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- (ii) in the case of all other License Options, up to two computers that are each owned, leased or controlled by YOU;

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Maplesoft warrants to YOU that the Software will not infringe any registered patent, copyright, trademark or trade secret right or other intellectual property right of a third party resident in Canada or the United States (collectively, the “**IP Rights**”). Maplesoft shall hold YOU harmless from costs, losses, damages and liability which may be incurred on account of a finding of infringement of IP Rights by the Software by a court of competent jurisdiction, and Maplesoft shall, at its own expense, defend all claims, suits or actions alleging such infringement of IP Rights, against YOU, provided that Maplesoft (i) is promptly notified of such claims, suits and actions, (ii) given all evidence in YOUR possession, and (iii) given reasonable assistance by YOU in, and sole control of, the defence thereof and all negotiations for its settlement or compromise. In the event of such a claim of infringement of IP Rights, Maplesoft’s obligation under this Agreement shall be fulfilled if Maplesoft: (i) obtains a license for YOU to continue the use the Software, or (ii) replaces or modifies the Software so as to be commercially substantially equal but non-infringing, provided, however, that if none of these options are reasonably available to Maplesoft, then upon written request by Maplesoft, YOU shall return the Software and Maplesoft will refund the Fees paid for the Software. The indemnification under this Section shall not apply to any claim of infringement of IP Rights which may be brought resulting from (1) any unauthorized use of the Software; (2) any use of the Software in a manner for which the Software was not designed or in combination with any other product, which combination is the cause of the IP infringement; (3) any unauthorized modifications to the Software made by YOU; (4) any wilful act by YOU contrary to the terms of the License; or (5) any settlement or compromise incurred or made by YOU without Maplesoft’s prior written consent. The above states the entire liability of Maplesoft with respect to infringement of IP Rights by the Software and is in lieu of all warranties, express, implied or statutory, in regard thereto.

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17. SECURE INFORMATION AND PRIVACY.

- (a) Neither Maplesoft, nor its suppliers nor partners, warrant or represent that any data stored by the Software

is held securely against loss or unauthorized access.

- (b) Where YOU disclose Personal Information to Maplesoft, YOU represent, warrant, and covenant that:
- (i) YOU are solely and exclusively responsible for the collection, accuracy or completeness of Personal Information disclosed, or provided, to Maplesoft, whether such Personal Information was generated directly by YOU or through an agent employed by YOU;
 - (ii) all Personal Information disclosed to Maplesoft has been collected and disclosed in accordance with all applicable laws pertaining to the Personal Information in question, and where applicable, all applicable consents to disclose to Maplesoft or, more generally, a service provider to YOU, have been obtained from the individual(s) whose Personal Information is provided; and
 - (iii) YOU will identify an individual, employed or otherwise authorized by YOU, to respond to enquiries concerning any Personal Information provided to Maplesoft and to promptly address all enquiries concerning such information.
- (c) Maplesoft's privacy policy can be found at <http://www.maplesoft.com/privacy>.

18. INDEMNITY.

YOU agree to indemnify and hold Maplesoft and any Third Party Licensors harmless from and against any loss, liability, cost, expense or damage (including reasonable legal fees) arising directly or indirectly out of any claim, suit action or judgment brought against Maplesoft or its Affiliates related to any act or omission by YOU relating to the Software, including but not limited to the provision by YOU of any products or services, any representations, warranties or covenants made by YOU, any failure by YOU to comply with any of the terms of this Agreement, or violation by YOU of any provincial, state, federal, foreign, or other laws or regulations or any third party rights.

19. COMPLIANCE AND AUDIT RIGHTS.

During the duration of this Agreement and for two (2) years after its expiration or termination, YOU will maintain accurate records of YOUR use of the Software sufficient to show compliance with the terms of this Agreement. YOU agree to notify Maplesoft promptly of any failure by YOU to comply with one or more licenses granted under this Agreement, or any failure to comply with any other material term of this Agreement. To confirm YOUR compliance with the terms and conditions of this Agreement, YOU agree to allow a Third Party auditor appointed by Maplesoft or by a Third Party Licensor (if applicable) (the "**Auditor**") to audit YOUR use of the Software, and to provide the Auditor access to YOUR facilities, Sites, CPUs and computer systems, and cooperation from YOUR employees and consultants, as reasonably requested by the Auditor in order to perform such audit, all during normal business hours, and after reasonable prior notice from Auditor. If an audit discloses that YOU has failed to comply with one or more licenses, and such failure to comply could have in part or in whole been avoided by YOU having paid additional Fees to expand the scope of the license or licenses, then YOU shall promptly pay Maplesoft or the Third Party Licensor, as the case may be, such licensing fees (at payee's then current rates) and, if such unpaid License Fees exceed 5% of the License fees paid for the applicable Software during the applicable period during which such underpayment occurred, then YOU shall, in addition to paying the unpaid Fees, also reimburse Maplesoft or the Third Party Licensor, as the case may be, the full cost of such audit.

20. GENERAL TERMS AND CONDITIONS.

- (a) **Export Controls.** The Software is subject at all times to all applicable export control laws and regulations of Canada in force from time to time. YOU agree that YOU shall not make any disposition of the Software purchased or licensed from Maplesoft that would violate those laws or regulations or would be contrary to the terms of this Agreement.
- (b) **Federal Acquisition.** This Software is a commercial product that has been developed exclusively at private expense or with public funds from sources other than the United States Government. If this Software and Documentation is acquired directly or indirectly on behalf of a unit or agency of the United States Government under the terms of (i) a United States Department of Defense contract, then pursuant to DOD FAR Supplement 227.7202-3(a), the United States Government shall only have the rights set forth in this License Agreement; or (ii) a civilian agency contract, then use, reproduction, or disclosure is

subject to the restrictions set forth in FAR clause 27.405(b)(2)(i), entitled Acquisition of Existing Computer Software, and any restrictions in the agency's FAR supplement and any successor regulations thereto, and the restrictions set forth in this License Agreement. If this Agreement and the licenses herein fail to meet the United States Government's needs or are inconsistent in any respect with U.S. federal procurement law, the government agrees to return the Software, unused, to Maplesoft.

- (c) **For European Union Users Only.** Any contractual provisions of this Agreement contrary to laws implemented under Article 6 of Appendix V of the European Union Software Directive or to the exceptions provided for in Article 5(2) and (3) of such Appendix, as amended from time to time, shall be null and void solely to the extent decompiling, disassembling, or otherwise reverse-engineering of the Software is necessary to enable YOU to create an independent software that is interoperable with the Software or any other permitted objectives specified by such laws implemented under such directive (collectively, the “**Permitted Objectives**”), provided that any such information gained is used solely for such Permitted Objectives.
- (d) **Governing Law.** This Agreement is governed by the laws of the Province of Ontario, Canada and, if the Software was acquired within Canada, each of the parties hereto irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario without regard to conflicts of laws principles. If the Software was acquired outside Canada, each of the parties hereto irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario; provided that YOU agree that any claim or action brought by YOU shall be commenced in the courts of the Province of Ontario. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- (e) **Successors and Assigns.** These terms and conditions inure to the benefit of and shall be binding upon, our respective heirs, successors or permitted assigns. YOU shall not assign this Agreement.
- (f) **Invalidity of Terms.** If any of these terms and conditions are found by a court of competent jurisdiction to be invalid, the parties hereto nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in such term or condition, and the other terms and conditions shall remain in full force and effect.
- (g) **Acknowledgement.** YOU acknowledge that YOU have read this Agreement, an Addendum thereto and limited warranty, understood them, and agrees to be bound by their terms and conditions. YOU also agree that this Agreement and the applicable Addenda hereto is the complete and exclusive agreement between YOU and Maplesoft with respect to the Software, and supersedes all prior agreements, representations and any other communications, oral or written, between YOU and Maplesoft relating to the subject matter of the Agreement including, without limitation, any warranties with respect to the Software. This Agreement may only be amended by written agreement of both parties.
- (h) **Entire Agreement.** Unless otherwise agreed to by Maplesoft in writing, this Agreement (including all terms incorporated herein by reference) constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein.

SCHEDULE A: DEFINITIONS

The following terms shall have the following meanings.

“**Academic Institution**” means a degree-granting educational institution utilizing the Software for academic purposes only, as per the Order Confirmation.

“**Affiliate**” means, with respect to a party to this Agreement, any individual or Entity which, directly or indirectly controls, is controlled by, or is under common control with such party. The term “control” means possession, direct or indirect, of the power to direct or cause the direction of the management of policies of a person or Entity; whether through ownership or equity participation, voting securities, beneficial interest, contract, agreement or otherwise.

“**Documentation**” means the user guides, study guides and other documentation made available by Maplesoft from time to time, whether or not made available in connection with the delivery of the Software, as may be updated from time to time. Documentation may be delivered in printed and/or online forms, and in one or more languages.

“**Entity**” means a corporation, an association, a joint venture, a partnership, a trust, a business, an individual, an IT professional, an academic institution, including an agency, or any organization that can exercise independent legal standing.

“**Elite Maintenance Program**” means the annual subscription that provides upgrades to the latest release of YOUR Maplesoft products to YOU.

“**Fee**” means the fee payable to Maplesoft by YOU as set out in the Order Confirmation for the Software and, if specifically identified on the Order Confirmation the Elite Maintenance Program.

“**Internal Use**” means the use of the Software by YOU, if YOU are an individual and otherwise (as applicable and to the extent permitted in this Agreement) by YOUR Affiliate’s employees, teaching assistants, student interns, and contractors (provided that in the case of contractors, such contractors are engaged by YOU or YOUR Affiliate to discharge their duties only on YOUR premises).

“**License**” has the meaning set forth in Section 5.

“**License Option**” means the specific rights, restrictions, and obligations under which YOU may install and use the Software pursuant to this Agreement, including those related to the permitted Installation Type(s) associated with the License Option acquired, as selected in the Order Confirmation.

“**MapleNet**” means MapleNet™ Software enabling YOU (or users accessing MapleNet through YOUR Site) to deploy and deliver MapleNet enabled content through a Core or Cores (as per the Order Confirmation) owned, leased or controlled by YOU.

“**MapleSim Server**” means MapleSim Server Software enabling YOU (or users accessing MapleSim Server through YOUR Site) to deploy and deliver MapleSim Server enabled content through a Core or Cores (as per the Order Confirmation) owned, leased or controlled by YOU.

“**Maplets**” means the applet interface to be used by users of YOUR Site to obtain or deliver mathematical calculations from and/or to the MapleNet™ Software, including, but not limited to web browsers, Java programs, or other software, provided that the interface shall not be a graphical user interface product known as the “Maple Worksheet / Document”, as same may be enhanced, modified or improved from time to time.

“**Maple Worksheets / Documents**” means an electronic document produced and displayed by Maplesoft with all capabilities and attributes imparted to it by the Software.

“**Other Educational Institutions**” means secondary schools, colleges, vocational institutes and/or other non-commercial educational institutions offering recognised courses of study or leading to an accredited diploma. A commercial user of the Software may, at Maplesoft’s sole discretion, be deemed to be an “Other Educational Institution” to the extent that the Software is used by such commercial user solely for non-commercial internal training and seminars provided to its customers and staff.

“Order Confirmation” means a document issued by Maplesoft or a Maplesoft authorized reseller to confirm the terms of YOUR purchase configuration including, without limitation, Software ordered, License Option, Installation Type, and the number of Licensed users (Non-Floating or Floating) entitled to use the Software. Order Confirmation forms may vary depending upon the type of purchase and shall include, without limitation, a Maplesoft invoice or web-store confirmation.

“Personal Information” means any information, recorded, in any form, about an identified individual, including users at YOUR institution or other individuals, or an individual whose identity may be inferred or determined from the information, but does not include any information about more than one individual where the identity of the individuals is not known and cannot be inferred from the information.

“Remote Access” means application virtualization or the ability to log into the Software or access the Software or any part thereof via the internet through services such as Citrix license key sharing or similar services.

“Software” means the computer software, toolboxes, electronic books or other products and Documentation delivered and licensed hereunder, including enhancements and error corrections. Each product from Maplesoft is a separate item of Software and shall be licensed individually hereunder, all as more specifically set out in the applicable Order Confirmation.

“Site” means a privately or publicly accessible intranet, extranet or internet website owned or exclusively licensed to YOU for use by YOUR users only.

“Student” means: (i) a full-time or part-time undergraduate student who is either working toward a degree or a diploma in an Academic Institution and actively enrolled therein at the material time; (ii) a student registered in a continuing or professional education program of an accredited institution; (iii) a student enrolled in a high school, vocational institute or other accredited institution; or (iv) any person endorsed by an accredited institution as being a student. Students may be enrolled on campus or in distance education courses. Maplesoft shall determine whether or not an institution is “accredited”, in its sole discretion. Students are required to provide applicable proof of their Student designation, either at time of purchase or afterward as directed by Maplesoft in its sole discretion.

“Student Prices” means the discounted prices at which Maplesoft offers the Software licenses herein to Students for Student Use.

“Student Use” means the installation and use of the Software by a Student in accordance with the Student License Option and applicable Installation Type acquired, only for the purpose of meeting classroom requirements of courses, self-study and personal research. For greater certainty, Student Use shall exclude use as an employee or otherwise for commercial gain, instruction, teaching, and commercial or academic research.

“Third Party” means any person or legal entity that is not Maplesoft, YOU, or an Affiliate.

“Third Party Licensor” means the person who, or entity which, grants a license to Maplesoft to redistribute that person’s or entity’s intellectual property, as the case may be, as set out on Maplesoft’s website.

“YOU or YOUR” means the Entity or Entities to whom Maplesoft grants the License herein and who is responsible for complying with the contractual obligations of the License and ensuring that anyone permitted access to the Software through YOU, also complies with such obligations.