



AMPL PRODUCT – END USER LICENSE AGREEMENT

THIS END-USER LICENSE AGREEMENT (the "Agreement") is a legal agreement between you (either an individual or a single entity) the customer ("Customer"), and AMPL Optimization inc. ("AMPL") for the AMPL(TM) optimization modeling software that accompanies this Agreement. AMPL hereby grants to the Customer, and Customer hereby accepts from AMPL, a non-exclusive, non-transferable limited right and license to use the Products subject to the terms and conditions specified below.

1. DEFINITIONS

(a) "Products" means collectively: (i) the machine-readable object code version of the computer programs that AMPL or its licensor makes available, whether embedded on disc or sent via the Internet, for use on the Designated Hardware (the "Software"), (ii) any published user manuals and documentation that AMPL or its licensor makes generally available for the Software (the "Documentation"), (iii) the fixes, updates, upgrades or new versions of the Software or Documentation that AMPL or its licensor may provide to Customer under this Agreement (the "Enhancements") and (iv) any copy of the Software, Documentation or Enhancements.

(b) "Designated Hardware" means the hardware equipment as described in Section 2, which may comprise single computers or networks of computers.

2. USE

Customer may use the Products in and for Customer's own internal purposes and business operations on the Designated Hardware while it possesses and operates the Designated Hardware. To initiate use of the Software, Customer shall run the Software as directed and shall provide the results to AMPL or its licensor so that AMPL or its licensor may provide Customer with an authentication code ("License String") to enable the use of the Software consistent with the terms and conditions of this Agreement. Any change in the Designated Hardware will require AMPL's or its licensor's approval and may require the issuance of a new License String, which may be subject to additional charges.

Except as expressly permitted by this Agreement, Customer will not (a) use, copy, modify, or transfer the Software or any copy, modification or merged portion, in whole or in part; (b) rent, lease, sublicense, assign, or otherwise transfer the Software; or (c) make the Software available over the Internet or similar networking technology to others who are not employees of Customer. Customer may make a reasonable number of back-up or archival copies of the Software and Enhancements.

Customer will reproduce all confidentiality and proprietary notices on each of these copies and maintain an accurate record of the location of each of these copies. Customer will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Products, except as and to the extent expressly authorized by applicable law. No other rights in or to the Products are granted except as expressly provided for in this Section.



Products purchased under a single-user license may be run in any number of simultaneous processes, but only on one designated computer by one designated user and userid. Sharing a userid to permit more than one user to access a single-user license is expressly disallowed.

3. PAYMENT

AMPL or its licensor shall physically or electronically ship the Products or License Strings along with an invoice. Customer will pay to AMPL or its licensor the invoiced amounts within thirty (30) days of the date of the invoice. All invoiced amounts are exclusive of any applicable value added, use, sales, service, property or other taxes or contributions, which Customer will pay in addition to the amount due and payable. Any amount not paid when due will accrue interest annually at 18%. Customer will pay such interest when remitting the principal amount to AMPL or its licensor. Customer shall pay any costs of collection incurred by AMPL or its licensor.

4. MAINTENANCE AND SUPPORT

(a) Maintenance and Support. During the first year following delivery of the Product (the “Warranty Period”), AMPL or its licensor will provide Customer, at no additional charge, with services consistent with AMPL’s or its licensor’s License Maintenance Contract.

(b) Limitation. The Updates will not include any upgrade or new version of the Products that AMPL decides, in its sole discretion, to make generally available as a separately priced item. This Section will not be interpreted to require AMPL to (i) develop and release Enhancements or (ii) customize the Enhancements to satisfy Customers’ particular requirements. If an Enhancement replaces the prior version of the Product, Customer may keep prior versions only for purposes of debugging on the Designated Hardware.

5. WARRANTIES AND REMEDIES

(a) Limited Warranty. AMPL warrants that it has the right to (i) enter into this Agreement and (ii) grant the licenses hereunder. AMPL also warrants that the Software will perform substantially as described in the accompanying Documentation during the Warranty Period. Customer acknowledges that (i) the Products may not satisfy all of Customer’s requirements and (ii) the use of the Products may not be uninterrupted or error-free.

(b) Remedies. In the case of a breach of warranty during the Warranty Period, AMPL or its representative will accept the return of the Products, terminate this Agreement and refund to Customer the License Fee actually paid to AMPL for the returned Products. Customer acknowledges that this Paragraph sets forth Customer’s exclusive remedy, and AMPL’s exclusive liability, for any breach of warranty or other duty related to the quality of the Products.

c) Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY APPLICABLE LAW, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY AMPL, ITS LICENSORS OR REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF



MERCHANTABILITY, SATISFACTION, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED. THE PRODUCT MAY INCLUDE MODULES OBTAINED FROM LUCENT TECHNOLOGIES, INC. AND/OR OTHER THIRD PARTIES. THESE THIRD PARTIES PROVIDE NO REPRESENTATIONS OR WARRANTIES AS TO THE PRODUCTS, ASSUME NO LIABILITY REGARDING THE LICENSED SOFTWARE AND DO NOT UNDERTAKE TO FURNISH ANY SUPPORT OR INFORMATION REGARDING THE PRODUCTS.

6. INDEMNITY

(a) Indemnity. If an action is brought against Customer claiming that a Product infringes a United States patent, trade secret or copyright, AMPL will defend Customer at AMPL's expense and, subject to Section 6, pay the damages and costs finally awarded against Customer in the infringement action, but only if (i) Customer notifies AMPL promptly upon learning that the claim might be asserted, (ii) AMPL has sole control over the defense of the claim and any negotiation for its settlement or compromise, and (iii) Customer takes no action that is contrary to AMPL's interest.

(b) Alternative Remedy. If a claim described in Section 6(a) may be or has been asserted, Customer will permit AMPL, at AMPL's option and expense, to: (i) procure the right to continue using the Product; (ii) replace or modify the Product to eliminate the infringement while providing functionally equivalent performance; or (iii) accept the return of the Product, terminate this Agreement and refund to Customer the License Fee actually paid to AMPL for such Product, less depreciation based on a 5-year straight-line depreciation schedule.

(c) Limitation. AMPL and its licensor shall have no indemnity obligation to Customer under this Section if the patent or copyright infringement claim results from: (i) a correction or modification of the Product not provided by AMPL or its licensor; (ii) the failure to promptly install an Update if installation of such Update would have avoided the infringement; or (iii) the use or combination of the Product with other non-AMPL software.

7. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL AMPL OR ITS LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CUSTOMER'S CLAIMS OR THOSE OF ITS CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY WHICH AMPL OR ITS LICENSORS MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE LICENSE FEES ACTUALLY PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT THAT DIRECTLY CAUSED THE DAMAGE. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION.

8. OWNERSHIP

All trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights in or related to the Products are and will remain the exclusive property of AMPL or its licensors, whether or not specifically recognized or perfected under local applicable law. Customer will not take any action that jeopardizes AMPL's or its licensor's



proprietary rights or acquire any right in the Products, except the limited use rights specified in Section 2. AMPL or its licensor will own all rights in any copy, translation, modification, adaptation or derivation of the Products, including any improvement or development thereof.

9. CONFIDENTIALITY

(a) Confidentiality. The parties acknowledge that they may receive certain non-public and confidential information from the other party, including, without limitation, data used with the Products and this Agreement (“Confidential Information”). Confidential Information shall not include any information that is: (i) publicly available or later becomes available other than through a breach of this Agreement; (ii) known to the receiving party or its employees, agents or representatives prior to such disclosure; (iii) independently developed by the receiving party or its employees, agents or representatives; (iv) lawfully obtained by the receiving party or its employees from a third party not in violation of any obligation of confidentiality; or (v) questions, comments, suggestions, or the like regarding the Products sent by Customer to AMPL or its licensor (collectively “Feedback”). Each party will take all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information, including at a minimum those taken by such party to protect its own confidential information. Neither party will allow the removal or defacement of any confidentiality or proprietary notice placed on the Confidential Information.

(b) Disclosure. Neither party will disclose, in whole or in part, the Confidential Information or any portion thereof, except to those of its employees or consultants who require access for such party’s authorized use of the Confidential Information, provided such consultants agree in writing to comply with the use and nondisclosure restrictions applicable to the Confidential Information under this Agreement. Each party acknowledges that any unauthorized use or disclosure of the Confidential Information may cause irreparable damage to the other party and its licensors. If an unauthorized use or disclosure occurs, the breaching party will immediately notify the other party and take, at the breaching party’s expense, all steps which may be available to recover the Confidential Information and to prevent their subsequent unauthorized use or dissemination.

(c) Feedback. AMPL and its licensor may reproduce, use, disclose, exhibit, display, transform, create derivative works and distribute Feedback to others without limitation. Further, AMPL and its licensor shall be free to use any ideas, concepts, know-how or techniques contained in such Feedback for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products incorporating such Feedback.

10. TERMINATION

The term of this Agreement shall commence on the Effective Date. Customer may terminate this Agreement, without right to refund, by notifying AMPL or its licensor of such termination. AMPL or its licensor may terminate this Agreement, upon thirty (30) calendar days written notice and without judicial or administrative resolution, if Customer or any of Customer’s employees or consultants breach any term or condition hereof. This Agreement will terminate automatically if Customer becomes insolvent or enters into bankruptcy, suspension of payments, moratorium, reorganization, or any other proceeding that relates to insolvency or protection of creditors’ rights.



Upon the termination of this Agreement for any reason, all rights granted to Customer hereunder will cease, and Customer will promptly: (i) purge the Products from the Designated Hardware and all of Customer's computer systems, storage media and other files; (ii) destroy the Products and all copies thereof; and (iii) deliver to AMPL or its licensor an affidavit which certifies that Customer has complied with these termination obligations. The provisions of Sections 4(b), 5(b), 6(c), 8, 9, 10 and 13 will survive the termination of this Agreement.

11. INSPECTION

AMPL or its representative may, upon prior notice to Customer, inspect the files, computer processors, equipment and facilities of Customer during normal working hours to verify Customer's compliance with this Agreement. While conducting such inspection, AMPL or its representative will be entitled to copy any item that Customer may possess in violation of this Agreement.

12. ASSIGNMENT

Customer shall not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without AMPL's or its licensor's prior approval, which shall not be unreasonably withheld.

13. U.S. EXPORT RESTRICTIONS

Customer acknowledges that the Products and all related technical information, documents and materials, might be subject to export controls. Customer shall comply with all export controls.

14. MISCELLANEOUS

All notices or approvals required or permitted under this Agreement must be given in writing. Any terms and conditions of any unilateral letter, memorandum, purchase order or other writing issued by Customer shall not be binding on AMPL or its licensors. Any waiver or modification of this Agreement will not be effective unless executed in writing and signed by an authorized representative of AMPL or its licensor and Customer.

This Agreement will bind Customer's successors-in-interest. This Agreement will be governed by and interpreted in accordance with the laws of the State of Illinois.

If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement, unless AMPL or its licensor in good faith deems the unenforceable provision to be essential, in which case AMPL or its licensor may terminate this Agreement effective immediately upon notice to Customer.

This Agreement constitutes the complete and entire statement of all conditions and representations of the agreement between AMPL and Customer with respect to its subject matter and supersedes all prior writings or understandings.

© 2015 AMPL Optimization inc. All rights reserved.