

# AIMMS SOFTWARE LICENSE AGREEMENT

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## 1. Definitions

**"Affiliate"** means any entity that, directly or indirectly, is controlled by one of the parties at the time of signing of this Agreement. Such an entity will be deemed to be an "Affiliate" only as long as such control exists. The term "control" means possession, directly or indirectly, of the power to direct management or policies (whether through ownership of securities, partnership or other ownership interests, by contract or otherwise). Upon request, each party agrees to confirm to the other the Affiliate status of a particular entity.

**"Agreement"** means this Agreement, its terms and conditions and all Order Forms entered into by the parties from time to time.

**"AIMMS"** means the AIMMS legal entity as specified in the applicable Order Form.

**"Confidential Information"** means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. AIMMS Confidential Information includes without limitation the Services and the Software; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, (iv) was independently developed by the Receiving Party, or (v) is disclosed pursuant to legal requirements or order.

**"Customer"** means the customer entity as specified in the applicable Order Form.

**"Data Protection Legislation"** means the General Data Protection Regulation ((EU) 2016/679); and any other applicable national implementing laws, regulations and secondary legislation, as amended or updated from time to time. "Data Subject", "Personal Data", "Controller", "Processor" and "Personal Data" shall each have the meanings as defined in the Data Protection Legislation.

**"Documentation"** means materials, in written or other tangible form (including on magnetic media) provided by AIMMS on or after the Effective Date that describe the Software's functional or technical specifications, which may include user guides, installation instructions and operation guides.

**"Effective Date"** means the date set forth on the signatory page of this Agreement, or if unsigned, the date set forth in the applicable Order Form that incorporates this Agreement by reference.

**"Subscription Term"** means the subscription term as set forth in the applicable Order Form.

**"Order Form"** means the ordering documents for Customer's purchases from AIMMS that are executed hereunder or otherwise formalized via digital means by the parties from time to time. AIMMS quotations signed by Customer are Order Forms. Order Forms shall be deemed incorporated herein.

**"Service"** means hosting the Software made available to Customer through the Internet or by other means of access designated by AIMMS.

**"Software"** means the AIMMS software products specified on the applicable Order Form, including any and all updates or new releases thereto, and such other AIMMS software products Customer may acquire the right to use from AIMMS after the Effective Date.

## 2. Access to the Software and Service

2.1 Subject to the terms of this Agreement, AIMMS grants to Customer a non-exclusive, non-transferable, subscription-based license to access and use the Software for analysing and optimizing Customer's own assets and data during the Subscription Term. The Software consists of the application software and any third-party products and services specified on the applicable Order Form that are made available to Customer.

2.2 If Customer has ordered hosting services on an Order Form, as part of the Service, AIMMS shall host the Software at locations as may be designated by AIMMS from time to time and allow Customer and its authorised users to access and use the Software according to the terms of this Agreement.

2.3 The Software may contain open-source software with a permissive, non-GPL, licensing scheme, which the Licensee may use under the terms and conditions of the specific license under which the open-source software is distributed.

2.4 Customer may permit its Affiliates to access and use the Software in accordance with the terms of this Agreement, provided that Customer shall be responsible for compliance by such Affiliate with this Agreement.

2.5 When relevant, Customer may allow consulting and/or implementation firms to access and use the Software in accordance with the terms of this Agreement solely for the purpose of servicing Customer's projects, and provided that Customer shall be responsible for compliance by such consulting and/or implementation firms with this Agreement.

2.6 Limitations with respect to users, accounts, licensed scope, and other matters regarding Customer's use of the Software and/or Service shall be set forth in the applicable Order Form.

2.7 If Customer provides consulting services to End Users, Customer may access and use the Software for analysing and optimizing data for the business purposes of such End Users. "End User" means an end user customer of Customer for whom Customer is collecting, analysing and reporting data. For the avoidance of doubt, Customer may not make the Software or Service available to End Users.

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## 3. Intellectual Property Rights

3.1 All right, title and interest in and to the Software and Service and any Confidential Information made available by AIMMS to the Customer pursuant to this Agreement, including without limitation, all intellectual property rights therein, shall remain exclusively with AIMMS and its licensors, as applicable.

## 4. Use of the Software and Service

4.1 Customer is responsible for its authorised users' compliance with this Agreement. Customer shall: (i) use reasonable efforts to prevent unauthorised access to, or use of, the Software and Service, and notify AIMMS promptly of any such unauthorised access or use; and (ii) comply with all applicable laws in using the Software and Service including without limitation all applicable export control regulations of the European Union and the United States of America and specifically it shall not permit users to access the Software in a EU or USA embargoed country or in violation of any EU or USA export law or regulation. Each party represents that it is not named on any government denied-party list.

4.2 Customer shall use the Software and Service solely for its internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software or Service available to any third party, other than to authorised users or as otherwise contemplated by this Agreement; (ii) attempt to gain unauthorised access to the Software, Service or its related systems or networks; or (iii) use the Software and Service outside or in excess of the licensed scope as set out in the applicable Order Form.

4.3 Customer shall not (i) modify, copy or create derivative works based on the Software; (ii) frame or mirror any content forming part of the Software or Service, other than on Customer's own intranets or otherwise for its own internal business purposes; (iii) decompile, disassemble, or reverse engineer or otherwise attempt to discover the source code of the Software except and only to the extent that applicable law expressly permits such activity; (iv) access the Software or Service in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Software; (v) use the Software or Service for any purposes except as expressly provided in this Agreement; (vi) copy nor permit any person using the Software to copy any written materials accompanying the Software other than strictly for Customer's internal use; (vii) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on the Software, Documentation and any related materials; or (viii) except as expressly permitted under Section 2, allow any third party to access or use the Software or Service for any reason. Customer shall notify AIMMS immediately to the extent it becomes aware of any unauthorised use, or access to the Software or the Service or any other Confidential Information made available to Customer under this Agreement, by any person or entity not authorized by this Agreement to have such possession, use or access.

4.4 Customer shall be responsible for the purchase, set-up, operation, maintenance and support of any and all software, hardware or other computer systems used by it to access and use the Software and Service, including without limitation maintenance of a local internet service provider. To the extent Customer requires an internet connection for proper use of the Software and Service, Customer shall be solely responsible for such internet connection, including without limitation all hardware, software and other equipment necessary to access the internet. The Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. AIMMS shall not be responsible for any delays, delivery failures, or other damages resulting from such problems.

## 5. Fees and Payment

5.1 Customer shall pay AIMMS all fees payable for the use of the Service, the Software and any other services purchased from AIMMS as specified in the applicable Order Form. Payment obligations are non-cancellable, and fees paid are non-refundable, unless explicitly set out in this Agreement. All fees are due and payable within the time as specified in the applicable Order Form. Fees will be invoiced by AIMMS as specified in the applicable Order Form. Any payment not made when due will bear interest from the date due until paid at the maximum rate allowed under applicable law.

5.2 If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, AIMMS reserves the right to suspend the right to use or access the Software and the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

5.3 All prices are exclusive of taxes, if any, on the Software and the Service; all sales and use taxes required to be remitted by AIMMS shall be payable by Customer upon invoice by AIMMS. For multi-year orders, the fee will be yearly adjusted for inflation based on the Consumer Price Index published for The Netherlands (if AIMMS is invoicing in Euros) or for the USA (if AIMMS is invoicing in US Dollars).

## 6. Confidentiality

6.1 The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 6. Notwithstanding the foregoing, AIMMS may disclose the terms of this Agreement and any applicable Order Form to a subcontractor to the extent necessary to perform its obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein. The Receiving Party may disclose Confidential Information of

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the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. Each party's obligations under this Section 6 shall survive expiration or termination of the Agreement for a period of three (3) years.

## 7. Data Protection

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Section 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and AIMMS is the Processor. AIMMS Processes Personal Data for Customer to provide the Software, Service and related services as set forth in this Agreement. AIMMS will Process this Personal Data for as long as this Agreement is in effect.

7.2 Without prejudice to the generality of Section 7.1 above, Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to AIMMS for the duration and purposes of this Agreement.

7.3 Without prejudice to the generality of Section 7.1 above, AIMMS shall, in relation to any Personal Data Processed in connection with the performance by AIMMS of its obligations under this Agreement: (i) process that Personal Data only on the written instructions of Customer unless AIMMS is required by applicable laws to otherwise Process that Personal Data. Where AIMMS is relying on applicable laws as the basis for Processing Personal Data, AIMMS shall promptly notify Customer of this before performing such Processing, unless those applicable laws prohibit AIMMS from so notifying Customer. AIMMS shall also notify the Customer immediately if AIMMS believes the Customer's Processing instructions breach applicable law; (ii) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures; (iii) ensure that all personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential; (iv) not transfer any Personal Data outside of the European Economic Area unless the written consent of Customer has been obtained, except that AIMMS may transfer Personal Data to any of its Affiliates and AIMMS's and its Affiliates' authorised data sub-processors if AIMMS has provided appropriate safeguards in relation to such transfer. AIMMS will notify Customer if AIMMS changes data sub-processors and Customer can object to any changes. AIMMS confirms that it has entered or (as the case may be) will enter into a written agreement with any data sub-processor incorporating terms which are substantially similar to those set out in this Section 7. As between Customer and AIMMS, AIMMS shall remain fully liable for all acts or omissions of any data sub-processor appointed by it; (v) assist Customer in responding to any request from a Data Subject and in ensuring compliance with Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; (vi) notify Customer without undue delay on becoming aware of a Personal Data breach; (vii) at the written direction of Customer, delete or return Personal Data and copies thereof to Customer on termination of this Agreement, unless AIMMS is required by applicable law to store the Personal Data longer; and (viii) maintain complete and accurate records and information to demonstrate its compliance with this Section 7.

## 8. Warranty

8.1 Each party represents and warrants that it has the legal power to enter into this Agreement. AIMMS represents and warrants that (i) it will provide the Service and other services as specified in an Order Form in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (ii) it owns or otherwise has sufficient rights in the Software to grant to Customer the rights to use the Software granted herein.

8.2 AIMMS warrants to Customer that, for a period of three (3) months from the date Customer first downloads the Software from the applicable website (the "Warranty Period"), the Software will perform substantially in accordance with the Documentation accompanying the Software. If the Software fails to perform substantially in accordance with the Documentation, Customer shall notify AIMMS in writing within the Warranty Period. If AIMMS receives such notice within the Warranty Period, AIMMS shall use reasonable efforts to make the Software perform in accordance with the Documentation. If, after using reasonable efforts, AIMMS is not able to repair or replace the Software so that it performs substantially in accordance with the Documentation, Customer may terminate the applicable Order Form upon written notice to AIMMS and AIMMS shall refund to Customer the fees paid by Customer for the non-conforming Software. The foregoing are Customer's sole and exclusive remedies for breach of this warranty. The warranty set forth in this Section 8.2 shall not apply if the Software has not been properly installed and used at all times in accordance with the Documentation. AIMMS makes no warranties that the Software will function when used in conjunction with third party products, including without limitation workstations.

8.3 EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, AIMMS MAKES NO WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE SOFTWARE, SERVICE OR OTHER SERVICES PROVIDED UNDER AN ORDER FORM, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION THAT THE SOFTWARE, SERVICE OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF OR ACCESS THERETO WILL BE ERROR FREE. TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW, AIMMS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, EXCEPT TO THE EXTENT THAT ANY WARRANTIES OR REPRESENTATIONS IMPLIED BY APPLICABLE LAW CANNOT BE VALIDLY WAIVED.

8.4 AIMMS disclaims all warranties and liabilities arising from or related to any third-party products or services, or open-source products (regardless of whether obtained from AIMMS or another source).

## 9. Technical Support

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9.1 AIMMS shall use reasonable efforts to maintain the service levels and uptimes as set out in the Service Level Statement at: <https://www.aimms.com/wp-content/uploads/AIMMS-SLS-20221228.pdf>. AIMMS shall provide maintenance and technical support services as set out in the Service Level Statement. The support and maintenance services described in the Service Level Statement are included in the fees payable for the use of the Service and/or the Software. If Customer desires to receive maintenance and support services outside of the services described in the Service Level Statement, such services may be arranged according to terms and conditions separately agreed between AIMMS and Customer.

9.2 AIMMS is not obligated to provide any technical support or maintenance for third-party products or services, or open-source products (regardless of whether obtained from AIMMS or another source), including without limitation Customer's networks or installation of networks.

9.3 To the extent AIMMS is providing any other services to Customer in connection with the Software or Service under an Order Form, including training or professional services, the terms and conditions of Annex 3 shall apply to the provision of such services.

9.4 Customer acknowledges and agrees that AIMMS's employees are a valuable asset to AIMMS and are difficult to replace. Accordingly, Customer agree that, during the term of this Agreement and for a period of one (1) year thereafter, Customer shall not solicit, recruit or offer employment or engagement (whether as an employee, independent contractor or consultant) to or hire any of AIMMS's employees. Customer agrees that if it violates the terms of this Section 9.4, it will immediately pay AIMMS, as liquidated damages and not as a penalty, a sum equal to the annual salary of the employee solicited or hired by Customer. An individual's response to a broad and general advertisement or solicitation not specifically targeting or intending to target employees of AIMMS or any of Affiliates shall not be deemed a violation of this Section 9.4.

## 10. Verification

10.1 AIMMS may audit Customer's use of the Software and the Service in order to verify compliance with the terms of this Agreement, including without limitation electronic auditing means at any time during the term of this Agreement. If an audit yields any deficiency in the amounts paid to AIMMS, Customer shall promptly remit payment to AIMMS of such amounts. In case Customer does not pay any such amount within thirty (30) days, in addition to any of its other rights or remedies, AIMMS reserves the right to suspend the right to use or access the Software and the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

## 11. Indemnification

11.1 Customer shall indemnify, defend and hold AIMMS harmless from and against any and all losses, damages, costs and expenses (including reasonable attorneys' fees) incurred by it in connection with claims made or brought against AIMMS involving a breach of this Agreement by Customer or its employees, agents or contractors or any violation of applicable law by Customer. AIMMS shall (a) promptly give written notice of the claim to Customer; (b) give Customer sole control of the defence and settlement of the claim (provided that Customer may not settle or defend any claim unless it unconditionally releases AIMMS of all liability); and (c) provide to Customer, at Customer's cost, all reasonable assistance.

## 12. IP Infringement

12.1 AIMMS shall, at its sole cost and expense, defend and settle any claim brought by a third party against Customer alleging that the Software infringes any patent, trade secret, trademark or copyright of any third party ("Infringement Claim"). AIMMS shall have the sole and exclusive right to defend and settle any Infringement Claim. In the event of an Infringement Claim, AIMMS shall also have the right, at its sole cost and expense, to (i) repair or replace the Software so that it is non-infringing (providing the repaired or replacement software has the same or substantially similar functionality as the Software); or (ii) acquire a license for Customer to continue to use the Software. If neither (i) nor (ii) are reasonably possible to AIMMS, then AIMMS may terminate the applicable Order Form upon written notice and pay to Customer an amount equal to the total fees paid by Customer for the Software in the twelve (12) month period immediately preceding such termination. This Section states Customer's sole and exclusive remedy, and AIMMS's sole and exclusive obligation, with respect to an Infringement Claim. AIMMS shall have no obligations under this Section 12 to the extent that Customer modifies (or has modified on its behalf) the Software or combines the Software with other software, hardware or other technology not provided or authorised by AIMMS.

## 13. Limitation of Liability

13.1 AIMMS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF REVENUE, PROFITS, OR DATA, ARISING IN CONNECTION WITH THE SOFTWARE OR SERVICE OR ANY SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF AIMMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AIMMS'S MAXIMUM CUMULATIVE LIABILITY FOR ANY AND ALL DAMAGES, COSTS, LOSSES, LIABILITIES AND EXPENSES OF ANY KIND AND NATURE ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. THE EXCLUSIONS IN THIS CLAUSE SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW, BUT AIMMS DOES NOT EXCLUDE LIABILITY CAUSED BY ITS WILFUL INTENT OR GROSS NEGLIGENCE OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.

## 14. Term and Termination

14.1 This Agreement commences on the Effective Date and will remain in force unless earlier terminated in accordance with Section 14.3 hereunder, or unless a party indicates that it wishes to terminate the Agreement by giving at least sixty (60) days written notice to the other party. Termination of this Agreement will not affect any Order Forms that were already signed before such termination. These Order Forms will be executed in accordance with, and will remain subject to, the terms of the Agreement.

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14.2 An Order Form shall automatically terminate without any notice being due at the end date of the Subscription Term. Customer cannot cancel or terminate a Subscription Term except as expressly permitted by Section 14.3. At any time prior to the expiration of the Subscription Term, the parties may agree to a new Subscription Term pursuant a new Order Form.

14.3 AIMMS may terminate this Agreement or an Order Form immediately upon written notice if Customer directly or indirectly discloses or provides the Software or the Service available to any third party not authorised under the terms of this Agreement. Either party may terminate the Agreement or an Order Form in any of the following cases: (i) upon thirty (30) days prior written notice if the other party materially breaches this Agreement or an Order Form and fails to cure such breach within the thirty (30) day notice period, including without limitation Customer's failure to pay the then-current fees when due; (ii) immediately if the other party permanently ceases to operate its business; or (iii) immediately upon an assignment for the benefit of the other party's creditors; a petition of bankruptcy filed by or against the other party; a receiver, trustee in bankruptcy, or similar officer is appointed to take control of all or part of the other party's business; or the other party is adjudicated bankrupt.

14.4 Upon termination or expiration of the applicable Order Form, Customer shall immediately cease using the Software and the Service, return all of the copies of AIMMS's Confidential Information to AIMMS and acknowledge that it may no longer use the Software or the Service. In the event that the Software is installed on Customer's computers, Customer shall immediately delete all copies of the Software residing on the computers, networks and/or systems of Customers and certify to AIMMS that it has not retained any copies thereof. In the event of termination of an Order Form, all fees due and to become due over the remaining period of the Subscription Term shall immediately become due and payable. Notwithstanding the preceding sentence, in the event of termination of an Order Form by Customer in accordance with Section 14.3 (i), Customer has the right to request a refund of any prepaid fees covering the remainder of the Subscription Term after the effective date of termination. Upon termination of this Agreement or an Order Form, AIMMS's obligations thereunder shall cease. The provisions of Sections 1, 3, 4.3, 5, 6, 8, 9.4, 11, 13, 14.4 and 16 shall survive any termination or expiration of this Agreement.

## 15. Applicable Law and Forum

15.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with:

- (i) the laws of the Netherlands in the event that the AIMMS entity on the applicable Order Form is AIMMS B.V. or AIMMS Pty Ltd.; or
- (ii) the laws of the [State of New York] in the event that the AIMMS entity on the applicable Order Form is AIMMS Inc.

15.2 Any dispute arising out of or in connection with this Agreement that cannot be amicably resolved between the parties shall be settled:

- (i) in the event that the AIMMS entity on the applicable Order Form is AIMMS B.V. or AIMMS Pty Ltd., in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal shall be composed of one arbitrator; or
- (ii) in the event that the AIMMS entity on the applicable Order Form is AIMMS Inc., in accordance with the rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS").

15.3 The United Nations International Convention on Contracts for the International Sale of Goods is expressly excluded from applicability to this Agreement.

## 16. Miscellaneous

16.1 This Agreement, including the applicable Order Form(s), constitutes the entire agreement between the parties, superseding all prior oral or written representations, agreements or understandings with respect to the subject matter hereof and thereof. There are no representations, warranties, conditions, guarantees or agreements relating to such subject matter except those expressly stated in this Agreement. To the extent there is any conflict between the terms of this Agreement and the applicable Order Form(s), the terms of the Order Form shall prevail.

16.2 Customer shall not sell, transfer, assign or otherwise convey this Agreement, or any of Customer's rights or obligations hereunder, including without limitation by operation of law to a successor in interest in connection with a merger, consolidation, sale of shares or assets or other change of control transaction involving without the Customer, without the prior written consent of AIMMS, which consent shall not be unreasonably delayed or withheld. AIMMS may, after prior notification to Customer, sell, transfer, assign or otherwise convey this Agreement, or any of its rights or obligations hereunder, to any of its Affiliates or in connection with a merger, consolidation, sale of shares or assets or other change of control transaction involving AIMMS. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

16.3 AIMMS reserves the right to assign, transfer, subcontract or delegate all or any part of its rights or obligations under this Agreement to any of its Affiliates at any time with or without notice to Customer. AIMMS agrees to be responsible for the acts and omissions of its Affiliates to the extent AIMMS assigns, transfers, subcontracts or delegates any of its obligations hereunder to them.

16.4 Neither party shall make any disclosure to any other person or issue any press release or other public announcement regarding this Agreement or any relationship between AIMMS and Customer or use the name, trademarks or other proprietary identifying symbol of the other party, without the other party's prior written consent, except that AIMMS may identify (by name and/or logo) Customer as a customer of AIMMS in a mere list of customers on its website and in related marketing materials, unless and until Customer revokes such consent.

16.5 Nothing in this Agreement is intended to or shall be construed as creating an agency, partnership, joint venture, franchise, or employment relationship between Customer and AIMMS or any person or entity affiliated with or employed by AIMMS.

16.6 Customer agrees that certain breaches of this Agreement by it may result in irreparable harm to AIMMS, the extent of which

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would be difficult and/or impracticable to assess, and where money damages would not be an adequate remedy for such breach. Accordingly, AIMMS shall be entitled to seek any and all remedies available at law or in equity, including without limitation injunctive relief or specific performance.

16.7 This Agreement may not be amended except in a writing signed by authorized representatives of both parties.

16.8 The failure of either party to enforce any provision or condition contained herein at any time will not be construed as a waiver of that provision or condition nor will it operate as a forfeiture of any right or future enforcement of the provision or condition.

16.9 If any provision of this Agreement, or the application of any provision to any party or circumstance, is held invalid, the remainder of this Agreement, and the application of the provision other than to the extent it is held invalid, will not be invalidated or affected.

16.10 AIMMS will not be in breach of this Agreement if its performance is prevented or delayed for circumstances beyond its control, including but not limited to acts of God, inclement weather, flood, lightning or fire, strikes or other labour disputes or industrial action, act or omission of government or other competent authority, pandemic, terrorism, war, riot, or civil commotion, unavailability of supply or power outage, hackers, viruses, disruption in transmission, or disruption in telecommunications services.

16.11 No one other than a party to this Agreement shall have any right to enforce any of its terms.

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## ANNEX 1 BESPOKE APPLICATIONS

If Customer has purchased licenses for AIMMS Development and/or AIMMS PRO (or equivalent functional product if the naming changes), then the following supplemental terms to the Agreement shall apply:

1. Subject to the limitations stated in the Agreement, Customer may use the Software to create, either itself or by an authorized AIMMS implementation partner, one or more models and bespoke applications that address a specific Customer issue (hereinafter "Bespoke Application").
2. All right, title and interest in and to the Bespoke Application shall vest in Customer. However, the aforesaid shall in no event imply a transfer to Customer of rights, title and interest in and to the Software or to any materials, (development-) products, methods, techniques that enables the creation and publishing of the Bespoke Application(s).
3. AIMMS SHALL HAVE NO LIABILITY OR OBLIGATION ARISING FROM OR WITH RESPECT TO ANY BESPOKE APPLICATION.
4. Customer shall indemnify, defend and hold AIMMS harmless from and against any and all losses, damages, costs and expenses (including reasonable attorneys' fees) incurred by it in connection with claims made or brought against AIMMS alleging that the Bespoke Application infringes any patent, trade secret, trademark or copyright of any third party.
5. For the avoidance of doubt, nothing prevents AIMMS to develop and to bring to the market, (by means of its own independent development efforts and in response to generic market opportunities), standard software applications that include functions and capabilities that happen to also be present in a Bespoke Application.

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## ANNEX 2

### Open-Source Solvers

If AIMMS makes available to Customer means of access to embedded third-party supplier components such as additional mathematical solvers in the form of opensource software ("OS Solvers"), such availability is to be regarded a service convenience to Customer and the below conditions apply to the OS Solvers and any use thereof and are accepted and approved by Customer and by all persons accessing or using any of the OS Solvers pursuant to this Agreement.

Customer'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 Customer.

If Customer does not agree to all of the following terms and conditions (both accompanying the OS Solvers and those following below), neither Customer nor any person acting by, for or through Customer may use, access, or distribute the OS Solvers in any way. Customer further agrees to indemnify, defend and hold harmless AIMMS and any of AIMMS's suppliers for any loss, injury or damage sustained by AIMMS and/or such supplier as a result of Customer's breach of any of the terms or conditions of this Section or of any license agreement or conditions of use pertaining to the use of any such OS Solvers.

- i. The OS Solvers are separate from and not part of the Software;
- ii. No assurances, express or implied, are provided by AIMMS or by the originator of or any contributor to any of the OS Solvers regarding whether any of the OS Solvers does or does not infringe the patent or intellectual property rights of any other person or entity;
- iii. Any liability for claims brought by any person or entity alleging infringement of intellectual property rights or otherwise relating to or arising from use or presence of any of the OS Solvers is expressly and specifically disclaimed both by AIMMS and by the originator thereof;
- iv. As a condition to exercising the right to access and use the OS Solvers, both Customer and user of the OS Solvers assume sole responsibility to secure any intellectual property rights needed, if any, for use of the OS Solvers beyond the rights to use the OS Solvers in conjunction with Customer's use of the Software; for example (but not by limitation on the foregoing), if a third party patent license is required to allow Customer or any authorized user of the Software to use or distribute the OS Solvers or any derivative work based thereon, it is the sole responsibility of Customer or such user to acquire such license before such.
- v. Customer, 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 Customer 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;
- vi. Customer and all users of the OS Solvers further irrevocably agree they shall have no claim against AIMMS or against any person or entity contributing or providing the OS Solvers or any part thereof any liability of any nature, for damages, including direct, indirect, special, incidental and consequential damages such as lost profits;
- vii. Customer irrevocably agrees for itself and any person using the OS Solvers that it shall not remove or alter any copyright notices contained within the OS Solvers;
- viii. Neither Customer nor any person accessing the OS Solvers through Customer shall modify any of the OS Solvers;
- ix. THE OS SOLVERS ARE PROVIDED STRICTLY ON AN "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Each user of the OS Solvers is solely responsible for determining the appropriateness of using and, if applicable, distributing the OS Solvers and assumes all risks associated with his, her or its exercise of rights under this Agreement pertaining to the OS Solvers, including but not limited to the risks and costs of program errors, compliance with applicable laws, damage to or loss of data, programs or equipment, and unavailability or interruption of operations;
- x. CUSTOMER 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, Customer'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.



# AIMMS SOFTWARE LICENSE AGREEMENT

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## ANNEX 3

### Professional Services

#### 1. Additional Definitions

(a) Capitalised terms used in this Annex that are not otherwise defined herein have the meaning set forth in the Agreement.

#### 2. Services

(a) The parties anticipate that Customer may desire to engage AIMMS to perform certain services in connection with the licenses or access rights granted to Customer by AIMMS under the Agreement, including, by way of example, training, installation, data cleansing and validation, configuration and/or customization of the Software. Subject to the terms and conditions set forth in this Annex, AIMMS shall use commercially reasonable efforts to perform the services as set forth in any Order Form.

(b) In the event that Customer requests that AIMMS performs services, the applicable Order Form shall describe the services and the fees, costs and expenses payable by Customer to AIMMS in connection with the performance of such services.

(c) Customer may at any time request a modification to the services to be performed pursuant to any particular Order Form by written request to AIMMS specifying the desired modifications. AIMMS shall, within a reasonable time following receipt of such request, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the services pursuant to the Order Form. If accepted in writing by Customer, such modifications in the Order Form shall be performed under the terms of this Annex. Modifications in any Order Form shall become effective only when a written change request is executed by authorized representatives of both parties.

(d) In case the applicable Order Form states that the services are subject to an acceptance procedure, the following shall apply. Upon AIMMS' completion of the services or Deliverables (as defined in Section 5 below), AIMMS shall notify Customer in writing and Customer shall have five (5) business days to either accept the services or Deliverables or reject them by providing AIMMS with a written notice of exceptions ("Notice of Exceptions"). If Customer fails to provide AIMMS with a Notice of Exceptions within such period, the services and/or Deliverables will be deemed accepted without any further act required by either party. Within ten (10) business days of receiving a Notice of Exceptions from Customer, AIMMS shall submit a plan to correct any deficiencies in the services/Deliverable and shall use commercially reasonable efforts to correct and re-submit the Deliverable/re-perform the services for acceptance in a timetable agreed to by the parties. Re-performed services and/or re-submitted Deliverables shall be subject to the same acceptance procedures set forth in this section.

#### 3. Personnel

(a) AIMMS shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Order Form. AIMMS may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

(b) Customer shall make available in a timely manner at no charge to AIMMS all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources required by AIMMS for the performance of the services. Customer shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. Customer shall be responsible for preparation of its facilities and all reasonable costs thereof as required for proper installation of the Software. Customer shall be responsible for ensuring that the system requirements set out in the sales proposal / quotation for installation and implementation of the Software are in place and for maintaining a proper operating environment for the Software.

#### 4. Fees; Payments

(a) In consideration of the services, Customer shall pay AIMMS such fees as required by the applicable Order Form or as set forth in the applicable sales proposal / quotation. If services are performed at the Customer site, AIMMS' travel related expenses incurred will be billed to and paid by Customer. All fees are due and payable within the time as specified in the applicable Order Form. Fees will be invoiced by AIMMS as specified in the applicable Order Form.

(b) For any services that are provided on a subscription basis, AIMMS may increase the fees for such services as specified in the applicable Order Form.

#### 5. Intellectual Property Rights

(a) Except to the extent that the same constitutes or embodies Customer's Confidential Information, ownership of all work product, developments, inventions, technology or materials (collectively, the "Deliverables") resulting from services performed in connection with this Annex shall be solely owned by AIMMS, including without limitation all intellectual property rights therein and thereto; provided, however, that Customer shall have a limited right and license to use such Deliverables consistent with its license rights set forth in the Agreement.

#### 6. Limitation of Warranties and Liability

(a) AIMMS warrants that the services performed under this Annex will be performed in a professional and workmanlike manner and further warrants that it has the required skills and experience to perform the services set forth in the specific Order Form.

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(b) Except as set out in this section 6, AIMMS makes no further representations or warranties regarding the services performed in connection with this Annex or any Deliverables resulting therefrom, and Customer acknowledges that this Annex is subject to all disclaimers and limitations on liability set forth in the Agreement.

### **7. Term; Termination**

(a) This Annex commences on the Effective Date and shall remain in effect so long as the Agreement is in effect.

(b) Either party may, at its sole option and for its own convenience, terminate the services as set out in an Order Form in effect upon thirty (30) days prior written notice. Upon such termination, AIMMS shall inform Customer of the extent to which performance has been completed through such date. Customer shall pay AIMMS for all work performed and expenses incurred through the date of termination. Customer shall also promptly pay AIMMS all amounts due and outstanding up to the effective date of termination.