



M - T e c h
i n d u s t r i a l

LICENSE AGREEMENT

Application Software License Agreement

entered into between

M-Tech Industrial (Pty) Ltd

(hereinafter referred to as "the Licensor")

represented by

ESTEIQ Engineering (Pty) Ltd

(hereinafter referred to as "the Flownex Partner")

and

University of Stellenbosch – Department of Mechanical and Mechatronic Engineering

(hereinafter referred to as "the Licensee")

1. Grant and nature of license

1.1. Subject to the terms and conditions of this Agreement, the Licensor hereby grants to the Licensee a non-transferable, non-exclusive license to use the Licensor's **Flownex** Thermal-Fluid Network Simulation Software and user documentation (as may be modified, amended or updated by the Licensor from time-to-time) (hereinafter referred to as the "Software") at the Installation Address set forth in Schedule A.

1.2. The type of license, whether commercial, academic or evaluation; whether perpetual, annual or limited period; whether single user or multiple user; and the number of seats licensed for are set out in Schedule A hereto. If a single user license is elected, the Licensee may install and use the Software's computer program only on one machine at a time at the Installation Address. If a multiple user license is elected, the Licensee may install and use the Software's computer program in such a manner that the computer program is accessible at one time by no more users

than the number of seats elected by the Licensee.

- 1.3. The License granted to the Licensee authorizes the Licensee to use the Software at the Installation Address until the Agreement is terminated.
- 1.4. The Licensee shall not have the right to sub-license or transfer the Software in any way, either in whole or in part, to any third party.
- 1.5. The Licensee shall not copy nor permit any party to copy the Software, except to make sufficient copies solely for backup or archival purposes.
- 1.6. The Licensee shall not modify, de-compile, disassemble or otherwise reverse-engineer the Software, or attempt to do any of these, unless, in the case of de-compilation, de-compilation is permitted by applicable law of the country of the Installation Address of the Licensee.
- 1.7. In the case of an academic license the Licensee shall only use the Software for educational purposes. Educational purposes shall include teaching, thesis/dissertation activities, and academic research conducted by the client's faculty, staff and/or students, including academic research sponsored by third parties, but shall specifically exclude all consulting activities performed by faculty, staff and/or students for any third parties. Under academic research is understood research that must be disseminated on a non-discriminatory basis and the results which of can be freely published. No exclusive licenses may be granted to third parties with regards to the research results.
- 1.8. In the case of a commercial license the Licensee shall not use the Software for the analysis, design or simulation of nuclear reactors systems without the Licensor's written consent.
- 1.9. In the case of an evaluation license the Licensee may only use the Software for evaluation purposes.

2. Deliverables

- 2.1. *Software.* The Licensor shall provide the Licensee with one executable copy of the Software's computer program and one copy of the Software's user documentation. The Licensee shall not copy the Software (except for one archival copy for back up purposes only) or the user documentation.
- 2.2. *Hardware.* The Licensor shall not be responsible for the provision or maintenance of any hardware.
- 2.3. For the academic license the licensee is required to provide to the licensor the following each year:
 - 2.3.1. All published articles in national and international journals where Flownex was used as part

of the study.

2.3.2. At least one Flownex network file (with a small write-up of what was simulated) that was used as part of a published study. These networks can then be used as demo network files and could be shipped with Flownex to illustrate Flownex applications in future.

2.3.3. All project reports, Masters and Ph.D. dissertations and theses that are generated where Flownex was used.

3. Installation, training and maintenance

The Licensor shall not, in terms of this Agreement, be liable for the installation of the Software or training in the operation or use thereof or maintenance of the Software.

4. Technical support services

4.1. On working days (Monday to Friday except for statutory holidays at the registered office of the Flownex Partner) from 9 a.m. to 5 p.m. ("Stand-by Time"), technical staff with sufficient expertise shall be available at the Flownex Partner to answer questions on the operation and functioning of the Software. Academic clients receive non-priority support.

4.2. During the Stand-by Time, the Licensee can request support services from the Flownex Partner by telephone, by letter, fax or e-mail. In such cases, the following information is to be indicated: name of Licensee, contact person, telephone number, software program concerned, hardware used, description of problem including any error codes displayed.

4.3. To render the requested support service, a technical staff member of the Flownex Partner shall advise the Licensee on the problem occurring by telephone, in writing or by e-mail. During the Stand-by Time, such consultation shall begin without undue delay after being requested by the Licensee, at the latest within twenty-four working hours.

4.4. On up to five days of the Stand-by Time in each calendar year, the Flownex Partner may generally suspend its support services in line with this Agreement. The Flownex Partner will inform the Licensee in good time in advance of the days on which the support services will not be available.

4.5. Only specific individual questions on the Software shall be answered as part of this support. No general training, organisation consulting or project supervision will be provided.

4.6. The support covers only problems with the current version and the immediately previous version of the Software, provided that the latter is installed on authorised hardware.

4.7. In particular, the support owed by the Flownex Partner on use of the Software does not cover the following:

- 4.7.1. data integration from other software programs and elimination of data errors;
- 4.7.2. the rectification of problems caused by incorrect use, in particular use of the Software contrary to the user manual, by misuse, wanton damage, or improper maintenance, servicing or other services by the contracting party or third parties;
- 4.7.3. the rectification of problems attributable to external influences such as power outages, damp, vibrations or force majeure;
- 4.7.4. the rectification of problems with Software which has been processed, modified or partly or completely connected with other software products by the contracting party or third parties without the prior written permission of the Flownex Partner, unless such connection is part of the intended use of the Software or the processing or modification does not have any negative impact on the work required for the maintenance of the Software, for which the Licensee shall bear the burden of proof;
- 4.7.5. the rectification of problems with the hardware used or with software programs of third-party suppliers.

5. Commencement and duration

- 5.1. This Agreement shall commence on the Commencement Date, as defined under Schedule A, clause 2.
- 5.2. In the case of an annual license this Agreement shall continue in force for a period of one (1) year calculated from the Commencement Date and thereafter, subject to payment of the relevant annual license fee, may be renewed for further periods of 1 (one) year, unless terminated earlier in accordance with the provisions of the Agreement.
- 5.3. In the case of maintenance and support this Agreement shall continue in force for a period of one (1) year calculated from the Commencement Date.
- 5.4. The term of the Individual Agreement shall be extended by a further twelve (12) months unless terminated in writing at the latest three (3) months prior to expiry date.

6. Payment

The Licensee shall pay the Flownex Partner the Software license fees, in the amounts and under the terms set forth in Schedule A. All fees shall be payable upon presentation of invoices. Licensor may change its license fees for additional copies of the Software or in respect of annually payable license fees upon thirty (30) days prior written notice.

7. Limitation of liability

- 7.1. The liability of the Licensor for faulty execution of the Software as well as all damages suffered by the Licensee, whether direct or indirect, as a result of the malfunctioning of such Software, will be limited to the Licensor rectifying the malfunction, within a reasonable time and free of charge, provided that the Licensor is notified immediately of the damage or faulty execution of the Software.
- 7.2. In no event shall the Licensor be liable to the Licensee for loss of profits or for incidental, special or consequential damages arising out of or in connection with the Software or the delivery, installation, servicing, performance or use of it in combination with other computer software.
- 7.3. In no event shall the Licensor's liability exceed the initial license fee paid by the Licensee for the Software.
- 7.4. Notwithstanding clauses 7.1 to 7.3, the Licensor's limitation of liability will not apply to any costs incurred as a result of a third party infringement claim brought against the Licensee for the licensed use of the Software pursuant to clause 8.2.

8. Guarantees, Indemnities and Warrantees

- 8.1. The Licensor guarantees that the media upon which the Software and related material are provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt by Licensee. In the event that any item is found by the Licensee to be defective within the warranty period, Licensor shall replace the item, free of charge. After the warranty period, the Licensor will charge for replacing any defective or damaged items.
- 8.2. Indemnity for third party Intellectual Property infringement
 - 8.2.1. The Licensor shall at its own expense and subject to the terms of this Agreement, indemnify, defend and hold the Licensee harmless from and against any claim(s) brought against the Licensee by a third party alleging that the Software or any portion thereof as furnished under this Agreement and used within the scope of the licence granted to the Licensee infringes any copyrights or patents, provided that Licensee gives the Licensor i) prompt written notice of such claim; ii) assistance and information reasonably requested by the Licensor; and iii) the sole authority to defend and settle such claim.
 - 8.2.2. Notwithstanding the provisions of clause 8.2.1, the Licensor shall have no liability for any infringement arising from i) the integration or combination of the Software together with any other software, materials or products not integrated or combined by Licensor or Flownex Partner, if the infringement would have been avoided in the absence of

such integration or combination; ii) the use of other than the current unaltered release of the Software available from the Licensor if the infringement would have been avoided by the use of the then-current release; iii) modifications to the Software that were not authorised by the Licensor or Flownex Partner or were undertaken at the request of or direction of the Licensee; iv) Licensee's use of the Software in a manner that does not comply with the terms of this Agreement.

8.2.3. If the Software becomes or in Licensor's opinion is likely to become, the subject of an infringement claim, the Licensor may, at its sole option and expense, either i) substitute non-infringing software of substantially similar functionality; ii) modify the infringing Software so that it no longer infringes but remains substantially similar in functionality; iii) obtain for the Licensee, at Licensor's expense, the right to continue the use of such Software or iv) if none of the afore-going is commercially feasible, Licensor will take back the Software involved and grant Licensee a refund or credit for the unused portion of the licence fee and associated unused Maintenance fees for the Software involved.

8.3. The Licensor makes no other warranties, express or implied, including warranties as to merchantability or fitness for a particular purpose.

9. Intellectual Property Rights

9.1. For the purposes of this Agreement, the Licensee acknowledges that any and all of the Intellectual Property Rights, including copyright, trade secret, patent, trademark and other proprietary rights used or embodied in or in connection with the Software, including all modifications thereto, are and will remain the sole property of the Licensor. These rights of the Licensor exclude the network models, flow diagrams, methods, algorithms and any other contribution by the Licensee through the use of the software, and will be the sole property of the Licensee.

9.2. Neither the Licensee nor the Licensor shall not question or dispute the ownership or validity of such rights at any time during the continuation in force of the Agreement or thereafter.

9.3. The Licensor warrants that, to the best of its knowledge, the Software does not infringe upon or violate any Intellectual Property Rights of any third party.

10. Term and termination

The services of the Individual Agreement shall begin on the date stipulated in the Individual Agreement and end after a period of twelve (12) months from the Commencement Date ("Basic Term"). The term of the Individual Agreement shall be extended by a further twelve (12) months unless terminated in writing at the latest three (3) months prior to expiry of the Basic Term ("Extension Period"). Sentence 2 shall apply analogously for a further extension after expiry of an Extension Period.

11. Breach and termination

11.1. Should either of the Parties breach any stipulation contained in the Agreement, then the other party may:

11.1.1. terminate the Agreement: provided that the party to the Agreement who breached its obligations in terms thereof fails to remedy such breach within 7 (seven) calendar days after receiving a notice from the other party to the Agreement, and claim all damages that it might have suffered as a result of that breach; or

11.1.2. claim specific performance of the Agreement from the party in breach of the Agreement and all damages that it might have suffered as a result of that breach.

12. Validity

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

13. Confidentiality

Neither the Licensee, its agents, employees nor persons authorized by the Licensee to use the Software shall in any manner use, disclose or otherwise communicate any information with respect to the Software which might enable copying of all or any portion of the Software. The Licensee agrees to take all necessary action to protect the confidential and proprietary information included in the Software, including providing appropriate instruction to, and concluding relevant agreements with, its employees or other authorized users of the Software.

14. Relationship

This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorized thereto in writing.

15. Arbitration

All unresolved disputes arising under this Agreement shall be submitted to arbitration under the rules of the Arbitration Foundation of South Africa. The award of the arbitrator shall be binding and may be entered as a judgment in any court of competent jurisdiction.

16. Domicilium and Notices

The Parties elect the following addresses as their respective *domicilium citandi et executandi* and for the delivery and service of all notices and other communications under this Agreement:

16.1. Licensor at:
Address: 24 Totius Street,
Potchefstroom,
2530,
South Africa

16.2. Licensee at:

Address: _____

16.3. Either of the parties may change its *domicilium citandi et executandi* to another address within the same country, by way of a notice to the other party to this agreement, provided that such a notice is received by the addressee, at least 7 (seven) calendar days prior to such a change taking effect.

16.4. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been received when personally delivered or five days after posting, sent by registered mail, postage prepaid, to the above address.

17. Entire agreement and variations

17.1. This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

17.2. No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

17.3. Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this agreement.

18. Assignment, cession and delegation

Neither of the Parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

19. Relaxation

No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this agreement, and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

20. Waiver

No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

21. Severability

In the event that any of the terms of this Agreement is found to be invalid, unlawful or unenforceable, such term will be severable from the remaining terms, which will continue to be valid and enforceable.

22. Governing law

The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.

Signed at Potchefstroom this _____ day of _____ 20

LICENSOR:

Signature: _____

Name: Mr. W.A. Landman

Title: Chief Financial Officer

Address: 24 Totius Street,
Potchefstroom,

2530,
South Africa

Signed at _____ this _____ day of _____ 20

LICENSEE:

Signature: _____

Name: _____

Title: _____

Address: _____

SCHEDULE A

1. Installation address

2. Commencement Date

1st April 2011

3. End user Contact Person: _____

4. Department/division: _____

5. End user Contact e-mail address: _____

6. End user Contact telephone number: _____

7. End user Contact fax number: _____

8. Finance department contact: _____

9. Finance department e-mail address: _____

10. Finance department telephone number: _____

11. Finance department fax number: _____

12. Company website Address: _____

13. Type of license

13.1. Commercial/Academic/evaluation: **Academic**

13.2. Perpetual /Annual/ Limited period: **Annual**

13.3. Single user/multi user: **Multi**

14. Version

8.013 or newer

15. Number of seats

Unlimited

16. Annual rates (Subject to change upon 30 days prior written notice)

\$500

17. License fees and terms

N/A

18. Maintenance and Support fees

N/A