

# COMSOL LICENSE AGREEMENT

**VERSION 3.4**



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## COMSOL License Agreement

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Patent pending

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Version:

October 2007

COMSOL 3.4

# COMSOL AB License Agreement

CAREFULLY READ THE FOLLOWING TERMS (“TERMS”) AND CONDITIONS BEFORE INSTALLING OR USING THE PROGRAMS OR DOCUMENTATION. INSTALLING OR USING THE PROGRAMS MEANS YOU HAVE ACCEPTED THE TERMS. IF YOU DO NOT ACCEPT THEM, RETURN THE PROGRAMS AND RELATED MATERIAL UNUSED TO YOUR VENDOR FOR A REFUND.

- I License Grant.** During the term of this License Agreement (“Agreement”), COMSOL (“we”, “us”, “our”) grants to licensee (“you”, “your”) a non-exclusive, non-transferable, limited license to install, run, use, operate and perform (collectively “use”) the COMSOL software (“Programs”) and documentation therefor (“Documentation”) as provided herein.
  - a Programs.** You may license a named single user license (“NSL”), a CPU-locked single user license (“CPU”), or a floating network license version (“FNL”) of the Programs under this Agreement, and your license rights are for the number of users set forth on the purchase order or invoice we accept.
  - b Object Code.** The license granted herein applies only to the object code version of the Programs. Licensee shall have no rights whatsoever with respect to the source code for the Programs.
  - c Ownership.** All right, title and interest in and to the licensed Programs, including without limitation, copyrights and trade secrets, are, and shall at all times remain, the exclusive property of us and/or our licensors, and you shall have no right, therein, except the expressly limited license rights granted herein.
  - d Non-transferable.** You may not sell, license, sublicense, rent, or distribute any Program, or make it available for use on a “time sharing” basis. You may transfer your rights hereunder only in accordance with Section 14.
  - e Reservation Of Rights.** You acknowledge that all rights with respect to the licensed Programs, whether now or hereafter existing, which are not expressly granted to you are reserved to us or our licensors. You shall not modify or create any derivative,

compilation, or collective work involving the Programs. You shall take appropriate action by instruction, agreement, or otherwise with any persons permitted access to the Programs, so as to enable you to satisfy all your obligations under the Terms.

- f** License Subject To Payment. The license granted herein is contingent upon your timely and complete payment of all amounts due and payable to us. If you fail to pay any amount when due, we may terminate your license rights effective immediately.
- g** Use.
- (i) If you have licensed the NSL version of the Programs, a single named individual may use at most one concurrent session of a Program. You may replace the named user for the license, on a temporary or permanent basis but no more than four (4) times a year, provided that only one licensed user is designated as the named user at any given time. The NSL version of the Programs may not be accessed or used over a network.
  - (ii) If you have licensed the CPU version, a single individual may use one concurrent session of a Program on a single designated computer at any given time. The CPU version of the Programs may not be accessed or used over a network.
  - (iii) If you have licensed the FNL version, you may have as many sessions of a Program in use at any given time as you have licensed concurrent users. If the Programs have the ability to run as client and server on separate computers, only the FNL version gives you the right to use the Programs as client and server on separate computers.
  - (iv) If the NSL, CPU, and/or FNL versions of the Programs or the Class Kit Option has been licensed by an Institution at Academic Prices (as such terms are defined in the Academic Addendum to this Agreement), your use of such Programs will be subject to the additional terms in the applicable Addendum to this Agreement.
  - (v) Regardless of which license you have, you shall use the Programs only for your internal operations. For the purposes of this Agreement, “internal operations” means use of the Programs by your employees or those of your subsidiaries or parent company and for the performance of consulting or research for

third parties who engage you as an employee or independent contractor. You also shall not disclose any characteristics or technical capabilities of the Programs to any third party without our prior written authorization.

- h** No Reverse Engineering. You shall not decompile, reverse engineer, disassemble, isolate, separate, or otherwise attempt to derive source code from any Program(s) or Documentation, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. All copies of Programs and Documentation shall contain all copyright and proprietary notices as in the original. You shall not remove, obscure, or alter copyright notices, trademark notices, or other proprietary rights notices affixed to or contained within the licensed Programs or Documentation. If you are a licensee in the European Union:

*European Union:* You may decompile, disassemble or otherwise reverse engineer the Programs only where any such act is necessary to create an independent program which is interoperable with the Programs or with another program or to observe, study, or test the functioning of the Programs solely to understand the ideas and principles which underlie any element of the Programs (“Permitted Objective”) and provided that:

- (i) the information necessary to achieve the Permitted Objective has not already been made available or has not been provided by us within a reasonable time after a written request to provide such information;
- (ii) the compilation, disassembly, reverse-engineering, etc., is confined to those parts of the Programs necessary to achieve the Permitted Objective;
- (iii) the information gained is not used or anything other than the Permitted Objective and is not disclosed to any other person except as may be necessary to achieve the Permitted Objective; and
- (iv) the information obtained is not used to create a program(s) substantially similar in its expression to any Program(s), including, but not limited to, expressions of the Programs in other computer

languages, or for any other act restricted by copyright in the Programs.

- i U.S. Government. If you are acquiring this license to the Programs on behalf of any unit or agency of the U.S. Government, the Government shall only have “restricted rights”. In particular, for units of the Department of Defense: the Government shall have only the rights specified in the license under which the commercial computer software or commercial software documentation was obtained, as set forth in subparagraph (a) of the Rights in Commercial Computer Software or Commercial Software Documentation Clause at DFARS 227.7202-3, therefore the rights set forth herein shall apply. For any other Government unit or agency, the rights of the Government regarding use, reproduction, and disclosure are as set forth in Clause 52.227-19 (c)(2) of the FAR.
- j License For Third Party Software. We have been granted licenses to distribute certain third party software. As a condition of those licenses, we are required to distribute the software subject to specific terms and conditions, which may be different from or additional to those contained herein for the Programs. The Terms include the restrictions on use of such third party software. The current applicable provisions of such third party software are available in the about.txt file in the COMSOL installation directory and in the directories under java in the COMSOL installation directory. You may also contact us to obtain the current applicable provisions. PLEASE NOTE: Your breach of any applicable term or condition of any third party license, even if such term or condition is not stated expressly in the Terms, shall also be considered a material breach of this Agreement.
- k No Commercial/Production Use for Trial Version. If you have been granted license to a trial version of any Program, i.e., to test the Program without any payment obligation, you may not use the Program for any commercial or production use, i.e., you may only use the Program for experimental and trial use.
- l Protection and Confidentiality. You acknowledge that the Programs contain trade secrets and other valuable and confidential information of us and our licensors, and you shall not act, or fail to act, in any way or manner to intentionally or

negligently harm our or our licensors' rights in our or their respective intellectual property in the Programs and Documentation. The Programs and Documentation, together with any other information learned in connection therewith that should reasonably be considered confidential under the circumstances, are "Confidential Information". You shall disclose Confidential Information only on a need-to-know basis to your employees; you may not disclose any Confidential Information to a third party; and you shall use all reasonable care to keep the Confidential Information confidential consistent with the grant of your licensed rights.

**m Exceptions to Confidentiality.** The above confidentiality obligation shall not apply to Confidential Information which (i) was in your possession before you received it; (ii) is or becomes publicly available through no fault of yours; (iii) is independently developed by you without reliance on the Confidential Information; or (iv) is received by you from a third party with no duty of confidentiality to us.

**2 License Term.** Unless terminated earlier according to the Terms, this Agreement shall continue annually, for a term, or perpetually, as identified in the purchase order accepted by us or our invoice. Annual licenses will end after a year, unless the then-current annual license fee has been previously remitted to us and you have received new annual passcodes. Term licenses will end after their term, unless the then-current term license fee has been previously remitted to us and you have received new term pass codes. You shall have the right to use Programs licensed under a perpetual license indefinitely, subject to the termination provisions of this Agreement.

**3 Delivery, Installation, and Use.**

(i) We may deliver the Programs and Documentation to you in archival form on CD-ROM or over the Internet with a passcode which specifies the licensed Programs. You shall be responsible for all use of your passcode, authorized or not, and you shall not disclose the archive passcode or allow it to be used except for installation of the Programs.

(ii) If you have licensed the NSL version of the Programs, they may be installed and operated on one or more individual computers, provided the Programs are only accessible to, and operated by, a

single licensed user designated by us as the “Named User” for that license. You may replace the named user for the license, on a temporary or permanent basis but no more than four (4) times a year, provided that only one licensed user is designated as the named user at any given time. The NSL version of the Programs may not be accessed or used over a network.

(iii) If you have licensed the CPU version of the Programs, a single individual may use one concurrent session of a Program on a single designated computer at any given time. The CPU version of the Programs may not be accessed or used over a network.

(iv) If you have licensed the FNL version of the Programs, they may be installed in a central location on a single dedicated network server. You may have as many sessions of a Program in use at any given time as you have licensed concurrent users. If the Programs have the ability to run as client and server on separate computers, only the FNL version gives you the right to use the Programs as client and server on separate computers. Portions of the Programs may be installed on individual computers, as long as the individual installations are controlled by the license manager on the network server. You may not provide access to the FNL version of the Programs to users located outside the country in which the license manager server is installed unless you have contracted for global use.

(v) You may make a backup copy of the Programs and Documentation as reasonably necessary to support the use of the Programs in accordance with this Agreement.

(vi) Regardless of which license you have, you may use the Programs only for your internal operations. For the purposes of this Agreement, “internal operations” means use of the Programs by your employees or those of your subsidiaries or parent company and for the performance of consulting or research for third parties who engage you as an employee or independent contractor.

- 4 Compliance with Export Laws.** The Programs are subject to U.S. and United Kingdom export control laws or other (U.S., U.K., and non-U.S.) governmental export and import laws and regulations (“Export Laws”). Notwithstanding any other term of this Agreement or any other agreement, neither you nor any third party may exercise any of your rights under this Agreement in violation of



any Export Law, nor may this Agreement be transferred to any party where doing so would result in such a violation. The terms of any limitation on the use, transfer or re-export of the Programs imposed by us in any document for the purpose of export control shall prevail over any term in this Agreement, but it shall be your responsibility to comply with the latest Export Law.

- 5 Maintenance and Support.** Software maintenance service will terminate upon expiration of the initial software maintenance service term of twelve (12) months, which is included with the purchase of each license. Maintenance includes: (a) technical support by telephone, telefax or electronic mail regarding the installation and/or use of the licensed Programs and their interaction with hardware, operating environments, and other software products; (b) subsequent releases of the Programs free of charge; and (c) reasonable commercial efforts to (i) provide workarounds within a reasonable time for any material programming errors in the current release of the Programs which are directly attributable to us, and (ii) correction of such errors in the next available release, provided you provide us with sufficient information to identify such errors. Maintenance services may be renewed, at the then-current price, as long as we offer such services. We may, in our sole discretion, discontinue maintenance and support subscriptions.

**6 LIMITED WARRANTY.**

- a** We warrant: (i) that we or our licensors have the right to grant the license rights hereunder; (ii) that for a period of ninety (90) days from delivery (“Warranty Period”) the licensed Programs shall conform in all material respects to their functional specifications in the Documentation; and (iii) you may receive a full refund if you terminate this Agreement within thirty (30) days of the date of delivery of the Programs (the “Acceptance Period”).
- b** If a Program does not operate as warranted and you notify us within the Warranty Period, your exclusive remedy and our sole liability shall be (i) the correction or workaround of major defects within a reasonable time, or (ii) if such correction or workaround prove neither satisfactory nor practical, termination of the relevant

license and refund of the initial license fee paid to us for the Programs.

- c** All requests for warranty assistance should be directed to COMSOL AB, Tegnérgatan 23, SE-111 40 STOCKHOLM, Sweden.
- d** EXCEPT AS EXPRESSLY PROVIDED ABOVE, THE PROGRAMS AND DOCUMENTATION ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, DESIGN, OPERATION, AND FITNESS FOR A PARTICULAR PURPOSE, AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PROGRAMS IS WITH YOU. NEITHER WE NOR OUR LICENSORS WARRANT THAT THE PROGRAMS WILL BE ERROR-FREE, UNINTERRUPTED, VIRUS-FREE, SECURE, SUITABLE FOR YOUR NEEDS, PRODUCE SPECIFIC RESULTS, OR THAT ERRORS OR FAILURES WILL BE CORRECTED. YOU ACKNOWLEDGE THAT YOU HAVE RELIED ON NO WARRANTIES OR PROMISE OTHER THAN THE EXPRESS WARRANTIES HEREIN.
- 7** Limitation Of Liability. OUR SOLE LIABILITY OR OBLIGATION UNDER THIS AGREEMENT IS THE REPLACEMENT OF DEFECTIVE MEDIA ACCORDING TO THE LIMITED WARRANTY ABOVE. IN NO EVENT SHALL WE OR OUR LICENSORS BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, THIRD PARTY CLAIMS AND LOSS OF PROFITS, DATA, OR ANY OTHER LOSS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, E.G., WE ARE UNABLE TO REMEDY ANY DEFECT IN THE PROGRAMS. IN ANY EVENT, OUR AND THEIR MAXIMUM LOSS, REGARDLESS OF ANY ACT OR OMISSION OF OURS OR ANYONE UNDER OUR DIRECTION OR CONTROL, SHALL NOT IN TOTAL EXCEED THE AGGREGATE AMOUNT PAID TO US IN THE SIX-MONTH PERIOD PRECEDING YOUR CLAIM(S), AND FOR SUCH PURPOSES, ALL CLAIMS SHALL BE AGGREGATED. The remedies against

us and our licensors expressly provided herein are exclusive and are in lieu of any other remedies at law or in equity.

## **8 Indemnification.**

- a By You.** You agree to indemnify, defend, and hold harmless COMSOL and its affiliates, successors, officers, directors, employees and representatives against and from any and all actions, claims, demands, costs, liabilities, losses, expenses (including reasonable attorneys' fees and court costs, whether incurred as the result of a third party claim or a claim to enforce this provision) and other damages (collectively, "Losses") arising out of or in connection with any and all third party claims relating to any use of the Programs by you and any act or omission of yours, including third party claims related to your activities pursuant to this Agreement, except to the extent we indemnify you as described below.
- b By COMSOL.** We agree to indemnify, defend, and hold you (which for this purpose includes your affiliates, successors, officers, directors, employees and representatives) harmless against and from, and to the extent you suffer, any Losses because the licensed Programs infringe a third party's intellectual property rights.
- c Limitation.** We shall have no liability or obligation to you hereunder for any infringement based upon (i) the combination of any of the licensed Programs with any other software, hardware or other products not developed by us, (ii) the use of other than a current, unaltered version of the licensed Programs, (iii) any use of a licensed Program for other than its intended purpose, (iv) modifications, improvements and derivative works of the licensed Programs created by or on behalf of you, or (v) if you breach this Agreement for failure to pay amount due.
- d Cooperation.** In connection with any claim or action described in this Section, the party seeking indemnification (i) will give the indemnifying party prompt written notice of the claim, (ii) will cooperate with the indemnifying party (at the indemnifying party's expense) in connection with the defense and settlement of the claim, and (iii) will permit the indemnifying party to control the defense and settlement of the claim, provided that the indemnifying party may not settle the claim without the

indemnified party's prior written consent (which will not be unreasonably withheld). Further, the indemnified party (at its cost) may participate in the defense and settlement of the claim.

- 9 Third Parties.** You shall notify us of third parties (and give their respective names, addresses, and contact information) that have access to or use the licensed Programs on your behalf. This provision shall not limit your other obligations hereunder.
- 10 Prevailing Party.** If any legal action or other proceeding is brought for any breach of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in bringing such action or proceeding, in addition to any other relief to which such party may be entitled.
- 11 Taxes.** You shall be liable for any taxes (except those on our net income) due in connection with this Agreement.
- 12 Termination.** We may terminate this Agreement by written notice to you if you breach any Term and have not cured such breach within sixty (60) days (within fifteen (15) days if the breach is for non-payment) thereafter. You may terminate this Agreement at any time for any reason, but you shall not be entitled to any refund except for license fees paid for any Programs for which the Acceptance Period has not expired at the time we receive your notice of termination.
- 13 Effect Of Termination.** Immediately upon termination of this Agreement for any reason, (a) your rights shall cease and all rights granted herein shall automatically revert to us; (b) you shall stop using the Programs and Documentation; (c) you shall erase all copies of licensed Programs from your computers and deliver to us all tangible copies of the Programs and Documentation; (d) you shall pay all amounts due us; and (e) you shall take such acts and execute all documents we reasonably request to register or effect the termination. Within five (5) business days of the termination, you shall provide us with a written declaration signed under penalty of perjury by you attesting to compliance with the provisions of subsections (b), (c) and (d) above. Expiration or termination of this Agreement shall not relieve a party of obligations accrued before such event. In addition, Sections 1(c), 1(l), 4, 7, 8, 10, 11, 13, and 16 shall survive termination or expiration of this Agreement.

- 14 Assignment and Transfer.** Unless you provide us with the identity and contact information of any prospective assignee or transferee of your rights and obligations hereunder and such transferee or assignee is acceptable to us, you may not assign or otherwise transfer this Agreement and its rights and obligations, in whole or in part, by operation of law or otherwise. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto. We may charge you an administrative fee for any permitted assignment.
- 15 Revised Terms of Use.** We may revise the terms of use of the Programs from time to time. Revisions are effective upon receipt of notice from us.
- 16 Miscellaneous.** You shall not grant any ownership right or security interest in the Programs to any person. You shall comply with all laws applicable to you in the jurisdiction in which you use the Programs. A breach of any provision of this Agreement may only be waived in writing and the waiver of such breach shall not operate or be construed as a waiver of any subsequent breach. If any Term should, for any reason, be held invalid or unenforceable in any respect, the remainder of this Agreement shall be enforced to the full extent permitted by law. A court of competent jurisdiction is hereby empowered to modify the invalid or unenforceable provision to make it valid and enforceable. This Agreement and the applicable Addenda hereto (if relevant) contain the entire understanding of the parties, and, except as provided herein, may not be changed except in a writing signed by you and us. This Agreement shall be governed by the laws of Massachusetts, without regard to its conflict of laws, the U.N. Convention on Contracts for the International Sale of Goods, and any version of the Uniform Computer Information Transactions Act (“UCITA”) adopted by any state, and to the extent UCITA is applicable, the parties agree to opt out of its applicability pursuant to the opt-out provisions contained therein. The parties consent to the exclusive personal jurisdiction of the state and federal courts in the Commonwealth of Massachusetts if there is any dispute between them. You may not bring any action against us or our licensors more than two (2) years after the cause of action accrued.

# Academic Addendum

Programs licensed to degree-granting educational institutions (“Institutions”) at our educational discount are subject to separate license provisions and are further restricted to use in connection with on-campus computing facilities that are used solely in support of classroom instruction and research activities of students and faculty. The right to use the Programs licensed at Academic Prices for commercial purposes is expressly prohibited.

This is an Addendum to the COMSOL AB Software License Agreement (the “Agreement”), and the terms and conditions of this Addendum are incorporated therein. Each capitalized term used but not defined herein shall have the meaning ascribed to it in the Agreement.

- 1 General Scope.** In addition to the terms in the Agreement, the provisions of this Academic Addendum apply to each Program licensed under the Agreement at prices offered only Institutions (“Academic Prices”) for NSL, CPU, and FNL versions of the Programs, and for the Class Kit Option, as defined below. A License purchased at Academic Prices gives the Licensee the right to use the software in Academic research as well as teaching at the licensed Institution. Moreover, a student working on a thesis or a diploma has the right to use a License purchased at Academic Prices outside the Institution as long as the usage is restricted to the thesis or the diploma work. If there is a conflict between the terms in this Addendum and the Agreement, the Addendum provisions shall control.
- 2 Class Kit Option.** If an Institution acquires and pays for the Class Kit Option license, it may use the CPU and/or FNL version of the Programs, as approved by us on the purchase order or invoice we accept.
- 3 Definitions.**
  - 3.1. Academic Internal Operations.** The Class Kit Option version of the Programs may be installed and used by up to 30 students and two teaching assistants for the purpose of teaching in an ordinary course, provided the Programs are used in classrooms for instructional purposes only by enrolled students meeting classroom requirements

for courses and study offered by the Institution. Students may use the Class Kit Option Programs for homework use, and two teaching assistants may use the Programs for the purpose of lesson preparation. All non-classroom use is limited to a single designated individually-owned computer for each such student or teaching assistant during the period of the academic year when the applicable class is in session and solely for class and instructional purposes. When a student is not enrolled in the applicable class or the class ends, the student must remove all copies of the Programs from his or her computer. Any other use is expressly prohibited.

3.2. Licensed Users. All enrolled students and employees (faculty and academic staff) of an Institution who are authorized to use the Programs for Academic Internal Operations in accordance with the Agreement and the applicable Addenda.

3.3. Class Kit Option. The specific rights, restrictions, and obligations under which an Institution may install and use Programs pursuant to the Agreement and this Academic Addendum for the Class Kit Option.

#### **4 Installation and Use**

4.1 NSL, CPU, and FNL. The right to install and use the NSL, CPU, and FNL version of the Programs if bought at Academic Prices is the same as in Section 1(g) and Section 3 of the Agreement, except that the FNL version may only be used on a network that is restricted to solely on-campus use.

4.2 Class Kit Limited Rights. Specific rights, obligations, and restrictions apply to the Class Kit Option. By selecting the Class Kit Option, the Institution and any users of the Class Kit Option agree to the terms of the Agreement and this Academic Addendum for use of the Class Kit Option for Academic Internal Operations.

4.3 Restricted Versions. The Class Kit Option is restricted to the CPU and FNL versions of the Programs only. The Institution is responsible for ensuring that the total number of students for each Program in the Class Kit Option does not exceed 30 and the number of teaching assistants does not exceed two (2). The Institution shall also be responsible for, and shall assign a central administrator the task of, accurately counting, controlling, and administering the use of the Class Kit Option, including without limitation, restricting its

use to on-campus computing facilities and limiting its use to comply with Academic Internal Operations.

4.4 Support. Support requests shall be made by the teaching assistants or the central administrator of the Class Kit Option.