

HSL - INCORPORATION LICENCE AGREEMENT

THIS LICENCE AGREEMENT is made on <date>

BETWEEN:

A **THE SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, AS PART OF UNITED KINGDOM RESEARCH AND INNOVATION** one of whose principal offices is at The Rutherford Appleton Laboratory, Harwell Oxford, Didcot, OX11 0QX ("**STFC**") and

B Example Ltd a company registered in England under number 12345678, whose registered office is at Sample Street, London (the "**Licensee**")

1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence Agreement the following expressions have the following meanings:

"Harmful Element" means any virus, worm, time bomb, time lock, drop dead device, trap and access code or anything else that might disrupt, disable, harm or impede the operation of any information system, or that might corrupt, damage, destroy or render inaccessible any software, data or file, or that may allow any unauthorised person to gain access to, any information system or any software, data or file on it;

"HSL Website" means the website with the URL <http://www.hsl.rl.ac.uk>, and any website that from time to time replaces that website;

"Intellectual Property" means patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, know-how, confidential information, applications for any of the above, trade secrets and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

"Licence Fee" means the one off payment of £ <price> payable in accordance with clause 3;

"Software" means <packages>; and

"Products" means the Licensee's own computer programs whether release or pre-release;

2 LICENCE

2.1 In consideration of the payment of the Licence Fee, STFC grants the Licensee an indefinite, non-exclusive, non-transferable, worldwide licence to:

2.1.1 copy and use the Software as an integral part of the Products;

- 2.1.2 market, demonstrate, distribute and sub-licence third parties to use the object code version of the Software solely as an integral part of the Products on any computer at any location; and
- 2.1.3 use any written know-how or documentation related to the Software which STFC has and is authorised to make available.
- 2.2 The Licensee will not tamper with, or remove, any copyright or other proprietary notice or any disclaimer that appears on or in any part of the Software, and will reproduce the same in all copies of any of the Software.
- 2.3 The licence granted in clause 2.1 relates only to the release of the Software current at the date of this Licence Agreement; the Licensee must acquire a new licence for any future release or upgrade of the Software.
- 2.4 All technical papers, sales and publicity material issued by or on behalf of the Licensee and referring to the use of the Software shall contain the following acknowledgment: "HSL, a collection of Fortran codes for large-scale scientific computation. See <http://www.hsl.rl.ac.uk/>"
- 2.5 STFC may stop providing any assistance or advice in relation to, or any corrections, new releases or versions of the Software and may stop updating or publishing the HSL Website at any time.

3 LICENCE FEES

- 3.1 The Licensee will pay the Licence Fee to STFC in accordance with the provisions of this clause.
- 3.2 STFC will issue its invoice to the Licensee within 21 days of the date of this Licence Agreement
- 3.3 The Licensee will settle STFC's invoice within 30 days of the date of such invoice.
- 3.4 If the Licensee fails to pay the amount by the due date for payment, the Licensee will, without prejudice to any other right or remedy available to STFC, pay interest on that amount and the costs of recovery in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.5 The Licence Fee is exclusive of VAT. The Licensee will pay VAT, if applicable, in addition to the Licence Fee.
- 3.6 No refund of the Licence Fee will be made on the termination of this Licence Agreement.

4 WARRANTIES AND LIABILITY

- 4.1 To the maximum extent permitted by the law, STFC excludes all warranties conditions or other terms that may be implied into this Licence Agreement whether by law, statute or otherwise.

- 4.2 STFC gives no condition, warranty or other term whatsoever, either express or implied including, without limitation, any condition, warranty or other term as to the condition of the Software, that the Software is free from any Harmful Element, or as to satisfactory quality, fitness for a particular purpose, non-infringement, or use of reasonable care and skill.
- 4.3 Subject to clause 4.7, STFC shall not be liable for any indirect, special, or consequential damages, or loss of profit, whether such damages or losses are known, foreseen, foreseeable or unforeseen.
- 4.4 STFC is not obliged to provide any support or error correction service, assistance or advice in relation to the Software. If it does provide that sort of service, assistance or advice, subject to clause 4.7, STFC will not be liable for any loss or damage suffered by the Licensee as a result.
- 4.5 STFC will not be liable to the Licensee to the extent that any loss or damage is caused by the Licensee's failure to implement, or the Licensee's delay in implementing, any upgrade, update, new release, revision, version or modification of, or advice in relation to, the Software that would have remedied or mitigated the effects of any error, defect, bug or deficiency.
- 4.6 Subject to clause 4.7, the aggregate liability of STFC for any and all breaches of this Licence Agreement, any negligence or arising in any other way out of the subject matter of this Licence Agreement will not exceed in total the Licence Fees paid by the Licensee to STFC under this Licence Agreement.
- 4.7 Nothing in this Licence Agreement limits or excludes STFC's liability for death or personal injury caused by its negligence or for any fraud, or for any sort of liability that, by law, cannot be limited or excluded.

5 CONFIDENTIALITY

- 5.1 The Licensee acknowledges that neither the Licensee, its agents, nor its employees shall in any manner use, disclose, or otherwise communicate any information with respect to the Software that might enable copying of all or any portion of the Software.
- 5.2 The Licensee further acknowledges and agrees that the Software constitutes proprietary information and trade secrets, whether or not any portion of the Software is or may be the subject of a valid copyright or patent. The Licensee agrees to take all necessary steps to protect the confidential and proprietary information included in and relating to the Software, including appropriate instructions to and or agreements with its employees.

6 INTELLECTUAL PROPERTY RIGHTS AND PUBLICITY

- 6.1 The Licensee may make reasonable modifications to the Software in order that it may function appropriately as an integral part of the Products but at no time shall the copyright or other intellectual property rights in all or part of the Software pass to the Licensee.
- 6.2 The Licensee shall make available free of charge to STFC and STFC may use (and authorise others to use) for any purpose all information relating to any modification. The Licensee shall not make any use of the Software that is not expressly provided for

in this Licence Agreement. The Licensee will ensure that each sub-licensee undertakes not to make unauthorised copies of the Software nor use the Software for any other purposes other than as an integral part of the Products.

- 6.3 STFC and the Licensee will not publish any press releases or promotional literature relating to this Licence Agreement without obtaining the prior written consent of the other party, which consent will not be unreasonably withheld or delayed.

7 **TERMINATION**

- 7.1 Either Party may terminate this Licence Agreement with immediate effect by giving notice to the other Party if:

7.1.1 the other Party is in breach of any provision of this Licence Agreement and (if it is capable of remedy) the breach has not been remedied within 30 days after receipt of written notice specifying the breach and requiring its remedy; or

7.1.2 the other Party becomes insolvent, or if an order is made or a resolution is passed for its winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed over the whole or any part of the other Party's assets, or if the other Party makes any arrangement with its creditors.

- 7.2 The Licensee's right to use the Software will cease immediately on the termination of this Licence Agreement.

- 7.3 Immediately upon the termination of the Licence Agreement the Licensee shall destroy the Software and all copies of the whole or any part thereof and certify in writing to STFC that they have been destroyed.

- 7.4 Any termination of this Licence Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Licence Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

8 **GENERAL**

- 8.1 STFC may assign any of its rights and obligations under this Licence Agreement, upon written notice, to any affiliated organization or to a statutory successor. Any assignment shall be subject to the assignee undertaking to observe the terms and conditions of this Licence Agreement.

- 8.2 The Licensee may not assign, transfer, charge, sublicense or otherwise deal in or dispose of in whole or in part any of its rights or obligations under this Licence Agreement without the prior written consent of STFC (such consent not to be unreasonably withheld or delayed).

- 8.3 Nothing in this Licence Agreement will constitute or will be deemed to constitute between the parties a partnership, association, joint venture or other co-operative entity, or constitute the relationship of principal and agent.

- 8.4 Neither party shall have any liability under or be deemed in breach of this Licence Agreement for any delays or failures in performance of this Licence Agreement which result from circumstances beyond the reasonable control of that party including, without limitation, fire, explosion, flood, tempest, unusually adverse weather conditions, failure or shortage of power supplies, war, hostilities, riot or acts of terrorism. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If circumstances continue for a continuous period of one (1) month, either party may terminate this Licence Agreement by written notice to the other party.
- 8.5 No forbearance, delay or indulgence by either party in enforcing the provisions of this Licence Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.
- 8.6 This Licence Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof (save that neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied). The Licensee hereby warrants to STFC that the Licensee has not been induced to enter into this Licence Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in this Licence Agreement and the Licensee hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this Licence Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently and was relied upon by the Licensee) and/or to rescind this Licence Agreement. No addition to or modification of any provision of this Licence Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.
- 8.7 Notwithstanding that the whole or any part of any provision of this Licence Agreement may prove to be illegal or unenforceable the other provisions of this Licence Agreement and the remainder of the provision in question shall remain in full force and effect.
- 8.8 The parties confirm their intent not to confer any rights on any third parties by virtue of this Licence Agreement and accordingly the Contracts (Rights of Third parties) Act 1999 shall not apply to this Agreement.
- 8.9 This Licence Agreement shall be interpreted and construed in accordance with the laws of England and Wales. The English Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Licence Agreement, however STFC may enforce the Licensee's obligation of confidence in the courts of any jurisdiction having competence to issue an injunction directly enforceable against the Licensee.

SIGNED for and on behalf of the STFC:

Name:

Position:

Signature:

SIGNED for and on behalf of the Licensee:

Name:

Position:

Signature:

SAMPLE