

TERMS AND CONDITIONS

Spotfire and Customer hereby agree that the following terms and conditions will apply to each Software license granted under this Agreement. Software licenses or Software Maintenance Services (“SMS”) may be ordered by Customer or by any Subsidiary, by signing a Spotfire Quotation or amendment to this Agreement that references this Agreement. Upon acceptance by Spotfire, such Order Form or amendment shall be deemed subject to and part of this Agreement (an “Accepted Order”) and, in the case of a Subsidiary, shall constitute such Subsidiary’s agreement to be bound by the terms and conditions of this Agreement. Customer further agrees that any Programs used or made available to its Subsidiaries shall be subject to the terms and conditions of this Agreement.

1.0 DEFINITIONS

- 1.1 **“Software”** shall mean the object code version of Spotfire’s proprietary computer program(s) identified in the Accepted Order and including any accompanying Documentation and Releases delivered to Customer.
- 1.2 **“Subsidiary”** shall mean a corporation or other entity in which the Customer owns more than a 50% interest as of the date of this Agreement.
- 1.3 **“Quotation”** shall mean Spotfire’s standard Quotation for quoting prices of Software licenses and SMS.
- 1.4 **“Users”** shall mean employees and agents of Customer who are authorized by Customer to use the Software in accordance with this Agreement.

2.0 SOFTWARE LICENSE GRANT

- 2.1 **General** Spotfire grants and Customer accepts a non-exclusive, non-transferable license to use the Software specified in the Accepted Order for the term designated in the Accepted Order solely for the Customer’s own internal business operations. The number of Users shall not exceed the number of Users designated in the Accepted Order. The number of Customer computers in which the Software is installed shall not exceed the number of Users designated in the Accepted Order. Customer shall not (i) use the Software for time sharing, rental, or service bureau use, or (ii) modify, enhance or create derivative works of the Software.
- 2.2 **Copies** The Customer may make one archival or back-up copy of the Software, provided that Spotfire and Spotfire’s vendors’ copyright and proprietary notices on the Software are included on such copy.
- 2.3 **Proper Use of Software** The Customer acknowledges that the continued integrity of the Software and Spotfire’s performance of its obligations described in this Agreement are dependent upon the proper use and maintenance of the Software by Customer. Proper use and maintenance means that Customer will (i) use the Software in accordance with this Agreement and the Documentation supplied by Spotfire and (ii) follow Spotfire’s instructions for installing new releases and for correcting and circumventing software defects.

- 2.4 Ownership** Spotfire and its suppliers reserve all right, title and interest in and to the Software (including all intellectual property rights embodied therein) and Customer's rights in the Software are limited to those expressly granted in this Agreement.
- 2.5 Proprietary Information** Spotfire and Customer may receive technical, financial, trade secret, confidential or proprietary information of the other party and its licensors ("Proprietary Information") in connection with this Agreement. The receiving party shall (i) protect such Proprietary Information to the same degree it protects its own Proprietary Information, but with no less than a reasonable degree of care, (ii) maintain and adopt reasonable measures to ensure that its employees and agents comply with the terms of this Agreement, (iii) use such Proprietary Material only for the purposes set forth in this Agreement, and (iv) limit use of and access to the Proprietary Material to its employees and agents that need to use the Proprietary Material on behalf of the receiving party. The receiving party shall not disclose any Proprietary Information to any third party without the prior written consent of the other party. The following shall not be deemed to be Proprietary Information: information that is generally available in the public domain, that is already possessed by the receiving party (provided that such prior possession can be demonstrated from written records predating the date of the disclosure), or that is received from a third party without violating any duty owed by such third party to the disclosing party. Notwithstanding anything to the contrary, Spotfire's Proprietary Information includes without limitation the Software and any materials delivered to Customer with the Software.
- 2.6 Configurations** As provided in the Software Documentation, Customer may make certain custom configurations ("Configurations") to the Software. If Customer transfers Configurations to a third party, Customer shall indemnify and hold harmless Spotfire and its affiliates, and their directors, officers, employees and agents, from and against any damages, claims, losses, costs, liabilities and expenses arising out the transfer or use of such Configurations. Customer shall not transfer any Configurations to an entity that is not licensed by Spotfire to use the Software to which the Configuration relates.
- 2.7 Delivery** Customer agrees that the Software shall be delivered and accepted when Spotfire provides a password to permit access to a download server; however, such acceptance shall not relieve Spotfire of its warranty obligations hereunder.
- 2.8 Software Directive** Except as provided in this Section 2.8, Customer shall not disassemble, decompile, access the source code, or attempt to reverse engineer any of the Software. If the provisions of the Council of European Communities Directive of May 14, 1991 on the Legal Protection of Computer Programs (the "Software Directive") apply to Customer's use of the Software, and Customer wishes to obtain the information necessary to achieve interoperability of an independently created computer program with Software as permitted under Article 6 of the Software Directive ("Interoperability Information"), then Customer shall notify Spotfire in writing, specifying the nature of the interoperability Information needed and the purpose for which it will be used. If Spotfire determines that Customer is entitled to such Interoperability Information under Article 6, Spotfire shall, at its option, either (i) provide such Interoperability Information to Customer or (ii) authorize Customer to reverse engineer the Software, within the limits prescribed by Article 6, solely to the extent necessary to obtain such Interoperability Information. If Spotfire elects clause (i), Customer shall provide all information and assistance requested by Spotfire to enable Spotfire to

perform clause (i), and Spotfire may charge Customer a reasonable fee, determined at Spotfire's discretion, for making available the requested Interoperability Information, unless such a fee is prohibited under Article 6.

3.0 TERM OF LICENSES

3.1 Term The licenses granted hereunder commence upon the delivery of the Software and expire at the end of the term for each Software license as set forth in the Accepted Order. Upon expiration or termination of a Software license, Customer's right to use the licensed Software shall end and Customer shall: (i) promptly return all Software, Documentation, and Spotfire Proprietary Information relating thereto and all copies thereof to Spotfire; (ii) erase all Software, Documentation, and Spotfire Proprietary Information relating thereto from the memory of its computer(s) and storage devices; and (iii) upon Spotfire's request, certify in writing that Customer has satisfied its obligations hereunder.

3.2 Termination Spotfire may terminate any license and/or SMS in the event that Customer materially breaches this Agreement. In such event, Spotfire shall give Customer written notice specifying the nature of the breach, and, if Customer fails to cure the breach within fifteen (15) days of receipt of such notice, Spotfire may thereafter terminate the license(s) and/or SMS effective immediately by giving notice. Notwithstanding any other provision hereof, Spotfire shall have the right to terminate any license and/or SMS effective immediately upon written notice to Customer in the event of any breach by Customer of any of the provisions of Section 2. Termination of any license shall not (i) relieve Customer's obligation to pay all license, SMS and other fees due under this Agreement, or (ii) entitle Customer to a refund of any license, SMS, or other fees paid prior to such termination.

4.0 SOFTWARE MAINTENANCE SERVICE (SMS)

4.1 General For the Initial Maintenance Term and thereafter provided that the Customer has elected SMS and has made timely payment of the SMS fee(s), Spotfire will provide the SMS specified in this Section 4 for the applicable Software.

4.2 Maintenance Term The Maintenance Term shall commence on the delivery of the Software and remain in effect for the period designated in the Accepted Order. Spotfire reserves the right to refuse to provide SMS while any accrued SMS fees remain unpaid. No refunds of maintenance fees will be provided for termination of services during the term.

4.3 Non-Continuous Coverage In the event Customer elects not to maintain continuous SMS services, Spotfire may, in its discretion, refuse to provide any SMS to Customer until payment for the period of discontinuity is made current.

4.4 Definitions For the purposes of this Section 4, the following definitions shall apply: "Defect" means a material error in program logic attributable to Spotfire which prevents the performance of a principal computing function as set forth in Spotfire's Documentation for the Software. "Major Release" means a new version of the Software with new features and/or significant enhancements to existing modules. "Point Release" means a version of the Software occurring between Major Releases, and may contain Defect corrections as well as new features and enhancements. "Release"

may refer to a Major or Point Release. "Documentation" means the user manuals made available with the Software to Customer by Spotfire.

4.5 Services (a) Spotfire will remedy Defects by using reasonable efforts to (i) incorporate a permanent Defect correction in the next Release of the Software or (ii) provide a fix, patch or workaround procedure. Customers will be notified of the availability of new Releases. All Releases shall be deemed to be Software hereunder. (b) Spotfire will support only the current Release of the Software and all Releases since and including the Major Release immediately preceding the current Major Release. Customer must maintain all associated computer hardware and operating system software at the latest Release level deemed necessary by Spotfire. Consultative Support Services from Spotfire may be available to Customer under separate agreement. When Spotfire determines that any requested assistance has exceeded a reasonable level, Spotfire may supply a quotation for additional Consultative Support Service.

5.0 PAYMENT

5.1 Payment and Taxes In exchange for the rights and services provided hereunder, Customer shall pay the recurring license fees, the applicable SMS fees, and any other fees indicated on the Quotation. Payment must be made within thirty (30) days of date of invoice. Customer shall pay all excise, sales, use, customs, value-added and other taxes, fees, levies, withholdings, or duties ("Taxes"), which arise out of this Agreement, excluding taxes measured by Spotfire's net income. Payments to Spotfire shall be made without deduction for Taxes or shall be grossed-up to provide Spotfire the same amount after such Tax as it would have received without the imposition of such Tax, together with tax receipts or similar evidence of any Tax payment by Customer. Customer agrees that, notwithstanding any other provisions of this Agreement, the license fees specified hereunder have been fully earned by Spotfire upon delivery of the Software, and such license fees are due and payable to Spotfire (without any further performance on the part of Spotfire) in accordance with the provisions of this Agreement. All such payments will be made without setoff, counterclaim, recourse or other defense.

5.2 Right to Assign Customer agrees that Spotfire may, without notice, assign its rights to receive any and all payments due hereunder to a third party financier ("Assignee"). Such assignment shall not affect or release Spotfire from its obligations and liabilities hereunder to Customer, however Customer further agrees that, in the event of any such assignment, the Assignee shall not be chargeable with or assume any of the obligations or liabilities of Spotfire. Customer shall, in accordance with the terms of this Agreement and on instruction from Spotfire, pay Assignee all amounts due hereunder without deduction or offset.

5.3 Remedies In the event Customer fails to make any payment to Spotfire or its Assignee when due, which failure continues for fifteen (15) days; in addition to any other rights and remedies available to Spotfire or Assignee, all amounts owed by Customer hereunder shall become immediately due and payable and, in addition, Spotfire or its Assignee may recover reasonable attorney's fees and legal expenses in exercising any of its rights and remedies upon default. Spotfire or such Assignee will notify Customer of any failure to receive a payment when due, but Customer's failure to receive

notice will not excuse a default or limit the remedies available to Spotfire or Assignee as described herein.

6.0 WARRANTY

6.1 Warranty Period (a) Spotfire warrants, for period of thirty (30) days from delivery (“Warranty Period”), that each item of Software shall be free from Defects. Customer’s exclusive remedy and Spotfire’s sole obligation shall be, at Spotfire’s option in each case, to either (i) correct or circumvent any Defect reported to Spotfire within the Warranty Period or (ii) refund an amount equal to the depreciated license fee paid by Customer for the copy of Software at issue during the then-current license term (calculated on a straight-line basis) and terminate licenses granted for such copy; provided, however, that: (A) Customer shall promptly notify Spotfire of any errors discovered and shall furnish to Spotfire adequate supporting documentation, details, and assistance to substantiate and to assist Spotfire in the identification and detection of such error; and (B) the error can be reproduced on properly functioning equipment controlled by Spotfire. (b) Spotfire warrants that it shall make commercially reasonable efforts to provide SMS, but does not warrant that it can or will correct all Defects or solve all problems. Customer’s exclusive remedy and Spotfire’s sole obligation shall be, at its option in each case, to either (i) re-perform the services that do not conform to such warranty or (ii) refund the applicable fees paid for the nonconforming services. © Spotfire shall have no responsibilities under this Section in the event that (i) the Software has not been used in accordance with Section 2, (ii) the Software been damaged or altered by accident, neglect, misuse or other abuse or (iii) the claimed defect has been caused, in whole or in part, by other than Spotfire, or a third party application, or configurations provided by third parties.

6.2 EXCLUSION OF WARRANTIES EXCEPT FOR THE

WARRANTIES SET FORTH IN SECTION 6.1 ABOVE, SPOTFIRE DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

SPOTFIRE’S EXPRESS WARRANTIES SHALL NOT

BE ENLARGED OR DIMINISHED AND NO

OBLIGATION OR LIABILITY SHALL ARISE OUT OF ANY TECHNICAL ADVICE OR SERVICE PROVIDED

BY SPOTFIRE IN CONNECTION WITH THE SOFTWARE OR SMS.

7.0 DAMAGES, INDEMNITY, RIGHTS AND OBLIGATIONS

7.1 LIMITATION OF LIABILITY IN NO EVENT SHALL

SPOTFIRE BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES ARISING FROM THE LOSS OF USE, DATA OR PROFITS. SPOTFIRE SHALL NOT BE LIABLE FOR DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT, NEGLIGENCE, OR OTHERWISE ARISING MORE THAN ONE (1) YEAR PRIOR TO INSTITUTION OF A LEGAL PROCEEDING THEREON. IN NO EVENT SHALL SPOTFIRE'S LIABILITY ARISING OUT OF OR RELATING TO A SOFTWARE LICENSE EXCEED THE AMOUNT OF LICENSE FEES PAID BY CUSTOMER UNDER SUCH LICENSE DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO LIABILITY FOR ANY DAMAGES. IN NO EVENT SHALL SPOTFIRE'S LIABILITY ARISING OUT OF OR RELATING TO SMS FOR A SOFTWARE LICENSE OR ANY OTHER SERVICES PROVIDED HEREUNDER EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER FOR SUCH SMS OR OTHER SERVICES DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO LIABILITY FOR ANY DAMAGES.

7.2 INFRINGEMENT INDEMNIFICATION

Spotfire shall defend or settle any third party claim, suit or proceeding brought against Customer that any Software infringes a European Union member country patent, copyright or trademark, and shall indemnify Customer against damages and costs finally awarded against Customer which result from such a claim, provided that: (i) Customer notifies Spotfire in writing within seven (7) calendar days of learning of such claim, suit or proceeding and (ii) Customer gives Spotfire sole control, and full authority, information and assistance in the defense or settlement of such claim, suit or proceeding. If any Software in whole or in part becomes, or if in Spotfire's opinion is likely to become the subject of a claim of intellectual property infringement, Spotfire shall have the right, at its option and expense, to: (i) replace the Software with a non-infringing, functionally compatible product; (ii) modify the Software so that it becomes non-infringing, (iii) obtain a license for Customer to use the Software, or (iv) if Spotfire reasonably determines that options (i), (ii), and (iii) are not commercially practicable, to terminate the license and refund an amount equal to the depreciated license fee paid by Customer for the Software during the then current license term (calculated on a straight line basis). Spotfire will have no liability for any costs incurred or settlement entered into without its prior written consent. The foregoing indemnity shall not apply to claims, suits or proceedings that arise from (i) the use of the Software in combination with non-Spotfire products, (ii) any modification of the Software by other than Spotfire, or (iii) use of a version of the Software older than the Major Release of the Software immediately preceding the current Major Release. This Section 7.2 states the exclusively liability and entire obligation of Spotfire, and the exclusive remedy of Customer, with respect to any claim, suit or proceeding involving actual or alleged infringement of any intellectual property rights in connection with this Agreement.

7.3 COMPLIANCE WITH LAWS

Customer shall comply with all applicable laws and regulations.

8.0 GENERAL

8.1 Force Majeure Either party's failure to perform its obligations hereunder shall not be deemed a breach of this Agreement if such failure is due to fire, strike, war, civil unrest, terrorist action, government regulations, acts of Nature, or other causes beyond the reasonable control of the party claiming force majeure. This provision shall not apply to Customer's obligation to pay any sums due under this Agreement.

8.2 Transfers and Assignment Customer shall not assign, sublicense or otherwise transfer Software or Proprietary Information or otherwise assign its rights or obligations under this Agreement without the prior written consent of Spotfire. For purposes of this section, an assignment or transfer shall include any change in majority ownership or control of Customer, including merger or other transfer of voting securities.

8.3 Waiver Failure or delay of either party to exercise any right or remedy hereunder shall not constitute a waiver of rights or remedies under this Agreement.

8.4 Governing Law This Agreement shall be governed by the substantive law of Sweden. Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal shall be composed of three (3) arbitrators. The place of arbitration shall be Gothenburg and the language to be used in the proceedings shall be English.

The parties agree that the decision in any such arbitration will be binding on both parties and that a judgment upon any award may be entered in any court having jurisdiction. Irrespective hereof, Spotfire may seek interim measures and injunctive relief at any competent court. Should the Customer be considered a consumer for purposes of consumer protection, any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach termination or invalidity thereof, shall be submitted and finally settled by the ordinary courts of Sweden, where the District Court of Stockholm shall be the first instance.

8.5 Entire Agreement This Agreement and any Accepted Orders constitute the exclusive statement of the terms and conditions between the parties with respect to the matters set forth herein, and supersede all other agreements, negotiations, representations, and proposals, written and oral. This Agreement and any Accepted Order may only be amended in a writing signed by both parties. Any additional or conflicting provisions contained in Customer's purchase order shall not apply and are rejected by Spotfire. In the event of a conflict between this Agreement and any Accepted Order, the order of precedence shall be: (a) any provisions in the Accepted Order inconsistent with this Agreement with a citation to the Section being modified and (b) this Agreement.

- 8.6 Severability** If any court of competent jurisdiction holds any provision of this Agreement unenforceable or inoperative, either in whole or in part, the remaining provisions shall be given full force and effect to the extent not inconsistent with the original terms of this Agreement.
- 8.7 Notices** Any notice given hereunder shall be sent in writing to the other party's business address set forth above or to such other party and address as such party shall most recently have designated in writing. Notices directed to Spotfire shall be sent "Attention: Chief Financial Officer".
- 8.8 Publicity** In consideration of the license(s) granted hereunder, Spotfire may identify Customer in published lists of licensees of Spotfire software. Customer may, upon request, review such materials in advance of publication.
- 8.9 Survival** The obligations set forth in Sections 2.4, 2.5, 3, 5, 7, and 8 shall survive termination or expiration of this Agreement.