

# AIMMS SOFTWARE LICENSE AGREEMENT

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Licensor has the right to verify Licensee's compliance with this Agreement. Licensee agrees to a) provide Licensor with written certification of the number (by product and version) of copies installed; and (b) allow a Licensor's representative or an independent auditor to inspect and audit Licensee's computers and records for compliance with this Agreement during Licensee's normal business hours. Licensee shall fully cooperate with such audit and provide any necessary assistance and access to all relevant records and computers. If an audit reveals that Licensee has, or at any time has had, unlicensed installation or use of the Software, Licensee will promptly acquire sufficient licenses to cover any shortage and shall pay the full license fee for such additional licenses *along with* (i) payment to Licensor of the amount of maintenance fees or subscription payments that would have been payable for the period in which such additional licenses should have been in effect *and* (ii) an additional "Late Compliance Fee" of twenty-five percent (25%) of the total amount due for the additional licenses and maintenance and subscription fees. With respect to the foregoing, if Licensee has allowed or engaged in unlicensed installations or uses in excess of those permitted by the applicable license and as a result is required to acquire and pay for the additional licenses and pay the additional maintenance and subscription fees specified in this Section, Licensee acknowledges that payment of the Late Compliance Fee is a reasonable additional payment to Licensor, not as a penalty, but as compensation to Licensor for the administrative cost of administering the actions described in this Section and the additional work required of Licensor to reflect on its records the actions required hereunder as well as compensation to Licensor for the lack of use of the funds which would have been received by Licensor if timely paid by Licensee for the additional licenses and maintenance and subscription fees if paid as contemplated by this Agreement to have avoided such unauthorized uses of the Software. If a material license shortage of five percent (5%) or more is found, Licensee must reimburse Licensor for the costs incurred in the audit and acquire the necessary additional licenses within thirty (30) days without benefit of any otherwise applicable discount. If Licensee requests in writing prior to the conduct of such audit, Licensor agrees to sign a confidentiality agreement reasonable in its terms to protect Licensee's privacy interests in the case of such an audit.

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13.1. AIMMS may, at its sole discretion, immediately terminate this Agreement and de-activate use of the Software by Licensee if Licensee (or in the case of any person using the Software, whether with Licensee's permission or not and whether or not such use is permitted by or in accordance with this Agreement) a) are in material breach of any of the terms and conditions for use of the Software as stated in this Agreement or any other term or condition stated in writing at the time of delivery of the Software, and fail to cure within 15 days of receipt of written notice from the Licensor of such breach; b) fail to pay Software & Services License Fee when and as due (including, but not limited to Subscription Fees due upon renewal); c) fail to comply with the terms of any quote or Licensee pursuant to which the Agreement has been

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13.4. As further described in Article Fees above, in case termination occurs because of failure by the Licensee to pay in the agreed terms, Licensor may suspend Licensee's online access to the Software and data.

13.5. Licensee may terminate this Agreement for any reason with 30 days' written notice; provided, however, that if the Agreement is terminated for convenience pursuant to this section, Licensee will not receive a refund of any prepaid Software & Services License Fee and Licensor may suspend Licensee's online access to the Software and data from the date of termination.

## 14. Other Licensor Entities and Supplier Rights.

Licensee acknowledges and agrees that certain provisions set forth in this Agreement include covenants and obligations of Licensee not only to Licensor, but also to other Licensor entities and third-party suppliers, and that other provisions are expressed to be not only for the benefit of Licensor, but also for the benefit of such Licensor entities and third-party suppliers. Licensee further acknowledges and agrees that each such Licensor entity and/or third party supplier is entitled in its or their own right to require by Licensee the due performance of each such covenant or obligation and shall be entitled to each such benefit; and, to the extent necessary to establish such third party rights and benefits under applicable law, that Licensor enters into this Agreement, not only in its own right, but also as agent for each such Licensor entity and/or third party supplier.

## 15. No Joint Venture or Other Relationship.

Nothing in this Agreement is intended to or shall be construed as creating an agency, partnership, joint venture, franchise, or employment relationship between Licensee and AIMMS or any person or entity

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affiliated with or employed by AIMMS.

## 16. Taxes.

Licensee is and shall be responsible for all applicable taxes (including, without limitation, income, property, franchise, gross receipts, goods and services, excise, sales, use, and value added taxes), duties, fees, tariffs, or other governmental charges or expenses imposed by any taxing authority (collectively, "Taxes") in connection with Licensee's licensing of the Software and receiving the Services and on any transactions arising out of or related to use of the Software or receiving the Services. Licensor shall state applicable Taxes on its invoices and shall remit all collected Taxes to the appropriate taxing authority.

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## 18. Choice of Law; Dispute Resolution; Language.

Licensee agrees that all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement shall be governed by, and construed in accordance with the following criteria: If Licensor is AIMMS B.V. or AIMMS Pte Ltd, the governing laws are the Laws of the Netherlands and disputes will be resolved by Arbitration in Amsterdam by a single arbitrator, in Dutch if both parties so wish, or in English otherwise. If Licensor is AIMMS Inc, the governing laws are the Laws of the State of New York and disputes will be resolved by a single arbitrator in New York, in English.

The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The above does not prevent Licensor and its suppliers from seeking injunctive or provisional relief with respect to a violation of intellectual property rights or

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## 19. Data Protection & Processing of Personal Data. Usage Data.

19.1. Both parties shall comply with the provisions and obligations imposed by the EU General Data Protection Regulation 2016/679 (the “**Data Protection Law**”) with respect to all Personal Data provided by Licensee to the Licensor.

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19.5. To the extent Licensee is a data controller for the purpose of any personal data processed under or in connection with the Agreement, Licensee shall comply with the provisions and obligations imposed by the applicable Data Protection Law and related regulations.

19.6. In the event that AIMMS needs to have access to Licensee’s users’ personal data to provide the Services, as data controller, Licensee confirms that it has obtained all necessary authorizations for lawful processing, prior to passing personal data to AIMMS. To the extent AIMMS processes personal data as a data processor for Licensee under or in connection with the Agreement, AIMMS shall ensure appropriate protection is in place to safeguard such personal data.

19.7. AIMMS shall use its reasonable efforts to assist Licensee to comply with Licensee’s obligations, as data controller, to respond to requests for access to Licensee’s records made by individuals to whom the personal data relates, subject to the payment by Licensee of AIMMS’s reasonable professional charges for the time engaged by AIMMS staff in so doing.

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19.8. Licensee authorizes AIMMS to collect, use, store and transfer the personal data Licensee provides to AIMMS for the purpose of performing AIMMS's obligations under the Agreement and for any additional purposes described, pursuant to the Agreement.

19.9. AIMMS may, in the normal course of business, make worldwide transfers of personal data on its corporate systems, to other entities, agents or subcontractors in the same group of companies, or to other relevant business partners who may have incidental access to personal data. When making such transfers, AIMMS shall ensure appropriate protection is in place to safeguard personal data transferred, under or in connection with the Agreement.

19.10. AIMMS shall not be liable for any claim brought by Licensee or a data subject arising from any action or omission by AIMMS to the extent that such action or omission resulted from compliance by AIMMS with Licensee's instructions.

19.11. If Licensee is a cloud customer (i.e. Licensee is accessing the Software in the cloud):

1. AIMMS informs Licensee and Licensee consents that AIMMS may, from time to time, collect and record usage data so that AIMMS can continuously assess and improve its services (e.g. resource demand forecasts); and
2. Licensee shall inform AIMMS, at least ten days in advance, when Licensee intends to conduct a 'pen test' or 'vulnerability assessment' so that AIMMS is aware and takes that into account when conducting its monitoring for suspect behaviour.

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## 22. Survive Termination.

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The covenants, conditions, terms and provisions of this Agreement shall survive termination of this Agreement.

## 23. Severability and Amendment.

23.1 This Agreement may not be amended by conduct, and may be amended only by way of a written document approved and accepted in writing (which may be by electronic signature) by Licensee and AIMMS. Any attempted or claimed amendment not fully in compliance with the requirements stated in the immediately-preceding sentence shall be of no force or effect. No one except AIMMS is authorized to modify this Agreement on behalf of AIMMS. If AIMMS does not insist upon strict performance with respect to any particular clause or requirement under this Agreement or does not, in a given instance, exercise its rights under this Agreement, such election not to insist upon strict performance or exercise of rights in a given instance shall not constitute an amendment of such term(s) or provision(s) and shall not bar AIMMS from insisting on strict performance of such terms or exercise of such rights as to any subsequent event or occurrence.

23.2 If any condition of this Agreement is considered illegal, such illegal condition shall not be part of this Agreement and rest of the conditions shall continue to be part of this Agreement. *Provided*, however, if the elimination of such illegal condition or term shall cause this Agreement to fail of its essential purpose or cause the Party benefited by such condition or term to lose a right or benefit which forms a material part of the consideration for its performance of this Agreement, such Party shall have the right to terminate this Agreement by giving written notice of such termination to the other Party, but such notice of termination must be given within thirty (30) days after the Party with the right to give such notice has received written notice that such condition or term has been declared illegal, and a failure to give a notice of termination within such time shall constitute that Party's waiver of the right to terminate based on this Article.

## 24. Force Majeure

Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed party.

If Licensee terminates this Agreement pursuant to this Article for failure of AIMMS to perform, AIMMS will refund to Licensee the fees for the Software or Services to the extent pre-paid by Licensee to AIMMS for the period following the effective date of termination.



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## 25. Confidentiality

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25.2 Except as otherwise established in this Agreement, the parties shall maintain the terms of this Agreement confidential at all times.

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As a convenience to Licensee and authorized users, AIMMS may make available to Licensee means of access to embedded third-party supplier components such as additional mathematical solvers in the form of open source software ("OS Solvers"). Such OS Solvers are NOT part of, and are separate from, the Software as further described in Section 26 below. Licensee's use of the OS Solvers is subject to the OS Solvers contractual terms referenced in or accompanying such OS Solvers. AIMMS can at any time discontinue or stop making the OS Solvers available to Licensee.

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- v. Licensee, by accessing or using the OS Solvers irrevocably acknowledges and agrees that AIMMS and all persons or entities that have distributed the OS Solvers (including such persons and entities who have distributed the OS Solvers to AIMMS) fully and unconditionally disclaim all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties of merchantability and fitness for a particular purpose, and Licensee and all persons accessing or using the OS Solvers accept and agree to such disclaimers, acknowledging that, but for their acceptance of such disclaimers, the OS Solvers would not be made accessible in conjunction with AIMMS' delivery of the Software;
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- x. LICENSEE ACKNOWLEDGES AND AGREES THAT NEITHER AIMMS NOR ANY ORIGINATOR OF OR CONTRIBUTOR TO THE OS SOLVERS SHALL HAVE ANY LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE OS SOLVERS OR THE EXERCISE OF ANY RIGHTS GRANTED IN THE OS SOLVERS UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;
- xi. For the avoidance of doubt, Licensee's indemnification obligations under this Agreement shall apply for any breach of this Section or any matters arising hereunder;
- xii. each and all of the foregoing terms and conditions shall survive termination or expiration of this Agreement or the License.

Executed by the Parties:

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Licensee Organization name

\_\_\_\_\_

AIMMS Entity:

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Date\_\_\_\_\_

Date\_\_\_\_\_

Signature\_\_\_\_\_

Signature\_\_\_\_\_

Name authorized representatives:

Name\_\_\_\_\_

Name\_\_\_\_\_