End User License and Support and Maintenance Agreement (EULA)
11-05-2017

These terms apply to all end user licenses for this software and to all support and maintenance services relating to this software - including support and maintenance services bought by the licensee subsequent to and independent of the transaction, according to which the licensee acquired his license for the software.

These terms can under no circumstances be deviated from and shall always apply, unless the Danish company MOSEK ApS in writing has explicitly consented to the specific deviations.

A copy of this EULA is included in all MOSEK distributions of THE SOFTWARE and available on the MOSEK web site.

Terms and Conditions

INITIAL PROVISIONS

1.   Definitions

1.1.   THE SOFTWARE means the modules of the MOSEK® mathematical optimization software, for which the licensee has been granted a license.

1.2.   FLOATING LICENSE means a software license tied to a particular computer that is acting as a license token server. Every computer connected to the license server can use the license. A floating license can only be used from one program/process at any given point in time. If a licensee acquires several FLOATING LICENSES tied to the same license server, the number of programs/processes, which at any given point in time can use the software corresponds to the number of licenses.

1.3.   SERVER LICENSE means a software license, tied to a specific computer. On the specified computer, an arbitrary number of users and programs can use the license simultaneously.

1.4.   UNRESTRICTED TEMPORARY LICENSE means a software license, which is not tied to any particular computer but is of limited duration.

1.5.   REHOST - A license is REHOSTED when Licensor provides a new license file for a new host ID –

e.g. because the licensee wants to transfer the license to another computer, or because the host ID of the original computer has been changed.

1.6. ERROR means a material verifiable and reproducible failure of THE SOFTWARE to conform in all material respects to the features and functions as described in the relevant documentation.

1.7. WORKAROUND means a suggested set of actions or recommendations intended, when properly implemented, to restore the functionality of THE SOFTWARE or to provide equivalent or similar functionality.

1.8. MAJOR VERSION means a version, which in comparison with a previous MAJOR VERSION A) contains new features, major enhancements and performance improvements B) may support other platforms and tools and C) may have a few incompatible features.

1.9. MINOR VERSION means a version of a MAJOR VERSION, which in comparison with a previous version of the same MAJOR VERSION contains new features and improvements in the efficiency, and in which compatibility with the previous version has high priority. MINOR VERSIONS of the same MAJOR VERSION behave almost identically and it is easy to upgrade to new MINOR VERSIONS of the same MAJOR VERSION.

1.10. BUILD means a version which only differs from the previous MINOR VERSION in the way the software is build (for instance because a different compiler is used).

1.11. REVISION means a revision which includes bug fixes and in some cases new functionality. Strong emphasis is given on backwards compatibility with existing releases of the same MINOR VERSION. New revisions are released frequently.

1.12. THE EFFECTIVE DATE means the date, on which the license for THE SOFTWARE was granted to the licensee.

1.13. THE SUPPORT AND MAINTENANCE PERIOD means the period, for which a licensee with a commercial license has paid the annual support and maintenance fee periodically invoiced by Licensor at the request of Licensee.

1.14. ACADEMIC INSTITUTION means a university or the like on which students can obtain at least a bachelor degree (normally after 3 years studying).

1.15. OOC means open online course.

1.16. DAY means a full calendar day of 24 hours starting at 0:00 and ending at 24:00.

1.17. DANISH WORKING DAY means a DAY excluding Saturdays, Sundays, 1 January, Maundy Thursday, Good Friday, Easter Monday, Ascension Day, Whit Sunday, Whit Monday, 24 - 26 December and 31 December.

1.18. EU SUMMER TIME PERIOD means the period beginning on the last Sunday in March and ending on the last Sunday in October.

1.19. DANISH WORKING HOURS means 9:00 to 16:00 Greenwich Mean Time + 1 hour on DANISH WORKING DAYS except during EU SUMMER TIME PERIOD, where it is Greenwich Mean Time + 2 hours.

OPERATIVE PROVISIONS

2.   Commercial License

2.1.   A commercial license is a nonexclusive software end user license, according to which the licensee is entitled to receive and use an object code copy of the licensed software for an unlimited period and for commercial as well as non-commercial purposes.

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

2.3.   A commercial license can be either a FLOATING LICENSE or a SERVER LICENSE.

3.   Academic License

3.1.   An academic license is a nonexclusive software end user license that entitles the licensee to receive and use an object code copy of the licensed software for academic education and research purposes only.

3.2.   An academic license shall be considered to be granted, when the licensee has accepted these terms and has been provided with a license file.

3.3.   MOSEK provides the following types of academic licenses: personal academic license, academic institution license and personal OOC license.

3.3.1. *Personal academic license*: It is an academic license where the licensee must be a student studying or an employee working at an ACADEMIC INSTITUTION. It is granted for a period of one year. It may, however, be prolonged for one or more periods. The license is personal. It is an UNRESTRICTED TEMPORARY LICENSE.

3.3.2. *Academic institution license*: It is an academic license, where the licensee must be an ACADEMIC INSTITUTION. It is granted for a period of two years and may be renewed. It is granted as a number of FLOATING LICENSES. The number of floating licenses is agreed on a case by case basis. Licensor has no obligation to provide support and maintenance but may choose to do so anyway. Licensor shall have the right to limit the number of persons entitled to contact Licensor about support and mainte-

nance issues to 2 contact persons.

3.3.3. *Personal OOC license*: It is an academic license where the licensee must be a student enrolled in a OOC. It is granted for the period in which the course lasts and in any case for no longer than six months. It may, however, be prolonged for one or more periods. The license is personal and may be used only for activities related to the course. It is an UNRESTRICTED TEMPORARY LICENSE.

4. Trial License

4.1. A trial license is a nonexclusive software end user license, which gives the licensee the right to evaluate an object code copy of the licensed software for a trial period not exceeding thirty (30) days, and which forbids the licensee to use the licensed software for any other purposes including commercial purposes. It is an UNRESTRICTED TEMPORARY LICENSE.

4.2. A trial license shall be considered to be granted, when the licensee has accepted these terms and has been provided with a license file.

5. Stand in Computer License

5.1. A stand in computer license gives Licensee the right:

- to get an extra license file for a (stand in) server / computer
- to run the software on that computer while the server(s) / computer(s) normally used is/are inoperative
- to test the operability of the extra license file on the (stand in) server / computer up to once a month.

5.2. Stand in computer licenses are only granted to licensees with commercial license(s) for which support and maintenance has been subscribed. Their term cannot go beyond the term of THE SUPPORT AND MAINTENANCE PERIOD.

5.3. Licensor shall have the right to require the licensee to enable the report log file feature of the license system and to provide Licensor with copies of the log files at reasonable intervals.

5.4. Licensor shall be entitled to terminate a stand in computer license any time at 3 months' notice.

6. Right to Use and No Right to Sublicense

6.1. The licensee acquires the right to use the delivered (downloaded) object code copy of THE SOFTWARE only and does not acquire any rights of ownership.

6.2. The licensee shall be prohibited from sublicensing and otherwise letting third parties use THE

SOFTWARE without prior written consent from the licensor, unless otherwise expressly stipulated elsewhere in these terms.

7. License System and License Files

7.1.   Licensor has embedded a license system in THE SOFTWARE in order to make it possible to control A) that end users do not use more copies on more computers than the they are entitled to B) that end users do not use the software for longer time than the duration of the license and C) that end users only can get access to modules and functionality, for which they have a license.

7.2.   Because of the license system a license file is required in order to use THE SOFTWARE.

7.3.   In order to make it possible for Licensor to provide a license file the licensee must provide Licensor with certain information about the licensee's computer, server and/or dongle. Without undue delay after receipt thereof, Licensor will send the licensee the necessary license file.

7.4.   The license file should only activate those modules, for which the licensee has a license, and the licensee shall not be considered to have any rights whatsoever to any excess modules, for which the licensee does not have a license, even though the licensee can download such modules from Licensor's website.

7.5.   The licensee is forbidden to tamper with the license file or the license system.

8. REHOSTING

8.1.   During the SUPPORT AND MAINTENANCE PERIOD commercial licenses, for which the invoiced support and maintenance fee has been paid, can free of charge be REHOSTED an unlimited number of times.

8.2.   Other commercial licenses can free of charge be REHOSTED once only.

8.3.   Licensor will provide new license file(s) after receipt of the information necessary for generating the file(s).

9. Support and Maintenance

9.1.   During THE SUPPORT AND MAINTENANCE PERIOD, licensees with commercial licenses will be provided with the following support and maintenance services:

- Hotline telephone and email assistance and advice, which during DANISH WORKING HOURS will provide Licensee with qualified technical help in English.
- Receiving and handling documented ERROR reports in English from Licensee and responding to

such ERROR reports in English.

- Using reasonable efforts either to correct ERRORS reported in English or to suggest alternative approaches in order to bypass them (WORKAROUNDS).
- Providing Licensee with technical information about THE SOFTWARE in English.
- In accordance with MOSEK's release policy published on MOSEK's website providing new releases of THE SOFTWARE in the form of new MAJOR VERSIONS, MINOR VERSIONS, BUILDS and REVISIONS.
- Unlimited REHOSTING free of charge, in accordance with the above REHOSTING clause 8.
- Granting computer stand in licenses in accordance with the above clause 5.

9.2. Correction of ERRORS will be limited to the latest MAJOR VERSION of THE SOFTWARE. However, the preceding MAJOR VERSION will still be supported with correction of ERRORS for a period of at least 2 years after the release of the latest MAJOR VERSION. When ERROR correction support of an earlier MAJOR VERSION stops, licensees with the earlier version will be encouraged to upgrade to a newer MAJOR VERSION. Correction of an ERROR may take the form of an upgrade to a newer MINOR VERSION, in which the ERROR has already been corrected.

9.3. MOSEK shall not be obliged to correct all ERRORS reported but will respond to ERROR reports in the way described above. Furthermore, MOSEK will take all English ERROR reports into consideration when developing new releases and versions.

9.4. Alpha releases and beta releases are not subject to support and maintenance.

9.5. The support and maintenance is governed by the license and support and maintenance terms in force on THE EFFECTIVE DATE. Should the terms subsequently be changed, Licensee will be informed about the new terms in connection with renewal of the support and maintenance subscription, and the new terms shall as from the renewal date apply to future support and maintenance and the corresponding license(s).

10.   No Modifying, Reverse Engineering etc.

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

11.   The MOSEK® trademark

MOSEK® is a registered trademark belonging to MOSEK ApS. Licensee is not granted any license rights under the MOSEK® trademark and may not use it without the prior written consent of MOSEK ApS.

12.   License and Maintenance Fees and Terms of Payment

12.1. Academic licenses and trial licenses are free of charge. So is any support, which Licensor may choose to provide in connection with such licenses even though Licensor is under no obligation to provide such support.

12.2. The fees and terms of payment relating to commercial licenses and support and maintenance provided in connection with such licenses are those which the licensee agree with Licensor and which appear from Licensor's invoices to the licensee.

13. Confidentiality

13.1. All confidential information relating to the license, the licensee's computers or support and maintenance, which one of the parties discloses to the other party, shall by the receiving party be treated confidentially as long as the information is still confidential, provided the disclosing party at the time of disclosure in a durable way has designated the information to be confidential.

13.2. Licensor will neither for PR purposes nor for any other purposes publish the names of end users with commercial licenses. Licensor shall be entitled to publish the names of end users with academic licenses.

14. Warranties and *DISCLAIMER OF WARRANTIES*

14.1. Licensor warrants end users with commercial licenses for a period of 90 days after THE EFFECTIVE DATE that they will be satisfied with THE SOFTWARE.

14.2. Licensor warrants that THE SOFTWARE will implement the functionalities and perform substantially in accordance with the official documentation, which is available free of charge on Licensor's website.

14.3. Licensor does not warrant that THE SOFTWARE will be error free.

14.4. Licensor warrants Licensees with commercial licenses that during THE SUPPORT AND MAINTENANCE PERIOD the support and maintenance services will be in accordance with generally accepted sound international industry standards and practices.

14.5. Licensor warrants that THE SOFTWARE does not infringe third parties' intellectual property rights under the laws of the country where the licensee is domiciled. This warranty does not extend to infringement of rights which the licensee at THE EFFECTIVE DATE knew or should have known.

14.6. Licensor represents and warrants that Licensor has the right to grant all the rights and licenses granted herein. Licensor represents and warrants that THE SOFTWARE does not comprise any (third party) open source software, free software or the like which according to applicable license conditions will require the licensees a) to disclose or (re)distribute source code versions or object code versions of any software derived from or developed by means of THE SOFTWARE or b) to grant third parties licenses for such derived or developed software.

14.7. The warranties do not extend to data fed into THE SOFTWARE by the licensee or the licensee's

software. The warranties cover the way such input data are processed and the resulting output data. The warranties do not cover the use of the output data made by the licensee or the licensee's software.

14.8. The above warranties are in lieu of all other warranties whether express or implied including implied warranties of merchantability and fitness for a particular purpose.

REMEDIES

15. *LIMITATION OF BOTH PARTIES' LIABILITY and EXCLUSIVE REMEDIES*

15.1. Should a licensee not - as warranted by Licensor - be satisfied with THE SOFTWARE, the licensee shall during the first 90 days after THE EFFECTIVE DATE be free to recover any paid license and support and maintenance fees in full, provided the licensee has a) discontinued use of THE SOFTWARE, b) destroyed all copies of the license file, c) returned everything received from Licensor. *This is the licensee's sole remedy for breach of that warranty.*

15.2. If Licensor is unable within reasonable time to perform support and maintenance services to a licensee with commercial licenses substantially as warranted, the licensee shall have the right:

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

15.3. In the event that Licensor believes that THE SOFTWARE infringes intellectual property, against which Licensor has warranted, Licensor shall have the right at Licensor's option:

- to modify THE SOFTWARE to become non-infringing and
- to obtain for the licensee a license to continue the licensee's use of THE SOFTWARE.

15.4. If i) the licensee's right to use THE SOFTWARE gets appreciably restricted because of third parties intellectual property rights, against which Licensor has warranted, and ii) MOSEK does not modify THE SOFTWARE or obtain a license from the third party in question in accordance with the above clause, the licensee shall have the right to a) terminate the license and discontinue use of THE SOFTWARE, b) destroy all copies of the license file, c) return everything received from Licensor and d) recover any license fee paid by the licensee to Licensor for the license written down over a 3 years period.

15.5. Should one of the parties breach his obligations, he shall compensate the other party for the economic damage caused by the breach to the extent it is due to negligence. If THE SOFTWARE infringes a third party's intellectual property covered by Licensor's warranty against such infringements, Licensor shall only indemnify the licensee damages which the licensee may be liable to pay the third party because of the infringement if the licensee forthwith notifies Licensor in writing of the claim and

Licensor gets the opportunity to participate in the defence and agree to any settlements.

15.6. In no event - except in case of gross negligence - shall any of the parties be liable for any indirect, incidental, special or consequential damages, including loss of profits, revenue, data or use incurred by the other party or any third party whether in action of contract or tort even if the party or any other person has been advised of the possibility of such damages.

15.7. Licensor's liability for damages shall in no event - except in case of gross negligence – exceed the license / support and maintenance fee received by Licensor for the relevant license / support and maintenance period.

15.8. Licensor shall in no event be liable for any losses, which could have been avoided if the licensee had used the latest release of THE SOFTWARE provided by Licensor.

15.9. Should the licensee substantially violate his obligations, the license and THE SUPPORT AND MAINTENANCE PERIOD shall automatically terminate.

15.10. The licensee's sole remedies relating to THE SOFTWARE and support and maintenance shall regardless of negligence - except gross negligence - be the remedies specified in this provision, unless other remedies are explicitly provided for elsewhere in these terms.

16.   General Notice of Breach of Contract

16.1. If one of the parties wishes to exercise any remedies against the other party because of the other party's breach of contract, he must give notice to the other party specifying the nature of the violation without undue delay after he has discovered the violation or he ought to have discovered it.

16.2. To the extent a party's claim relates to goods or services supplied by the other party, the notice must be delivered not later than one year after the date, on which the goods or services were supplied.

MISCELLANEOUS PROVISIONS

17.   Transferability

The rights granted to the licensee according to these terms are personal to the licensee and may not be transferred to third parties - except to transferees belonging to the same group of companies as the licensee. Transfer to third parties not belonging to the same group of companies can only take place with the prior written consent of Licensor.

18. **Purchase Orders, Order Confirmations and Similar Documents**

Any purchase orders, confirmations of orders and similar documents issued by one of the parties and relating to the subject matter of these terms shall be considered to be issued and accepted for invoicing and payment purposes only - even if they state the opposite and are accepted by the other party without reservations.

CHOICE OF LAW AND DISPUTE RESOLUTION

19. **Choice of Law**

These terms are governed by Danish law.

20. **Venue**

20.1. Any dispute, controversy or claim arising under, out of or relating to this agreement and any subsequent amendments of this agreement - including, without limitation, its formation, validity, binding effect, interpretation, performance, breach, expiration or termination, as well as non-contractual claims and product liability claims - shall depending on the subject matter of the dispute be settled by the City Court of Copenhagen or the Danish Maritime and Commercial High Court. If both courts are competent in relation to a subject matter, the suing part shall be free to choose between the 2 courts.

20.2. This clause shall not restrict the parties' right to have disputes about intellectual property rights and trade secrets - including cases about infringement of intellectual property rights and misappropriation of trade secrets - settled by other courts which according to their own rules of competence can decide such cases. This clause shall, likewise, not restrict the parties' right to request interim measures to be taken by other courts which according to their own rules of competence can take such interim measures.