EULA - SpinSci Technologies LLC

SOFTWARE LICENSE AGREEMENT

USE OF SOFTWARE IS PROVIDED ONLY UNDER LICENSE FROM SPINSCI TECHNOLOGIES, LLC ("SPINSCI" OR "LICENSOR"). BY PURCHASING, COPYING, DOWNLOADING, INSTALLING, AND/OR USING ALL OR ANY PORTION OF THIS SOFTWARE OR ANY SPINSCI SOFTWARE PRODUCT(S), THE INDIVIDUAL OR ENTITY LICENSING THE PRODUCT(S) ("LICENSEE" or "YOU") ACCEPTS ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT AND IS CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT. LICENSEE AGREES THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY LICENSEE. THIS AGREEMENT IS ENFORCEABLE AGAINST LICENSEE. IF LICENSEE DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THE LICENSEE MUST NOT INSTALL OR USE THE SOFTWARE. YOUR USE OF THE SOFTWARE INDICATES YOUR ACCEPTANCE OF THIS AGREEMENT AND IF YOU DO NOT AGREE TO BE BOUND BY THESE PROVISIONS, YOU ARE REQUIRED TO DESTROY ALL COPIES OF THE SOFTWARE FROM YOUR EQUIPMENT IMMEDIATELY.

1. LICENSE TERMS

a. Evaluation Use. The terms of this Section 1(a) are applicable to You if You have registered as an Evaluation customer. Subject to the terms of this Agreement, SpinSci grants to You a non-exclusive, non-transferable, license to use the evaluation version of the Software solely for your Evaluation Use for Your internal business. Third Party Software supplied by SpinSci, if any, may be used solely with the Software. This Evaluation license begins upon the downloading or receiving of the Software and ends thirty (30) days thereafter (the "Evaluation Period") at which time this Evaluation License expires and You must stop using the Software or pay SpinSci for any use after this time in accordance with Section 1(c) below. All rights not specifically granted to You herein are retained by SpinSci. For purposes of this Agreement, "Third-Party Software" means the object code version of the information processing programs developed by third parties unrelated to Licensor, which may be used with the Software, but which may require separate agreements between You and the Third-Party Software vendor, and the open-source software used as part of the Software (a copy of the Open-Source Guidelines and modules used by SpinSci is available upon request). Third Party Software not supported or maintained by Licensor.

b. Development Use The terms of this Section 1(b) are applicable to You if You have registered as a Development Use customer. Subject to the terms of this Agreement, the Sales Form and payment of all applicable fees, SpinSci grants to You a non-exclusive, non-transferable, fee bearing license to use the Software solely for Development Use for Your internal business purposes, as specified on the corresponding invoice, quote and/or sales order form, whichever is most current ("Sales Form") and solely for the term, that number of servers or users set forth in the Sales Form. Third Party Software supplied by SpinSci, if any, may be used solely with the Software. All rights not specifically granted to You herein are retained by SpinSci.

c. Production Use. The terms of this Section 1(c) are applicable to You if You have registered as a Production Use customer. Subject to the terms of this Agreement, the Sales Form and payment of all applicable fees, SpinSci grants to You a non-exclusive, non-transferable, fee bearing license to use the Software solely for Production Use, as specified on the corresponding Sales Form, and solely for the term, that number of servers or users set forth in the Sales Form. Third Party Software supplied by SpinSci, if any, may be used solely with the Software. This Production Use license is for Your internal business use and not for reseller or OEM arrangements. If You integrate the Software into an application and intend to distribute the resulting integrated application, You must first contact SpinSci to obtain the appropriate distribution

license. All rights not specifically granted to You herein are retained by SpinSci.

d. Restrictions on Use. You may not (a) reverse engineer, decompile, disassemble or otherwise attempt to determine source code or protocols from the Software; (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Software); (b) (b) modify, adapt, alter, translate, or create derivative works of the Software; (c) merge the Software with any other software, except as set forth herein; (d) redistribute, lease, rent, resell, encumber, sell, transfer or sublicense the Software to any third party, or otherwise use it except as permitted in this Agreement; (e) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or in the output of the Software; (f) publish any results of benchmark tests run on the Product to a third party without SpinSci's prior written consent; (g) use the Software in violation of any import, export, re-export or other applicable laws or regulations; (h) attempt to deactivate, bypass, or otherwise circumvent the license keys, remote monitoring, or other security measures for the Software. Any attempt to do any of the foregoing is a violation of the rights of SpinSci. Additional restrictions, if any, with respect to Third Party Software will be delivered to You along with the Third-Party Software. You are forbidden from using Evaluation Use Software for Development or Production Use. You are forbidden from using Development Use Software for Production Use. If You breach this restriction, you will be subject to payment for any such use and may be subject to prosecution and damages. The terms of the license will govern the Software and any upgrades or modifications that replace and/or supplement the original Software, unless such upgrade or modification is accompanied by a separate license in which case the terms of that license will govern. The foregoing licenses are expressly limited to installation and operation of the Software for your internal business purposes, in binary executable code form only, solely in accordance with the associated documentation, in compliance with all applicable law and regulations, and further subject to this Agreement.

e. Territory. The license grants hereunder are limited to use solely within the United States and Canada. SpinSci may terminate the license granted herein if SpinSci determines that Licensee is using the Software outside the Territory.

f. Compliance Audit. SpinSci may, at any time with seven (7) days prior written notice, request and gain access to Your premises subject to Your security procedures, for the limited purpose of conducting an audit to determine and verify that You are in compliance with these terms and conditions. You will promptly grant such access and cooperate with SpinSci in the audit. The Audit will be conducted in a manner not intended to unreasonably disrupt Your business and will be restricted in scope, manner and duration to that reasonably necessary to achieve its purpose. You will be liable for promptly remedying discrepancies revealed during the audit, including reimbursement to SpinSci for the costs of the Audit, if there are noncompliance issues and any underpayments of applicable fees.

g. Further Limitations. SpinSci reserves the right at any time not to release or to discontinue release of any Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

h. Pre-release Software Additional Terms. If the Software is pre-commercial release or beta Software ("Pre-release Software"), then this section applies. The Pre-release Software does not represent final product from SpinSci, and may contain bugs, errors, and other problems that could cause system or other failures and data loss. SpinSci may never commercially release the Pre-release Software. If Licensee received the Pre-release Software pursuant to a separate written agreement, then use of the Software is also governed by such agreement. Licensee will promptly return or destroy all copies of Pre-release Software upon the earlier of SpinSci's request or upon SpinSci's commercial release of such Software. LICENSEE'S USE OF PRE-RELEASE SOFTWARE IS AT ITS OWN RISK. SEE SECTIONS 3 AND 4 FOR DISCLAIMERS AND LIABILITY LIMITATIONS RELATED TO PRE-RELEASE SOFTWARE.

2. DISCLAIMER OF WARRANTY. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY, SPINSCI AND ITS SUPPLIERS MAKE AND YOU RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR

OTHERWISE; AND SPINSCI AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO THE PRODUCT, MAINTENANCE AND ANY OTHER SOFTWARE OR SERVICE DELIVERED HEREUNDER, ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. YOU ASSUME THE RESPONSIBILITY FOR THE SELECTION OF THE PRODUCT AND HARDWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE PRODUCT AND HARDWARE.

3. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SPINSCI OR ITS SUPPLIERS OR RESELLERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (OR ANY DIRECT DAMAGES WITH RESPECT SOLELY TO ANY PRODUCT PROVIDED WITH THE SOFTWARE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE, LICENSOR'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE LICENSE FEES LICENSEE PAID (IF ANY) FOR THE SOFTWARE GIVING RISE TO SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, LICENSOR IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING OUT OF CONTENT PROVIDED BY LICENSEE OR A THIRD PARTY THAT IS ACCESSED THROUGH THE PRODUCT AND/OR ANY MATERIAL LINKED THROUGH SUCH CONTENT OR ANY THIRD-PARTY SOFTWARE. ANY DATA INCLUDED IN THE SOFTWARE UPON SHIPMENT FROM LICENSOR IS FOR TESTING USE ONLY AND LICENSOR HEREBY DISCLAIMS ANY AND ALL LIABILITY ARISING THEREFROM.

4. TERM AND TERMINATION

a. Termination. This Agreement will remain in force from the earlier of Your (i) clicking on the ACCEPTANCE button (if applicable), (ii) downloading of the Software, (iii) installation of the Software, or (iv) use of the Software, until terminated in accordance with this Agreement or as set forth in a Sales Form. This Agreement may be terminated by You upon thirty (30) days' prior written notice to SpinSci or by destroying or returning to SpinSci all copies and partial copies of the Software and Documentation under Your control, provided that no such termination will entitle You to a refund of any portion of any fees. SpinSci may, by written notice to You, terminate this Agreement immediately if any of the following events occur: You are in material breach of any non-monetary provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after SpinSci gives You written notice thereof.

b. Effect of Termination. Upon the date of termination of this Agreement for any reason whatsoever, You shall destroy the Software and all copies, in whole or in part, all Documentation relating thereto, and any other SpinSci confidential information in Your possession that whatever form, including without limitation in tangible, electronic or virtual form. Sections 2 through 9 of this Agreement shall survive the expiration or termination of this Agreement for any reason.

5. CONFIDENTIAL AND PROPRIETARY RIGHTS

a. Title, ownership rights, and intellectual property rights in and pertaining to the Software shall remain in SpinSci and/or its suppliers, at all times. All the rights not expressly granted to You herein are reserved to SpinSci. Except as otherwise set forth under this Agreement, any other use of the Software by any person or entity of any kind is strictly forbidden and is a violation of this Agreement. Licensee acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any

manner with SpinSci and/or its suppliers' ownership of or rights with respect to the Software. The Software is protected by copyright and other intellectual property laws and by international treaties. Licensee agrees, at its expense, to defend, indemnify and hold SpinSci and its affiliates harmless from any and all costs, damages and reasonable attorneys' fees resulting from any claim that Licensee's use of the Software, including if such Software has injured or otherwise violated any right of any third party or violates any law.

b. The Software and documentation comprise the confidential and proprietary information of Licensor and its suppliers and constitute valuable trade secrets. You agree to maintain the Software, and all related information and materials of Licensor in the strictest confidence, with the same degree of care that you use for your own confidential and proprietary information, but in any event with no less than a reasonable degree of care. You shall not access, use or disclose such information or materials for any purpose not expressly authorized by this Agreement.

6. HIGH RISK ACTIVITIES. The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, SpinSci and its suppliers specifically disclaim any express or implied warranty of fitness for High-Risk Activities. Licensee agrees that SpinSci and its suppliers will not be liable for any claims or damages arising from the use of the Software in such applications.

7. U.S. GOVERNMENT END USERS. If You are a U.S. Government agency, in accordance with Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212) and Sections 227.7202-1 through 227.7202-4 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1,227.7202-3)), as applicable, You hereby acknowledge that the Software constitutes "Commercial Computer Software" and that the use, duplication, and disclosure of the Software by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this standard commercial license Agreement. In the event that, for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, You hereby acknowledge that the Government's right to use, duplicate, or disclose the Software are "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2), or DFARS 252.227-7014(a)(14), as applicable.

8. MISCELLANEOUS

a. Force Majeure. Neither party shall be liable for any delay or failure in performance due to causes beyond its reasonable control.

b. Export Compliance. You acknowledge that the Software is subject to the U.S. Export Administration Regulations (the "EAR") and that You will comply with the EAR. You will not export or re-export the Software, directly or indirectly, to: (a) any countries that are subject to U.S. export restrictions (including, but not limited to, Cuba, Iran, North Korea, Sudan, and Syria), (b) any end user whom You know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems, or (c) anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or any end user who has been prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government. By accepting this Agreement, You represent and warrant that You are not located in any such country, will not utilize the Software in any such way, or are on any such list. In addition, You are responsible for complying with any local laws in Your jurisdiction which may impact Your right to import, export or use the Software. If SpinSci has knowledge that a violation has occurred, SpinSci may be prohibited from providing maintenance and support for the Software.

c. Assignment. You may not assign this Agreement without SpinSci's prior written consent which will not be unreasonably withheld.

d. Severability. If any part of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other parts of the Agreement.

e. Waiver. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. SpinSci's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

f. Notices. All notices permitted or required under this Agreement shall be in writing and shall be delivered in person, by FAX, email, overnight courier service, mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in the Sales Form other in other writing between the parties.

g. Governing Law and Venue. Notwithstanding the Territory, this Agreement will be governed by both the substantive and procedural laws of the State of Texas, U.S.A., excluding its conflict of law rules. Any dispute regarding this Agreement will be heard in the state or federal courts having jurisdiction in Dallas, Texas, U.S.A. and You agree that You shall be subject to the personal jurisdiction of such courts.

h. Entire Agreement. Any amendment or modification to the Agreement must be in writing signed by both parties. This Agreement constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreements regarding the subject matter hereof. No terms, provisions or conditions of any purchase order, acknowledgment or other business form that You may use in connection with the licensing of the Software will have any effect on the rights, duties or obligations of the parties hereunder, or otherwise modify this Agreement, regardless of any failure of SpinSci to object to such terms, provisions or conditions.

i. Relationship; Third Party Beneficiaries. The parties hereto are independent contractors. Nothing contained in this Agreement, express or implied, is intended or shall be construed to create any agency, employment, partnership, fiduciary or joint venture relationship, or give any third party any rights or remedies under or by reason of this Agreement; provided, however, that the disclaimers and limitations on liability of Licensor and indemnification provided by you under this Agreement shall extend to Licensor, its successors and assigns, and their shareholders, directors, members, managers, officers, employees, agents, affiliates, subcontractors, distributors, service providers, and suppliers. All references to Licensor in connection therewith shall be deemed to include the foregoing persons and entities, who shall be third party beneficiaries of such contractual disclaimers, limitations and indemnity obligations, and entitled to accept all benefits afforded thereby.

9. DEFINITIONS

a. "Development Use" means use of the Software by a Development Use customer to design, develop and/or test new applications for Production Use.

b. "Documentation" means SpinSci's current user manuals, operating instructions and installation guides generally provided with the Software to its licensees.

c. "Evaluation Use" means use of the Software for evaluation, trial and/or proof of concept for applications intended for Your Production Use.

d. "Pre-release Software" means pre-commercial release or beta Software. The Pre-release Software does not represent final product from SpinSci, and may contain bugs, errors, and other problems that could cause system or other failures and data loss.

e. "Production Use" means using the Software in for internal business purposes only, which may include third party customers' access to or use of such applications.

f. "Software" means the object code versions, extracts and/or derivative works of the software made available by Licensor, including the program architecture, design, coding methodology, screen shots, and "look and feel" therefor, all modifications and improvements thereto, all prior versions and derivative works thereof, Upgrade, Updates, the Documentation, all goodwill associated therewith, and all present and future copyrights, trademarks, service marks, trade secrets, patent rights, and other proprietary and intellectual property rights of any nature throughout the world embodied therein and appurtenant thereto. All protocol libraries, parameter files, customizations, configurations, enhancements, interfaces, and other modifications to or improvements for the Software are and shall be the sole and exclusive property of Licensor, even if you develop or pay for the development thereof or provide any suggestions, specifications or other feedback in connection therewith.

g. "Territory" means the geographical territory specified within this Agreement and into which You download the Software or indicate acceptance of this Agreement, but excludes any U.S. embargoed countries and countries where You are prohibited from using the Software.

h. "Update" means either a Software modification or addition that, when made or added to the Software, corrects the Error, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of the Error on customer.

i. "Upgrade" means a revision of the Software released by SpinSci to its end user customers generally, during the Term, to add new and different functions or to increase the capacity of the Software. Upgrade does not include the release of a new product or added features for which there may be a separate charge. SpinSci will have the final determination of whether a new product offering is an Upgrade or a new product or feature, provided that SpinSci treats the product offering as a new product or feature for its end user customers generally.