



End User License Agreement (EULA)

CLEMEX End User License Agreement

IMPORTANT: Upon installation of the Software You will be prompted to signify Your acceptance of these terms by clicking an “I Agree” button. By clicking the “I Agree” button and/or by using the Software You have indicated that You have read and understood this Agreement and that You have accepted these terms and conditions. If You do not agree with these terms, prior to completing the installation of the Software, You should promptly return the Software media along with proof of purchase to CLEMEX or the Authorized Dealer from whom You obtained it for a full refund. If you have completed the installation of the Software, and/or used the Software, your purchase is nonrefundable.

1. Proof of Purchase.

This license agreement (the “Agreement”) represents the terms and conditions under which the Software has been licensed to You. Please print out a copy of it, treat it as valuable property and keep it in a safe place. You may be required at some point in the future to prove that You have a license to the Software. This Agreement together with a receipt, invoice or other purchase documentation will serve as Your only proof that You have a valid license to the Software.

2. Definitions.

(a) “Authorized Dealer” means a third-party reseller or distributor which has been authorized by CLEMEX to resell the Software and related services.

(b) “Authorized Users” means (i) You, if you are a natural person (ii) Your employees, if you are a legal entity, including employees of Your unincorporated divisions, but not employees of other legal entities (including employees of any legal entity that is Your subsidiary or part of a group of companies affiliated with You), and (ii) Your consultants, agents and contractors who are working on Your premises, provided they are not competitors of CLEMEX and they have agreed in writing to restrictions on the use of the Software and obligations of confidentiality no less stringent than those set forth in this Agreement.

(c) “Documentation” means the explanatory printed or electronic materials provided by CLEMEX with the Software, including, but not limited to, license specifications, instructions on how to use the Software and technical specifications.

(d) “License Types” refers to the definition of the various types of licenses pertaining to the Software as provided in Section 5 of this Agreement, including the limitations on the number of Authorized Users specified therein.

(e) “CLEMEX” means Clemex Technologies Inc., a corporation organized under the laws of the Province of Québec in Canada with its principal office located in 800 Guimond Boulevard, Longueuil, Québec J4G 1T5, Canada. CLEMEX retains the right to utilize its affiliated companies in pursuing any of its rights and fulfilling any of its obligations under this Agreement. Therefore, the term “CLEMEX” as used herein may also refer to affiliated companies that are directly or indirectly owned or controlled by Clemex Technologies Inc. and who have been authorized to distribute the Software and related services.



(f) "Software" means any software that is licensed by CLEMEX to You under this Agreement, including the Documentation.

(g) "Territory" means the country in which You have purchased and installed the Software.

(h) "You" and "Your" refers to the purchaser of Software or services pursuant to this Agreement and may refer to a natural person or to a legal entity including, but not limited to, a corporation, partnership or a limited liability company.

3. Ownership of Software.

CLEMEX owns certain rights in the Software and Documentation, and any associated media, printed materials, "online" documentation and electronic documentation. THE SOFTWARE IS A PROPRIETARY PRODUCT OF CLEMEX OR THIRD PARTIES FROM WHOM CLEMEX HAS OBTAINED LICENSING RIGHTS. THE SOFTWARE IS PROTECTED BY COPYRIGHT LAWS AND OTHER INTELLECTUAL PROPERTY LAWS. TITLE TO THIS SOFTWARE, ANY COPY OF THIS SOFTWARE, AND ANY INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE WILL AT ALL TIMES REMAIN WITH CLEMEX AND SUCH THIRD PARTIES. Your rights are defined by this Agreement which You agree creates a legally binding and valid contract. CLEMEX retains the right to utilize its affiliated companies, authorized distributors, authorized resellers and other third parties in pursuing any of its rights and fulfilling any of its obligations under this Agreement.

4. License Grant.

CLEMEX grants to You a non-exclusive, non-transferable license (except as may be required by applicable law) to allow that number of Authorized Users for whom You have purchased valid licenses of the Software under this Agreement to use the Software in the Territory on the type of computer and with the operating system for which the Software was designed to operate. If the number of Authorized Users of the Software may exceed the number of applicable licenses, then You must have a mechanism or process in place to ensure that the number of Authorized Users using the Software does not exceed the number of authorized licenses You have purchased. A single use of the Software occurs when the Software, or any portion of the Software, is loaded into memory for execution on a computer. If a copy of the Software is stored on or accessible through a network server for the sole purpose of execution by network computers, this will not be deemed a single use for purposes of this paragraph.

CLEMEX reserves the right to embed a software security mechanism within the Software to monitor usage of the Software to verify Your compliance with this Agreement. Such a security mechanism may store data relating to the usage of the Software and the number of times it has been copied, or may communicate with computers controlled by CLEMEX over any type of communications link to exchange communications and report data relating to the usage of the Software and the number of times it has been copied. CLEMEX reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to the Software. You may not take any steps to avoid or defeat the purpose of any such measures. Use of any Software without any required lock device or authorization key is prohibited.

With respect to CLEMEX's Software or any Clemex Software Options, if the Software is permanently stored on the hard disk or other storage medium of a standalone computer and only one Authorized User uses that computer more than 80% of the time it is in use, then that same



Authorized User may also use the Software either on a portable computer or on a home computer within the Territory, while the original copy is not in use, provided that You have a currently valid maintenance services contract with CLEMEX or one of its affiliates or Authorized Dealers at that time.

If this Software is obtained as an upgrade or provided as an update to a previous version of licensed Software, this Software may be used only to replace the previous version, and no additional license is granted. This Software and any previous versions may not be separately used.

You may copy the Software into any machine readable or printed form for backup purposes in support of Your licensed use of the Software.

5. License Types.

The following License Types may be offered with respect to individual Software products or product families. The License Type will be specified in a Licensed Software Designation Agreement ("LSDA") or similar ordering document which is acceptable in form to CLEMEX, which ordering document may occur in electronic format or written format at the option of CLEMEX.

(a) "Concurrent User" licenses means that access to the Software at any given moment will be limited to the maximum number of concurrent users for whom licenses have been validly acquired under this Agreement.

(b) "Named User" licenses means that access to the Software will be restricted to those individuals within Your organization that are named by You and for whom licenses have been validly acquired under this Agreement. You shall have the right to change Named User licenses provided that no individual Named User license may be changed more than once every thirty (30) days.

(c) "Node-Locked" license means that the use of the Software will be restricted to a single workstation specified by You. This type of license may be accompanied by a device or dongle to manage this restriction.

(d) "Per Server" license means that the use of the Software is restricted to a single server specified by You.

(e) "Per Product" license means that the use of the Software will be restricted to the number of third party products the Software is interfaced with on a one-to-one basis.

(f) "Subscription" license means a license whose term is limited to a period of time mutually agreed by CLEMEX and You in an LSDA, which term will generally be between 6 months and 5 years. A Subscription license is renewable by mutual agreement of the parties for an additional limited term or terms following expiration of the initial Subscription term, but a Subscription license may not be converted to an extended term license or perpetual license under any circumstances. Upon expiration of the initial term or any renewal term, if applicable, the Subscription license will terminate and You must cease any further use of the Subscription license thereafter. Maintenance services for a Subscription license are included in the Subscription license fee. Subscription license fees are payable in advance and will be invoiced as specified by the parties in an LSDA. For multiple year Subscription terms, CLEMEX retains the right to require new license keys to be issued periodically during the Subscription term. CLEMEX retains the right to withhold



Subscription licensing from certain of its Software products and/or certain of the third-party products which CLEMEX has the right to distribute

(g) “Academic Institutional” license. If CLEMEX identifies a Software license as an Academic Institutional license, You must be an academic institution or other qualifying non-profit organization and may use up to the maximum number of copies of the Software that have been validly obtained pursuant to CLEMEX’s Academic Program provided that they are used for educational purposes and for no other purpose. Without limiting the foregoing, Academic Institutional licenses may not be used for commercial, professional or productive purposes, for commercial training or any other for-profit purposes. For the avoidance of doubt, Trial, Backup (or Failsafe), Loaner and Test/QA licenses shall not be granted as Academic Institutional licenses under the CLEMEX Academic Program.

(h) “Student” license. If CLEMEX identifies a license as a Student license, You must be a student attending an academic institution and must limit the use of the Software to personal learning purposes and no other purpose. Student versions of the Software are provided without maintenance services and may be used only for a period of one (1) year from the date the Software is obtained, or such longer period of time as specified by CLEMEX. This version of the Software may not be used for commercial, professional or productive purposes, commercial training or any other for-profit purpose. For the avoidance of doubt, Trial, Backup (or Failsafe), Loaner and Test/QA licenses shall not be granted as Student licenses under the CLEMEX Academic Program.

(i) “Backup (or Failsafe)” license means a license that You may purchase separately solely to support redundancy on Your backup or failsafe installations, and may not be used for any other purpose.

(j) “Loaner” license means a license to the Software that is granted to You at CLEMEX’s option on a temporary basis, not to exceed 90 days, in order to provide You with a temporary workaround as part of CLEMEX’s maintenance obligations if You have a current maintenance services contract with CLEMEX or one of its subsidiaries or Authorized Dealers.

(k) “Test/QA” license means a license that You may purchase solely for the purpose of supporting Your need for ongoing installation customization, support and testing, and may not be used for any other purpose.

(l) “Trial” license means a license granted solely for the purpose of allowing a potential customer to evaluate the Software subject to the restrictions contained in Section 9 of this Agreement.

6. Your Responsibilities and Prohibited Actions.

(a) Confidentiality. Pursuant to this Agreement, CLEMEX will share the Software and other confidential business information of CLEMEX or its third-party suppliers with You. You will hold such information in confidence and take the precautions necessary to safeguard the confidentiality of such information. You will limit use of the Software to processing Your own internal business and are prohibited from processing the data of or for any other third parties. You may not analyze the Software for purposes competitive with those of CLEMEX. In the event You conduct benchmarks or other tests concerning the Software, including any content or functionality of our third-party licensors, the results shall constitute confidential information of CLEMEX and shall not be published or otherwise revealed to any third party.



(b) Remarketing of Software. The following uses of the Software are expressly forbidden to cause or permit: (i) disclosure to, or access or use of the Software by anyone other than Authorized Users, (ii) the loan, publication, transfer of possession (whether by sale, exchange, gift, operation of law or otherwise) of the Software, in whole or in part, to or for any third party, and (iii) use of the Software as a service bureau. Notwithstanding anything to the contrary in this Agreement, if required by applicable law and if CLEMEX has sold an extended term or perpetual license of the Software to You for a one-time fee, You are entitled to transfer the Software to a third party provided that: (i) You must transfer the entire license of the Software and not only a portion of it, (ii) You must conduct the transfer in full compliance with Section 6(h) of this Agreement (Export), (iii) following the transfer You must discontinue in total any use of the transferred Software and certify such discontinuance to CLEMEX in writing, (iv) the third party or any subsequent transferee must agree in advance, in written form, to abide by the terms of this Agreement that are applicable to You, including with respect to any restrictions concerning the Territory in which the Software may be used, (v) You are prohibited from transferring or attempting to transfer any portions of this Agreement relating to maintenance services or any other services, and (vi) You shall inform CLEMEX in writing and in advance regarding the identity and location of the transferee. CLEMEX shall not be obligated to supply the transferee or any subsequent transferee with license keys for the transferred Software unless You, the transferee and/or any subsequent transferee is in full compliance with the terms of this Section 6(b). In addition, You hereby agree to indemnify and hold CLEMEX, together with its affiliates, officers and directors, harmless from any losses, costs, damages or expenses, including reasonable attorney's fees that may be incurred by CLEMEX as a result of any failure by You to comply with the requirements of this Section 6(b).

(c) Transfer of Software. Except as specifically provided in this Agreement, You may not transfer or assign all or any portion of the Software, or any rights granted in this Agreement, to any other person without the prior written consent of CLEMEX.

(d) Reverse Engineering or Modifying the Software. You will not reverse engineer, decompile, translate, disassemble, or otherwise attempt to discover the source code of the Software. The prohibition against modifying or reverse engineering the Software does not apply to the extent that You are allowed to do so by applicable law including, but not limited to, the European Union Directive on the Interoperability of Software or its implementing legislation in the member countries.

(e) Use Outside of Territory. You may not access the Software outside of the country in which You purchased and installed the Software without the prior written consent of CLEMEX.

(f) Host Identifier. With respect to each order for Software under this Agreement, You will provide CLEMEX with the host identifier required by CLEMEX and such other information reasonably requested by CLEMEX for each workstation and/or server on which the license management portion of the Software will be installed to permit CLEMEX to generate a license file that will restrict end-user access to only those Software modules licensed under this Agreement and limit use of such Software modules at any given time to the maximum number of Authorized Users for which You have purchased valid licenses.

(g) Third Party Suppliers. You agree that CLEMEX's third party suppliers may enforce this Agreement as it relates to their Software directly against You.

(h) Export. CLEMEX shall not be required to undertake any action pursuant to this Agreement that is prevented by any impediments arising out of national or international foreign trade or customs requirements, including embargoes or any other sanctions.



This Agreement is subject to all Canadian and United States government laws and regulations as may be enacted, amended or modified from time to time. Regarding the export from the United States of CLEMEX software, services or technology thereof. You will not export or re-export any CLEMEX software, services, technology, or any derivatives thereof, or permit the shipment of same without: (i) the express written consent of CLEMEX and (ii) if necessary, obtaining at Your expense any required prior authorization from the United States Department of Commerce or other applicable authority as may be required by law.

This Section will survive the expiration or termination of this Agreement for any reason.

7. Special Terms Applicable to Academic Institutional Licenses.

If the Software has been provided to You as an Academic Institutional license, in addition to all of the other terms and conditions contained in this Agreement the following terms apply.

(a) Academic Institutional Software is limited to those Software products that CLEMEX has designated as academic bundles which may be licensed to you on a “limited term” basis or a “perpetual” basis as follows:

(i) A limited term license will extend for a period of one year following the first day of the month immediately following the date the Software is made available to You via electronic download and will automatically renew thereafter on an annual basis. There is an annual fee for a limited term license, which includes the maintenance services described below. Either party may terminate such license by providing the other party with at least 60 days written notice prior to the expiration of the then current term;

(ii) A perpetual license extends indefinitely, subject to Your continued compliance with the terms of this Agreement. If You are granted a perpetual Academic Institutional license, such license will not include maintenance services unless You order such services separately from CLEMEX or an Authorized Dealer.

(b) You will limit use of the Software to purposes directly related to teaching, training, degree-granting programs, and research and development that are part of the instructional functions performed by You. An Academic Institutional license will terminate automatically if You discontinue use of the Software as part of Your standard offered classroom curriculum. CLEMEX expressly prohibits use of the Software for (i) any training, or instructional endeavors for non-diploma seeking students; (ii) any training or instructional endeavors for any third party that may be a licensee of the Software under separate agreement with CLEMEX; (iii) any commercial purpose, including but not limited to, commercial processing, paid-for consulting, or processing the work of any affiliates; and (iv) developing, testing, analyzing and benchmarking software for sale or license. Notwithstanding anything to the contrary in this Agreement, for purposes of the Academic Institutional license the term “Authorized Users” means You, Your faculty, staff members, students and graduate assistants and the term “Territory” is limited to the area included in the zip code or other postal code in which the Software is first installed.

(c) You must also meet the following conditions:

(i) You will use the Software as part of Your standard offered curriculum in a course(s) offered at least once per academic year.



(ii) You will obtain advance written approval from CLEMEX for all documents intended for publication by You which concern the capability, functionality and/or methodology of the Software.

(d) You may copy the Software as reasonably required in conjunction with Your, and each Authorized User's, permitted use under this Agreement. You will retain and reproduce all copyright or proprietary notices in their exact form on all copies (including partial copies) of the Software made by You. As between You and CLEMEX, the original and all copies of the Software remain the sole property of CLEMEX and will be subject to the terms and conditions of this Agreement.

(e) Section 14 of this Agreement does not apply to Academic Institutional licenses. If you have purchased a limited term Academic Institutional license or You have purchased maintenance services separately as part of a perpetual Academic Institutional license, CLEMEX, or its Authorized Dealer, will provide Software maintenance services to You, but not individual Authorized Users, between the hours of 9:00 a.m. and 5:00 p.m. in local time zones in the Territory, except for holidays observed by CLEMEX or the applicable Authorized Dealer. You will designate a knowledgeable full-time staff representative who will serve as a focal point for administering and resolving all of Your requests for Software maintenance. Such individual will use reasonable efforts to solve Your problems or issues related to the Software prior to contacting CLEMEX or the Authorized Dealer for assistance. This individual will forward all service requests to CLEMEX or the Authorized Dealer and will also serve as the recipient of all site-wide CLEMEX Software maintenance services.

(f) Maintenance service is provided only for the most current release of the Software when installed on the type of computer and the operating system for which the Software was designed to operate and consists of the following:

(i) Telephone support line service which consists of support requests answered by CLEMEX, or Authorized Dealer, technical support personnel for the Software specific technical needs and problems;

(ii) Bulletin board service which will allow You to electronically log Software support requests and access release notes and Software information; and

(iii) Upgrades to the Software, if and when made available by CLEMEX. Upgrades will not include separate Software modules that are available for license at additional charge. You agree to install all Software updates received from CLEMEX or the applicable Authorized Dealer within 30 days after receipt thereof, or at the end of Your current semester, whichever is later.

(g) Work product and other data created with Academic Institutional licenses of the Software may contain certain limitations that make the data unusable outside the educational use area. If You combine or link data created with Academic Institutional licenses with data otherwise created, then such other data may also be affected by these limitations. CLEMEX shall have no responsibility or liability whatsoever if You combine or link data created with Academic Institutional licenses of the Software with data otherwise created.

8. Special Terms Applicable to Student Licenses.

If the Software has been provided to You as a Student license, in addition to all of the other terms and conditions contained in this Agreement the following terms apply.



(a) A Student license is limited to those Software products that CLEMEX has designated as academic bundles which will be licensed to you on a "limited term" basis which will extend for a period of one year following the first day of the month immediately following the date the Software is made available to You, or such longer period of time as specified by CLEMEX;

(b) You will limit use of the Software to purposes directly related to academic study pursuits related directly to a diploma-seeking program. The Student license will terminate if you exceed, or attempt to exceed, this authority;

(c) A Student license is granted without maintenance services of any kind;

(d) Work product and other data created with Student licenses contain certain limitations that make the data unusable outside the academic use area. If You combine or link data created with Student licenses of the Software with data otherwise created, then such other data may also be affected by these limitations. CLEMEX shall have no responsibility or liability whatsoever if You combine or link data created with Student licenses of the Software with data otherwise created.

9. Special Terms Applicable to Trial Licenses.

Notwithstanding the terms and condition of Section 4 of this Agreement, if the Software has been provided to You as a trial license the following terms apply to such trial licenses:

(a) CLEMEX grants to You a nonexclusive, nontransferable, limited license to install and use the executable form of the Software in a test environment within the Territory solely for trial purposes. The Software shall not be used for commercial, professional or productive purposes, for commercial training or any other for-profit purposes, including testing, analysis and benchmarking. If during the term of this Agreement CLEMEX provides You with updates or new releases of the Software, they are deemed to be part of the Software and subject to the terms and conditions of this Agreement.

(b) Trial Software is provided to You on an "as-is" basis, without CLEMEX maintenance services. CLEMEX AND ITS THIRD-PARTY SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR AGAINST INFRINGEMENT, WITH RESPECT TO TRIAL SOFTWARE PROVIDED PURSUANT TO THIS AGREEMENT. In no event will CLEMEX and/or its third-party suppliers be liable to You for any claims or damages whatsoever arising out of or related to this Agreement, regardless of the form of action, whether in contract, tort or otherwise.

(c) Trial licenses will extend for a limited, finite period of time specified by CLEMEX. Any trial license will terminate effective immediately if You fail to comply with any of the terms and conditions contained herein. Receipt by You of updates or new releases will not, by implication, extend the term of the trial license beyond the term specified for such Software. Within 10 days after termination of any trial license You will, at Your expense, (i) return to CLEMEX the original and all tangible copies of the Software in all forms, and any associated hardware keys, (ii) destroy all soft copies of the Software, and (iii) certify to CLEMEX in writing that such obligations have been fulfilled.

10. Term and Termination.

CLEMEX reserves the right to terminate this Agreement with written notice if You fail to comply with any of the terms described herein. All license rights granted will cease upon any termination



of this Agreement. Within 15 days after termination of the license rights granted herein or this Agreement for any reason, You will at Your expense, (i) return to CLEMEX the original and all tangible copies of the Software in all forms, (ii) destroy all soft copies of the Software, and (iii) will certify to CLEMEX in writing that such obligations have been fulfilled. If You default in the payment when due of any amount due pursuant to this Agreement and do not cure such default within 10 days after written notice thereof, CLEMEX may, by giving written notice thereof to You, terminate this Agreement in its entirety effective immediately.

11. Warranties and Your Remedies.

CLEMEX warrants that, during the Warranty Period as defined below, the Software will provide the features and functions generally described in the Documentation and that the media, if any, on which the Software is furnished will be free from defects in materials and workmanship. The "Warranty Period" is defined as 90 days from date the software is made available to you via electronic download provided that, in those jurisdictions in which it is not valid to limit the warranty period to 90 days, the Warranty Period is hereby extended to one (1) year or such lesser period of time as allowed by applicable law. CLEMEX's entire liability and Your exclusive remedy during the Warranty Period will be, at CLEMEX's option, to attempt to correct or work around errors, to replace defective media on which Software is installed, if any, or to refund the license fees for the Software involved and terminate the license immediately. Any refund is subject to the return and/or destruction of the Software or defective media to CLEMEX in accordance with the provisions of Section 10 of this Agreement.

CLEMEX MAKES NO OTHER WARRANTIES OF ANY KIND, AND NO WARRANTY IS GIVEN THAT THE SOFTWARE IS ERROR-FREE OR THAT ITS USE WILL BE UNINTERRUPTED OR THAT IT WILL WORK IN CONNECTION WITH ANY OTHER SOFTWARE. ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR OF ERROR-FREE AND UNINTERRUPTED USE OR ANY WARRANTY AGAINST INFRINGEMENT) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED, EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS LICENSE AGREEMENT.

No CLEMEX employee or Authorized Dealer or agent is authorized to make any modifications, extensions, or additions to these warranty provisions or to this License Agreement.

CLEMEX software and other technical software are tools intended to be used by trained professionals only. They are not substitutes for Your professional judgment. Due to the large variety of potential applications for the Software, the Software has not been tested in all situations under which it may be used. CLEMEX shall not be liable in any manner whatsoever for the results obtained through the use of the Software. Persons using the Software are responsible for the supervision, management and control of the Software. This responsibility includes, but is not limited to, the determination of appropriate uses for the Software and the selection of the Software and other programs to achieve intended results. Persons using the Software are also responsible for establishing the adequacy of independent procedures for testing the reliability and accuracy of any program output, including all items designed by using the Software.

If New York law is not held to apply to this License Agreement for any reason, then in jurisdictions where warranties, guarantees, representations, and/or conditions of any type may not be disclaimed, any such warranty, guaranty, representation and/or condition is hereby limited to the



period of either (i) 90 days from the initial date on which the Software is made available to You via electronic download or (ii) in those jurisdictions in which it is not valid to limit the time period to 90 days, it is hereby extended to one (1) year or such lesser period of time as allowed by applicable law.. In addition, this Agreement will be enforced in part, if only certain parts of it are enforceable.

All warranties are void if a failure of a warranted item results, directly or indirectly, from an unauthorized modification to a warranted item, an unauthorized attempt to repair a warranted item, or misuse of a warranted item, including, without limitation, use of a warranted item under abnormal operating conditions or subjecting a warranted item to unreasonably harsh conditions of any kind.

The above warranties and limitations give You specific legal rights, and You may also have other rights which may vary from jurisdiction to jurisdiction if New York law is held not to apply to this License Agreement. Certain limitations set forth in this Section may not apply in some jurisdictions if New York law is held not to apply to this License Agreement.

12. Limitation of Liability.

CLEMEX's entire liability for all claims or damages arising out of or related to this Agreement, regardless of the form of action, whether in contract, equity, negligence, intended conduct, tort or otherwise, will be limited to and will not exceed, in the aggregate for all claims, actions and causes of action of every kind and nature; the amount paid to CLEMEX for the specific item that caused the damage or that is the subject matter of the cause of action. In no event will the measure of damages payable by CLEMEX include, nor will CLEMEX be liable for, any amounts for loss of income, profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if CLEMEX has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed. This Section 12 shall not be interpreted to exclude any liability that is prohibited from being excluded by applicable law. Except as otherwise provided by applicable law, no claim, regardless of form, arising out of or in connection with this License Agreement may be brought by You unless such claim is brought either (i) within two years after the cause of action has accrued or (ii) within the shortest period of time after the cause of action has accrued that may be legally contracted for in the applicable jurisdiction if a two year limitation would be legally unenforceable.

13. Indemnity for Infringement of Intellectual Property Rights.

CLEMEX will defend, at its expense, any action brought against You to the extent that it is based upon a claim that any Software furnished hereunder infringes a patent, copyright, trade secret or other intellectual property right that is recognized in the Territory and will pay all costs and damages finally awarded against You by a court of competent jurisdiction, provided that CLEMEX is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim.

CLEMEX, at its option, will obtain for You the right to continue using, or will replace or modify the Software involved so it becomes non-infringing; or, if such remedies are not reasonably available, CLEMEX will grant You a refund for the Software involved based on a straight line amortization over 60 months from initial delivery, and accept the return of the Software and terminate the license immediately.



CLEMEX will have no obligation under this Section if the alleged infringement or violation is based upon the use of the Software in combination with other software not furnished by CLEMEX if such alleged infringement or violation would not have occurred except for such combined use or if such claim arises from CLEMEX's compliance with Your designs, specifications or instructions. This Section represents the sole and exclusive liability of CLEMEX for infringement of the intellectual property rights of a third party under this Agreement.

14. Software Maintenance Services.

If You have purchased maintenance services for the Software, the following terms apply:

(a) **Maintenance Services.** Software maintenance services consist of (i) the provision of Software updates, (ii) the provision of Error corrections, as defined herein, for the Software, and (iii) the provision of email and telephone support in connection with the Software. Software maintenance services will be provided in accordance with the terms of this Section to those customers who have purchased maintenance services under this Agreement for the applicable Software. Software maintenance services are, and will continue to be, available under this Agreement only to the extent that these services are made available by CLEMEX with respect to the Software, or any portion of the Software, to its customer base in general.

(b) **Maintenance Term.** You may purchase Software maintenance services for an initial annual maintenance term or such other time period that is acceptable to CLEMEX. Thereafter, maintenance services will automatically renew for successive one (1) year terms unless terminated by You by providing notice of termination in writing to CLEMEX at least 60 days prior to the expiration of the initial term or any renewal term. If You purchase additional Software licenses during the term of this Agreement, CLEMEX reserves the right to adjust the annual maintenance term and pro rate the annual maintenance fees for such add-on Software to be coterminous with the initial Software maintenance term and billing cycle.

(c) **New Releases of Software.** New versions of the Software released by CLEMEX may contain Error corrections and/or new or enhanced functionality. You shall have the right to receive new versions of the Software that are released to CLEMEX's customers in general during any period of time for which You have purchased maintenance services under this Agreement for the applicable Software. This right does not extend to any release, module, option, future product, or any upgrade in functionality or performance of the Software which CLEMEX develops as a customized product for a single customer or that CLEMEX develops and licenses as a separate product and not for release to customers in general as part of maintenance services. You are responsible for the installation and implementation of any new version and any required data conversion. You remain solely responsible for the configuration of Your own equipment and software, including the compatibility of any additional equipment or software with the CLEMEX Software.

(d) **Support for Prior Versions of the Software.** Once a new version of the Software is released, CLEMEX will maintain the current version it just released and the immediately preceding version.

(e) **Error Corrections.** An Error means the failure of the Software to conform substantially to the Documentation ("Error"). You may report any suspected Error to CLEMEX or the applicable Authorized Dealer and, upon CLEMEX's request, You will provide CLEMEX with a detailed, written description and documentation of the suspected Error. CLEMEX will investigate the facts and circumstances related thereto and You will cooperate with CLEMEX's investigation. If CLEMEX finds that the Software contains an Error, CLEMEX will use all commercially reasonable



efforts to correct the Error. An Error correction may consist of a separate patch, a workaround or it may be included in a future release of the Software, at the discretion of CLEMEX.

(f) Telephone Support. You shall have the right to receive telephone support in connection with the Software from CLEMEX or the applicable Authorized Dealer between the hours of 9:00 am and 5:00 pm in the Territory, except on holidays recognized by CLEMEX or the Authorized Dealer. You will also be provided with the ability, by means of an electronic channel via the Internet, to log Software support requests, report suspected Errors, monitor progress on Your prior requests, download Software fixes and workarounds, exchange information on a bulletin board, and obtain access to release notes and other Software information.

(g) Limitation of Remedies. CLEMEX's sole and exclusive responsibility, and Your sole and exclusive remedy, for a failure to provide Error corrections for the Software in accordance with this Section 13 will be that You may terminate Software maintenance for the Software involved. CLEMEX will thereafter promptly refund the unused portion of the fees paid for the remainder of the then current term of the Software maintenance services for the applicable Software.

(h) Initial and Renewal Fees. Purchase of Software maintenance services for one of Your sites will be subject to the purchase of such services for all CLEMEX supported Software modules licensed for use at that site. The fees for Software maintenance services will be set forth on CLEMEX's quotation for such services. For each of the first two renewal terms following the initial term, CLEMEX may adjust the Software maintenance fees provided that: (i) CLEMEX provides written notice to You at least 60 days prior to the end of the then current term, (ii) the fee adjustment becomes effective upon expiration of the then current term, and (iii) the percentage of the fee adjustment does not exceed a cap of three percent (3%) per year. Following the first two renewal terms, CLEMEX's ability to increase maintenance prices shall not be subject to the cap or notice period requirements.

15. General.

(a) Allocation of Risk. You bear the entire risk as to damage and the quality and performance of the Software. You assume risk as to any hardware, software, data or any other item as a result of the copying or use of the Software, including but not limited to the costs of any repairs or replacement of any item or any services. You assume responsibility for the selection of this Software to achieve Your intended results, and for the installation, use and results obtained from this Software.

(b) Purchase Orders. Other than an LSDA as defined in Section 5, if You issue a purchase order, memorandum or other instrument covering the Software or services provided under this Agreement, it is agreed that any terms and conditions contained therein that are additional to or inconsistent with this Agreement will not be binding on the parties.

(c) Acceptance of Orders. CLEMEX, in its sole discretion, reserves the right to accept or reject any order for the Software or services. Once an LSDA or other ordering document for Software is accepted by CLEMEX, delivery of the Software identified in the LSDA will occur when CLEMEX makes the Software available to You by means of electronic download from a website specified by CLEMEX. Physical shipment of the media is CLEMEX's option and will occur as an accommodation to You or because certain elements of the Software are not available for electronic download. If Your installation location resides in a taxing jurisdiction which does not apply a transactional tax (such as sales tax) to electronic deliveries only, and You desire to avail itself of such provisions, You must opt out of receiving physical shipments and execute an



electronic delivery exception form, as specified by CLEMEX, to arrange for electronic delivery only. The Software will be delivered subject to EXW (Incoterms 2010) for deliveries that occur entirely within the United States, Russia, China or India. For delivery from the United States to any other country, the Software will be delivered subject to DAP (Incoterms 2010). You will, at Your expense, obtain any necessary permits and consents to install the Software at Your site.

(d) Taxes. You are responsible for, and will remit directly to the appropriate tax authorities, or pay to or reimburse CLEMEX, all applicable taxes, assessments, duties, permits, fees and other charges of any nature or kind, now in force or enacted in the future ("Taxes"), however designated assessed or levied, including, but not limited to all national, local, regional, provincial or municipal sales and/or use taxes, value added taxes, goods and services taxes, consumption taxes, personal property taxes, ad valorem taxes, custom duties, import fees, stamp duty, intangibles tax, registration fees, but not including taxes based on the net income of CLEMEX. Such amounts shall also include without limitation any penalties, interest, fees, or other expenses, if any, incurred as the result of any such Taxes not being paid at the time or in the manner required by law. Taxes includes those amounts which are due based upon (i) transactions arising under this Agreement, (ii) amounts payable hereunder, (iii) the Software or other services being provided to You hereunder, (iv) the subsequent use of such Software or services by You, and/or (v) Your possession of the Software or services. If You are exempt from sales tax, use the product or services provided herein in an exempt manner, or otherwise deems Yourself not subject to sales tax, then You must provide a valid and executed exemption certificate, direct pay permit, or other such government approved documentation in good faith to CLEMEX.

If You are required by law to make any income tax deduction or to withhold income tax from any sum payable directly to CLEMEX hereunder, You shall promptly effect payment thereof to the applicable tax authorities, and shall also promptly provide CLEMEX with official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that the income taxes have been paid and to enable CLEMEX to support a claim for tax credit relief for such income tax payments made on its behalf by You. Your failure to provide official tax receipts or other evidence of payment to CLEMEX shall result in You paying directly to CLEMEX additional amounts equal to the amounts originally deducted or withheld from the original payment and for which no documentation was provided.

(e) Audits. You will at all times maintain records specifically identifying the Software licensed to You under this Agreement, the location of each copy thereof, and the location and identity of the workstations and servers on which the Software is installed. CLEMEX may, during regular business hours and upon reasonable advance notice, conduct an audit to determine Your compliance with the terms and conditions of this Agreement. You will permit CLEMEX or its authorized agents to access Your facilities, workstations and servers and otherwise cooperate fully with CLEMEX in any such investigation and will take all commercially reasonable actions to assist CLEMEX in accurately determining Your compliance with the terms and conditions of this Agreement. CLEMEX and its authorized agents will comply with Your reasonable security regulations while on Your premises.

16. Choice of Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Québec, Canada, without giving effect to any choice-of-law rules that may require the application of the laws of another jurisdiction. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.



17. Choice of Jurisdiction.

Any disputes arising under this Agreement shall be settled exclusively in the courts of the Province of Québec located in Montréal, Canada. The parties hereby submit to the personal jurisdiction of such courts for the purpose of resolving any dispute under this Agreement.

18. Severability/Reformation.

If any provision of this Agreement is found to be void or unenforceable, it will not affect the validity of any other provision of this Agreement and those provisions will remain valid and enforceable according to their terms. To the extent that an unenforceable provision may be reformed to be enforceable by a court of law, such provision will be deemed to be so reformed in this License Agreement.

19. Other Rights Reserved.

All rights not specifically granted in this License Agreement are reserved by CLEMEX.

20. Entire Agreement.

You acknowledge that You have read this License Agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this License Agreement.

Should You have any questions concerning this Agreement, You may contact Your local CLEMEX representative or write to Clemex Technologies Inc., 800 Guimond Boulevard, Longueuil, QC, Canada J4G 1T5.

CLEMEX EULA Dec 2019