the TECS for Paid-Up Licenses licensed by Licensee) unless Licensee, Channel Partner, or Licensor gives prior written notice of their intent to not renew the applicable Lease License prior to the end of the initial or renewal term (as applicable). Notice to not renew shall be deemed given by Licensee if Licensee does not issue a purchase order to Licensor or the Channel Partner for the Lease Licenses prior to the expiration of the then-current License Term. Notice to not renew shall be deemed given by Licensor or the Channel Partner, except as otherwise expressly indicated, in the event that Licensor or Channel Partner does not provide a renewal quotation or follow-on proposal for the Lease Licenses prior to the expiration of the then-current License Term. Licensor may terminate the Lease Licenses in the event that Licensee fails to pay the then-current renewal fees to the Channel Partner or Licensor, as applicable, by the due date for such payment. In the event a Lease License is terminated prior to the end of the term, no refund will be due to Licensee for any portion of the prepaid Lease License fee.
- (b) The license for a Paid-up License will commence on the Effective Date of Program(s) and will be perpetual unless terminated as provided in Section 3(c) below.
- (c) Licensor may immediately terminate this Agreement and any Program(s) license upon any of the following: (i) Licensee materially breaches any provision of this Agreement or a License Form and fails to cure such breach within thirty (30) days of notice of such breach from Licensor or Channel Partner, provided that Licensor may terminate this Agreement and any Program(s) licenses for any material breach by Licensee that is not capable of being cured; (ii) Licensee ceases to do business for any reason; (iii) Licensee has a receiver or administrator appointed over all or part of its assets; (iv) Licensee becomes subject to any bankruptcy, insolvency, reorganization, liquidation or other similar proceedings, which proceedings are not dismissed within fifteen (15) days thereafter; (v) the transfer of a majority of Licensee's assets or outstanding voting securities (including, without limitation, by way of merger of Licensee with or into any other person or entity), or the sale of Licensee's business, or any other transaction or series of related transactions in which the security holders of Licensee immediately prior to such transaction(s) do not hold at least a majority of the

outstanding voting securities of Licensee immediately after the transaction(s); or (vi) any attempted assignment of this Agreement or License Form by Licensee without prior written approval by Licensor.

- (d) If the license for Program(s) granted hereunder is terminated for any reason, Licensee will immediately uninstall the Program(s) from the computer(s) on which it is installed and will certify to Licensor in writing that the Program(s) is uninstalled and all copies thereof have either been destroyed or returned to Licensor or the Channel Partner. Licensee will immediately return to Licensor or the Channel Partner any confidential information or material provided to Licensee in connection with the Program(s), unless otherwise specified by Licensor or the Channel Partner.

4. PAYMENT

For sales of licenses of the Program(s) and/or TECS to Licensee directly by Licensor or its Affiliates or for sales of licenses of the Program(s) and/or TECS by a non-Affiliated Channel Partner in which Licensor has requested payment be made directly to Licensor or its Affiliates ("Directed Payments"), Licensee agrees to pay the applicable fees within thirty (30) days of receipt of an invoice for such fees from Licensor or its Affiliates. In the event that Licensee does not pay within such time period, Licensor or its Affiliates (as applicable) additionally may charge Licensee interest in an amount equal to 1.5% per month of the unpaid balance. For sales of licenses of the Program(s) and/or TECS to Licensee by non-Affiliated Channel Partners other than Licensor's Affiliates, payments other than Directed Payments made by Licensee under this Agreement will be paid to the Channel Partner within the time agreed between the Channel Partner and Licensee. If such period is not specified, then the payment terms shall be consistent with the payment terms set forth above for payments to Licensor and its Affiliates. Fees are exclusive of all value added taxes, sales taxes, use taxes, and the like. Licensee will pay all taxes associated with the Program(s), exclusive of any tax based on the income of Licensor or the Channel Partner. If claiming a tax exemption, Licensee must provide a valid tax exemption certificate.

5. CONFIDENTIAL INFORMATION

- (a) Licensee hereby acknowledges that the Program(s) embodies confidential and proprietary information, including trade secrets, owned by Licensor or its Affiliates or suppliers (the "Program Confidential Information").
- (b) Excluding the Program(s) and the Program Confidential Information, the parties agree that any other information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") under this Agreement and which is identified in writing as confidential or proprietary ("Other Confidential Information") and, together with the Program Confidential Information, ("Confidential Information") will remain the property of the Disclosing Party. If initially disclosed orally or visually, Other Confidential Information must be identified as confidential at the time of disclosure and a written summary thereof, also marked with such a legend, must be provided to the Receiving Party within 15 days of the initial disclosure. Notwithstanding the foregoing to the contrary, reports and/or information related to or regarding Licensor's or its Affiliates', suppliers', or Channel Partner's business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information even if not so marked or identified. The Receiving Party will use the same degree of care, but not less than reasonable care, to protect the confidentiality of the Disclosing Party's Confidential Information as it uses to protect its own similar confidential and proprietary information. The Receiving Party agrees that it will not (i) use the Disclosing Party's Confidential Information in any way, for its own account or the account of any third party, except for the exercise of its rights and performance of its obligations under this Agreement, or (ii) disclose any such Confidential Information to any party, other than furnishing such Confidential Information to (a) its employees, Affiliates, Channel Partners and consultants who are required to have access to such Confidential Information in connection with the exercise of its rights and performance of its obligations under this Agreement and (b) professional advisers; provided that such employees, Affiliates, consultants, Channel Partners and professional advisers are bound by written agreements or, in the case of professional advisers, ethical duties, respecting such Confidential Information in accordance with the terms of this Section 5. Notwithstanding anything to the contrary contained herein, Licensee agrees that Licensor may disclose Licensee's Confidential Information to Licensor's third party software suppliers solely for the purposes of providing Customer Support for the Program(s) and solely as such issues relate to such third party software suppliers' components within the Program(s), provided that any such disclosures are subject to terms and conditions at least as restrictive as those set forth in this Section 5.
- (c) The obligations of Section 5(b) will not extend to any information which:
 - (i) was lawfully known to Receiving Party prior to receipt from the disclosing party; or
 - (ii) enters the public domain in general through no wrongful act or breach of this Agreement by Receiving Party; or
 - (iii) is received by Receiving Party from a third party having a legal right to disclose such information; or,
 - (iv) is developed independently by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or
 - (v) is required by law, regulation or court order to be disclosed, so long as the Receiving Party notifies the Disclosing Party in writing prior to disclosing the Confidential Information so that the Disclosing Party has an opportunity to seek a protective order or other appropriate remedy from the proper authority. Receiving Party agrees to cooperate with the Disclosing Party in seeking such order or other remedy or in defining the scope of any required disclosure.
- (d) Receiving Party has the burden of proving the exceptions in section 5(c) above.
- (e) The obligations of the parties with regard to Other Confidential Information will survive for a period of three (3) years from the date of the first disclosure of such Other Confidential Information.
- (f) If the parties have separately entered into a confidentiality agreement regarding the exchange of Other Confidential Information in connection with this Agreement, then the terms of that separate confidentiality agreement will govern the disclosure and use of Other Confidential Information between the parties and not this Section 5. Any existing confidentiality agreements between the parties will remain in full force and effect and will not be varied by the terms of this Section 5.

6. **WARRANTIES; LIMITATION OF REMEDY**

- (a) Licensor warrants to Licensee that the Program(s) will perform in all material respects as specified in Licensor's most current user's manual(s) ("Manual") applicable to the Program(s) for ninety (90) days from the Effective Date of Program(s) and for the period of time during which Licensee is entitled to receive TECS for a Program(s), unless otherwise specified on the applicable License Form. The warranties provided in this Section 6 will only apply to the two (2) most current releases of the Program(s). This warranty will not apply if Licensor has notified Licensee in writing that Licensor no longer supports the operating system version on which such Program(s) is licensed.
- (b) Licensor, its Affiliates, Channel Partners and suppliers do not warrant the accuracy or the applicability of the results obtained from the use of the Program(s) or the Manual. No other documents or oral conversations, statements or representations will be offered by Licensee as evidence to explain, expand, alter, add to or invalidate the express warranties set forth above.
- (c) The warranties set forth herein are the sole warranties provided to Licensee and extend only to Licensee itself. Licensor, its Affiliates, Channel Partners and suppliers will not be responsible for any breach of warranty caused by (i) modifications (or attempted modifications) to the Program(s) made by or on behalf of Licensee, whether authorized or unauthorized, or (ii) any combination of the Program(s) with any other software, or (iii) any use of the Program(s) other than on the Designated Network, or (iv) use of other than the most current release of the Program(s) and Manual.
- (d) **THE EXPRESS WARRANTIES SET FORTH IN SECTION 6(a) OF THIS AGREEMENT ARE IN LIEU OF, AND LICENSOR, ITS AFFILIATES, CHANNEL PARTNERS AND SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE PROGRAM(S) OR ANY PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (whether or not Licensor, its Affiliates, Channel Partners and/or its suppliers know, have reason to know, have been advised of, or are otherwise in fact aware of any such purpose), whether alleged to arise by law, by reason of custom or usage in the trade, or by course of dealing. In addition, Licensor, its Affiliates, Channel Partners and suppliers expressly disclaim any warranty or representation to any person other than Licensee with respect to the Program(s) or any part thereof.**
- (e) In the event that Program(s) fails to perform in all material respects as warranted in this Agreement, Licensee's sole remedy will be for Licensor, at Licensor's option, to:
 - (i) Provide a correction or work-around to correct the breach; or
 - (ii) Modify the Program(s) to conform substantially to the Manual; or
 - (iii) If the Manual is in error, modify the Manual to accurately reflect the Program(s)'s intended functionality and actual operation; or
 - (iv) Terminate the license for that Program(s) and/or this Agreement and require Licensee to return the Program(s) to Licensor, in which event Licensor will refund to Licensee a pro rata portion of the amounts paid for such Program(s). For a Paid-Up License, such pro rata calculation will be based on straight-line depreciation over a 36-month period following the applicable delivery date.
- (f) **LICENSEE'S REMEDIES AS SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE REMEDIES TO WHICH LICENSEE IS ENTITLED FOR BREACH OF WARRANTY.**

7. **INDEMNIFICATION**

- (a) Licensor will defend at its expense any claim, suit or proceeding (each, a "Claim") brought against Licensee by any third party to the extent such Claim asserts that the Program(s) infringes or conflicts with any rights of such third party under copyright laws of any country that is a signatory to the Berne Convention; any trademark issued under the laws of the United States, any State of the United States or any member state of the European Union; or any trade secret laws of the United States, any State of the United States or any member state of the European Union. Licensor will pay all costs and damages finally awarded against Licensee by a court of competent jurisdiction or any settlement amounts finally agreed to by Licensor as a result of any such Claim; provided, however, that Licensee (i) promptly notifies Licensor in writing of such Claim; (ii) promptly gives Licensor the right to control and direct the investigation, preparation, defense and settlement of such Claim, with counsel of Licensor's own choosing (provided that Licensee will have the right to reasonably participate, at its own expense, in the defense of any such Claim); and (iii) gives assistance and full cooperation for the defense of same. If a Program(s) is, or in Licensor's opinion, might be held to infringe as set forth above, Licensor may, at its option, (i) replace or modify the Program(s) so as to avoid infringement, (ii) procure the right for Licensee to continue the use of the Program(s), or (iii) terminate any licenses to the Program(s) and/or this Agreement and require Licensee to return the Program(s) to Licensor, in which event Licensor will refund to Licensee a pro rata portion of the amounts paid for such Program(s). For a Paid-Up License, such pro rata calculation will be based on straight-line depreciation over a 36-month period following the applicable delivery date.
- (b) The foregoing indemnity will not apply to any Claim based upon or arising from (i) use of the Program(s) in a manner for which it was not designed or not in accordance with the Manual, (ii) use of the Program(s), when use of a subsequent software release which Licensor has made commercially available would have avoided such infringement; or (iii) Licensee's continued use of the Program(s) subsequent to receipt of notice of any claimed infringement. This Section 7 represents the sole and exclusive remedy of Licensee and the entire liability and obligation of Licensor with respect to infringement or claims of infringement or misappropriation of any intellectual property right (including any trade secret) by Licensor or by its operation, use or receipt of the Program(s).

8. **LIMITATION OF LIABILITY AND INDEMNITY**

- (a) **SUBJECT TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR, ITS AFFILIATES, CHANNEL PARTNERS AND SUPPLIERS WILL NOT BE LIABLE TO LICENSEE OR ANY OTHER**

PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OR LOSSES. Except for Licensor's indemnification obligations set forth in Section 7(a) of this Agreement and for Licensor's material breach of Section 5, in no event will Licensor's, its Affiliates', Channel Partners' and suppliers' aggregate liability to Licensee exceed, in the case of a Paid-Up License, the License Fee initially paid for such Paid-Up License (not including any TECS fees or other fees) or, in the case of a Lease License, the License Fee paid for such Lease License during the preceding twelve (12) months. Licensee acknowledges that given all the circumstances, the limits on Licensor's liability are reasonable because of, among other things, the likelihood that without those limitations the amount of damages awardable to Licensee for a breach by Licensor or Channel Partner of this Agreement may be disproportionately greater than the license fees paid or payable for the Program(s). For the avoidance of doubt, Licensee is entirely responsible for keeping full back up copies of its software, data and database configurations in accordance with best industry practice. The foregoing limitations of liability apply regardless of whether or not the parties have been advised of the likelihood of such damages or losses and regardless of the theory of liability.

- (b) Each of Licensor's its Affiliates', Channel Partners' and suppliers' employees, agents, and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in this Section 8 in that person's own name and for that person's own benefit, as if the words "and their employees, agents, sub-contractors, and suppliers" followed the words "Licensor, its Affiliates, Channel Partners and suppliers" wherever it appears in this Section 8.
- (c) Notwithstanding anything to the contrary in this Agreement, neither party limits its liability (if any) to the other party for any matter which it would be illegal for that party to exclude or to attempt to exclude its liability, but nothing in this clause confers any right or remedy upon the other party to which it would not otherwise be entitled.
- (d) The Program(s) is a mathematical analysis tool intended to assist Licensee in Licensee's development and design processes and requires considerable skill and judgment for its correct use and for the interpretation of the computed results. The Program(s) is not intended to be nor is it a substitute for rigorous and comprehensive prototype or other testing by Licensee of products prior to production and sale. Licensee agrees to defend, indemnify and hold Licensor and its Affiliates, Channel Partners and suppliers, along with its and their officers, directors, employees and agents, (collectively, the "Indemnified Parties") harmless from and against all losses, damages, liability (including from the Indemnified Parties' negligence with respect to the Program(s) and support thereof) incurred by such Indemnified Parties (including reasonably attorneys' fees) as a result of Licensee's use of the Program(s); provided, however that such indemnification obligations will not extend to (i) claims for which Licensor is required to indemnify Licensee under Section 7 (ii) claims for Licensor's breach of Section 5 or (iii) claims arising out of Licensor's willful misconduct.

9. TECHNICAL ENHANCEMENTS AND CUSTOMER SUPPORT (TECS)

- (a) TECS will consist of (i) reasonable telephone, e-mail or web-based support respecting the use of the Program(s) ("Customer Support"); and (ii) Program releases or corrections provided by Licensor without additional charge to TECS customers generally ("Technical Enhancements"). Licensor may limit the provision of Customer Support to the ASC specified in the License Form. In such event the ASC will provide first-level support to all of Licensee's users permitted to use the Program(s) under the terms of this Agreement. Licensee may change the ASC at any time upon written notice to Licensor or the Channel Partner, as applicable. Customer Support will be provided by Licensor or its designee in Licensor's discretion. Technical Enhancements will be provided by Licensor at such times as determined solely by Licensor.
- (b) During the period of time in which Licensee is entitled to receive TECS for a Program, Licensee may request three (3) replacement License Keys due to a change of the Designated Network within one year from the TECS effective date at no additional charge. Additional replacement License Key(s) or replacement License Key(s) during the period of time in which TECS is not current may be provided in consideration for payment of the administrative fee required by Licensor.
- (c) For a Lease License, the annual TECS fee is included in the Lease License fee.
- (d) For a Paid-up License, telephone, email or web-based support assistance for Program installation will be provided without charge for thirty (30) days from the Effective Date of Program. In consideration for payment of the TECS fees required by Licensor or Channel Partner, as applicable, TECS for a Paid-Up License will be provided by the Channel Partner or Licensor, as applicable. TECS will automatically renew at the prior year's TECS rate plus an increase consistent with the increase in the price of the Program(s) for which such TECS fees are being paid for a renewal term equal to the duration of the immediately preceding initial or renewal term (as applicable) unless Licensee, Channel Partner, or Licensor gives prior written notice of its intent to terminate TECS prior to the end of the initial or renewal TECS term (as applicable). Notice to not renew shall be deemed given by Licensee if Licensee does not issue a purchase order to Licensor or the Channel Partner for the TECS prior to the expiration of the then-current TECS term. Notice to not renew shall be deemed given by Licensor or Channel Partner, except as otherwise expressly indicated, in the event that Licensor or Channel Partner does not provide a renewal quotation or follow-on proposal for TECS prior to the expiration of the then-current TECS term. Licensor may terminate TECS in the event that Licensee fails to pay the then-current TECS fees to the Channel Partner or Licensor, as applicable, by the due date for such payment. In the event TECS is terminated prior to the end of the term, no refund will be due to Licensee for any portion of the prepaid TECS fee.
- (e) Licensor and the Channel Partner will have no obligation to provide TECS: (i) for other than the two most recent commercially available releases of each Program(s); (ii) for any Program(s) that have been altered, damaged or modified by Licensee or on Licensee's behalf; (iii) for any applications, models or other customizations provided by Licensor or Channel Partner as part of a consulting services engagement; or (iv) for any problems caused by Licensee's negligence or use of the Program(s) other than in accordance with the Manual and this Agreement.

- (f) Licensor may, from time to time, post notices of Class3 Errors in Program(s) on its Customer Portal website (<http://www1.ansys.com/customer/>) or in such other manner as Licensor may decide in its sole discretion upon providing notice on the Customer Portal website. The ASC will promptly notify all of Licensee's users of the Program(s) of Class3 Errors in the Program(s).
- (g) In the event that TECS is discontinued by Licensee, Licensor shall have no obligation to permit reinstatement of TECS on such Program(s). Except as otherwise agreed between the parties, Licensor's election to permit reinstatement shall be subject to Licensor's then-current TECS reinstatement policy.

10. MISCELLANEOUS

- (a) All notices required in this Agreement will be given in writing to all parties and delivered by registered air mail, international air courier, facsimile, or mutually agreed equivalent. Notices will be effective when received as indicated on the facsimile, registered mail or other mutually agreeable delivery receipt. All notices will be given by one party to the other using the contact information indicated on the License Form, unless a change thereof previously has been given in writing to the party giving the notice.
- (b) Licensee will not assign this Agreement or individual Program(s) license to any third party by operation of law, or in bankruptcy, or otherwise without prior written consent of Licensor. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns and permitted transferees.
- (c) The provisions of Sections 2(d), 2(e), 3(d), 4, 5, 6(e), 6(f), 7, 8 and 10 will survive termination of this Agreement or any individual Program(s) license.
- (d) This Agreement may be executed in any number of counterparts (including electronically scanned and e-mailed PDF copies, faxed copies and any similarly signed and electronically transmitted copies), each of which will be deemed to be an original and all of which will constitute together one and the same agreement.
- (e) The rights and obligations of the parties hereto will be governed by the substantive law of the Commonwealth of Pennsylvania, excluding the United Nations Convention on the International Sale of Goods and choice of law provisions.
- (f) The parties hereto consent to the venue and jurisdiction of the federal and state courts maintaining jurisdiction over Washington County, Pennsylvania for purposes of any legal proceedings arising under or relating to this Agreement.
- (g) If any provision of this Agreement will be invalid, such provision will be ineffective only to the extent of such invalidity without invalidating the remainder of this Agreement.
- (h) Any failure of any party to enforce any of the provisions of this Agreement will not be construed as a waiver of such right of the party thereafter to enforce each and every such provision.
- (i) The benefits and burdens of, and risk of loss and damage to, Licensee's copy of the Program(s) will remain with Licensor until the Program(s) is received (physically or electronically) by Licensee.
- (j) This Agreement, the applicable License Form and any exhibits, appendices or amendments that incorporate the Agreement by reference, constitute the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. This Agreement supersedes the terms of any click-wrap, shrink-wrap, or break-the-seal license agreement included in any Program(s) package. Except as specifically provided herein, this Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of the parties. Unless otherwise specified, or except to the extent expressly defined in Section 5 of License Form, the terms and conditions contained in the Software License Agreement will take precedence over any conflicting provisions contained in any appendix, exhibit, License Form or amendment incorporating the Software License Agreement by reference. No purchase order, procurement agreement or any other standardized business forms issued by Licensee, and even if such purchase order, procurement agreement or other standardized business forms provides that it takes precedence over any other agreement between the parties, shall be effective to contradict, modify, or delete from the terms of this Agreement in any manner whatsoever. Any acknowledgment, written or oral, of any such purchase order, procurement agreement or standardized business form is not recognized as a subsequent writing and will not act as acceptance of such terms.
- (k) The parties have required that this Agreement and all documents relating thereto be drawn up in English.

11. ADDITIONAL PROVISIONS FOR ANSYS EKM

- (a) The following additional terms solely shall apply to Licensee's use of Program(s) identified in Section 3 of the License Form as ANSYS EKM software (provided that such terms shall also apply to the ANSYS EKM software in the event that Licensor bundles ANSYS EKM software with other Program(s) and Section 3 does not contain a Program specifically identified as ANSYS EKM software):
 - (1) Notwithstanding the terms of this Agreement to the contrary and subject to U.S. Export laws and regulations, Licensee may access the ANSYS EKM software from any Licensee or Licensee Affiliate location worldwide.
 - (2) Licensee may install one non-production copy of the Program for configuration and testing purposes ("Test Server License"). Licensee will not allow any employee or Contract User to access or use the Test Server License for any purpose other than configuration and testing.
 - (3) In order to make the ANSYS EKM software functional, Licensee needs to have a web application server and a relational database. For Licensee's convenience, an open source web application server (Jboss or Tomcat) and an open source relational database (MySQL or Derby) have been provided along with the EKM Program. Licensor has also provided an open source graph visualization software (Graphviz) along with the EKM Program. Licensee may use these open source software programs solely under the terms and conditions of the specific license under which the open source software is distributed. Source code for Graphviz ("Graphviz Source") may be obtained by contacting Licensor at ekm.open.source@ansys.com. ANY SUCH OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY EXPRESSED OR IMPLIED WARRANTY; INCLUDING BUT NOT LIMITED TO THE IMPLIED

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