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### **1. DEFINITIONS.**

Each capitalized term used but not defined herein shall have the meaning ascribed to it in Schedule A to this Agreement.

### **2. MAPLESOFT'S ORDER CONFIRMATION AND LICENSE TO YOU.**

YOU acknowledge that Maplesoft or a Maplesoft authorized reseller has provided to YOU an Order Confirmation setting forth, among other things, the Software ordered, the License Option, the Installation Type, the licensed number of users entitled to use the Software, the term of the License and all contact information for YOU (including contact name, address, email address and fax number). Unless YOU notify Maplesoft or a Maplesoft authorized reseller within 30 days of receipt of the Order Confirmation that it is inaccurate, YOU shall be deemed to have confirmed the accuracy of the information and to have accepted the terms and conditions set out therein. YOU acknowledge and agree that the provisions of this Agreement shall apply to all Software licensed. Maplesoft reserves the right to vary the terms of this license from time to time in its sole discretion.

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Depending on the specific Software YOU are granted access to, the License Option, and Installation Type selected by YOU, the License term may be any one of the following as set out in the Order Confirmation:

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- (b) **Perpetual Licenses:** YOU may purchase a perpetual license to use the Software (a “**Perpetual License**”). A Perpetual License shall entitle YOU to use the Software indefinitely, unless and until terminated by Maplesoft in accordance with this Agreement. YOU understand and agree that the Elite Maintenance Program for each Perpetual License, if any, will terminate automatically upon expiration of the initial Elite Maintenance Program term. Thereafter, the Elite Maintenance Program term may be renewed for the Software upon payment at the then-applicable rates, as long as Maplesoft offers such Elite Maintenance Program, generally, for such Software. Maplesoft acknowledges that Perpetual License Software does not contain any code or device that will render it inoperable, upon expiration of any time period or upon any event.

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- (a) **Commercial License Option.** This License Option gives YOU (a commercial individual or an Entity purchasing this License Option for a commercial individual or institution) the right to use the Software for commercial purposes. This License Option may use any of the Installation Types with no additional use restrictions save and except as set forth in the applicable Installation Type and as otherwise set forth in this Agreement. This License Option may be granted as a Term License or as a Perpetual License. This License Option may include certain rights under the Home Use License Option as specified in YOUR Order Confirmation. If YOU are an Entity that purchases this License Option for a commercial user, YOU are also responsible for ensuring the commercial user complies with this License Agreement.
- (b) **Academic License Option.** This License Option gives YOU (an academic individual or an Entity

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- (ii) *Restricted Academic License.* This License Option gives YOU the right to use the Software for (and restricts YOUR use to) academic instruction and teaching only. Under this License Option, use of the Software for research or commercial use is strictly prohibited. Under this License Option, YOU are prohibited from granting Students Remote Access to the Software or installing the Software on a Student machine (whether owned by YOU or the Student) unless a separate license has been granted to YOU by Maplesoft in writing. This License Option may be granted as a Term License or as a Perpetual License. This License Option may include certain rights under the Home Use License Option as specified in YOUR Order Confirmation.

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## 7. **INSTALLATION TYPES.**

At the time of purchase of this License, YOU must select the applicable Installation Types permitted by Maplesoft. Rights, obligations, and restrictions apply to each Installation Type as set forth below. By accepting the terms and conditions of this Agreement, YOU also accept the applicable Installation Type. If the Installation Type is not specified by YOU at the time of YOUR original order, Maplesoft shall determine the Installation Type for YOU in its sole discretion. Maplesoft's Order Confirmation for such Software shall be determinative. The Software may be installed by the following Installation Types:

- (a) **Single User Installation Type:** This Installation Type gives YOU the right to install and operate the Software as follows:
  - (i) for installations of Software for Student Use (being the Student License Option), home use (being the Home Use License Option), or personal use (being the Personal Edition License Option), on one designated stand-alone node-locked personal computer that is owned, leased or controlled by YOU or the Student or individual user, as applicable, and
  - (ii) in the case of all other License Options, up to two computers that are each owned, leased or controlled by YOU;

Provided that the Software is only accessible to, and operated by YOU, the Student or an individual user, as applicable. The Software may be physically transferred from one computer to another owned, leased, or controlled by YOU or the Student or individual user, as applicable, but shall permanently delete the Software from the transferor computer such that the Software is installed on one computer only in the case of a Student, home users (under the Home Use License Option) and personal users (under the Personal Edition License Option) and otherwise on up to a maximum of two computers at any one time.

- (b) **Multi-User Installation Type – Non-Floating:** This Installation Type gives YOU the right to use the Software from multiple, specific (non-floating) computers that YOU designate during the installation and activation process, that are situated at one physical location. YOU may only use the Software on up to the designated number of computers noted in YOUR Order Confirmation. YOU may not transfer the Software to a different physical location. YOU may not provide Remote Access to the Software to users based in a different physical location. Use of the Software in a concurrent fashion (as set forth in Section 7(c) below) is strictly prohibited under this Installation Type. Although YOU may receive Upgrades to future versions of the Software (as permitted under Maplesoft's Elite Maintenance Program), the number of computers where the Software can be accessed cannot exceed the number of licensed users specified in YOUR Order Confirmation.

- (c) **Multi-User Installation Type - Floating:** This Installation Type gives YOU the right to use the Software from multiple, non-specific (floating) computers that YOU designate during the Installation and Activation process across one or more locations as set out in YOUR Order Confirmation that are owned, leased or controlled by YOU, provided that the total number of concurrent users does not exceed that set out in such Order Confirmation. YOU may have only as many users simultaneously operating the Software at any given time as permitted by the Order Confirmation. YOU are responsible for ensuring that the total number of users of the Software at any one time does not exceed the number of users licensed for the Software. YOU shall assign a central administrator the task of accurately counting and controlling the number of users allowed to access, install and administer the Software, including Upgrades to the Software, if applicable. Although YOU may receive Upgrades to the Software as permitted under Maplesoft's Elite Maintenance Program, the number of users who can concurrently access the Software (whether an Upgrade or Software that has not been Upgraded) cannot exceed the number of users specified in YOUR Order Confirmation. All such users must be within one country.
- (d) **International Multi-User Installation Type - Floating:** This Installation Type gives YOU the right to use the Software from multiple, non-specific (floating) computers that YOU designate during the Installation and Activation process across one or more locations as set out in YOUR Order Confirmation that are owned, leased or controlled by YOU, provided that the total number of concurrent users does not exceed that set out in such Order Confirmation. YOU may use the Software only from computers located in the countries specified in the Order Confirmation. YOU may have only as many users simultaneously operating the Software at any given time as permitted by the Order Confirmation. YOU are responsible for ensuring that the total number of users of the Software at any one time does not exceed the number of users licensed for the Software. YOU shall assign a central administrator the task of accurately counting and controlling the number of users allowed to access, install and administer the Software, including Upgrades to the Software, if applicable. Although YOU may receive Upgrades to the Software as permitted under Maplesoft's Elite Maintenance Program, the number of users who can concurrently access the Software (whether an Upgrade or Software that has not been Upgraded) cannot exceed the number of users specified in YOUR Order Confirmation.
- (e) **Core Installation Type:** This Installation Type gives YOU the right to install, use and operate the Software on designated stand-alone node-locked computers (each a "CPU") owned, leased or controlled by YOU as set out in the Order Confirmation, provided that YOU do not exceed the licensed number of cores as specified in YOUR Order Confirmation. There is no limitation on the number of users that may access and use the Software on cores, however certain technical limitations on use may apply based upon the functionality or technical features of the core. All users must be within one country unless prior written consent for multi-country access is provided by Maplesoft.

## 8. GENERAL LICENSE RESTRICTIONS.

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- (d) use the Software for supporting Third Parties' use of the Software, time share the Software to unlicensed Third Parties, or provide service bureau use, without Maplesoft's prior written consent, except as expressly set forth in Sections 8(k), 8(l), 8(m), 8(n), and 8(o);

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- (h) use Maplesoft's name, trade names, logos, or other trademarks of Maplesoft, or any of its Affiliates or Licensors, whether in written, electronic, or other form, without Maplesoft's prior written consent;
- (i) access or use Software that YOU are not currently licensed to access or to use;
- (j) disclose the purchase codes and/or license file, if applicable, to a Third Party or allow them to be used except for installation and use of the Software as provided herein;
- (k) use the MapleNet Software except as follows: to deploy and deliver MapleNet enabled content through a production server owned, leased or controlled by YOU. Such content may be accessed by any Entity permitted by the Order Confirmation, through YOUR Site, only in the form of Maple Worksheets/Documents, Maplets, HTML, JSP and other Java based applets (the "MapleNet Content"). YOU are prohibited from making available on YOUR Site any MapleNet Content and/or MapleNet applications which are similar in functionality to, or competitive with, any Maplesoft Software (as determined by Maplesoft in its sole discretion). YOU are further prohibited from making available MapleNet Content through any means other than Maple Worksheets/Documents, Maplets, HTML, JSP or, other Java based applets. All Maplesoft Software used to develop or create MapleNet Content must be validly licensed from Maplesoft. YOU are permitted to provide access to MapleNet Content, but YOU may not sell, license or otherwise make available MapleNet Content for commercial gain, which includes, but is not limited to, generating revenue by providing access to MapleNet or MapleNet Content by charging a subscription fee, service fee, or any other form of transaction fee. MapleNet may be installed on the correct number of CPU cores, leased or controlled by YOU, and as set out in the Order Confirmation, provided that access to MapleNet is provided only through YOUR Site;
- (l) use the MapleSim Server Software except as follows: to deploy and deliver MapleSim Server enabled content through a production server owned, leased or controlled by YOU. Such content may be accessed by any Entity permitted by the Order Confirmation, through YOUR Site, only in the form of Maple Worksheets/Documents (the "MapleSim Server Content"). YOU are prohibited from making available on YOUR Site any MapleSim Server Content and/or MapleSim Server applications which are similar in functionality to, or competitive with, any Maplesoft Software (as determined by Maplesoft in its sole discretion). YOU are further prohibited from making available Content through any means other than Maple Worksheets/Documents. All Maplesoft Software used to develop or create Content must be validly licensed from Maplesoft. YOU are permitted to provide access to MapleSim Server Content, but YOU may not sell, license or otherwise make available MapleSim Server Content for direct commercial gain, which includes, but is not limited to, generating revenue by providing access to MapleSim or MapleSim Content by charging a subscription fee, service fee, or any other form of transaction fee. MapleSim Server may be installed on the correct number of CPU cores, leased or controlled by YOU, and as set out in the Order Confirmation, provided that access to MapleSim Server is provided only through YOUR Site;
- (m) use Maple T.A. Software except as follows: to develop, deploy and deliver T.A. Content through a server owned, leased or controlled by YOU and accessed by any Entity permitted by the Order Confirmation through a Site. YOU shall be prohibited from deploying and/or delivering T.A. Content unless YOU have a valid Term License for the Maple T.A. Software and have paid all fees and applicable taxes otherwise then due in respect of thereof. However, YOU shall continue to have the right to develop T.A. Content even if YOU do not hold a valid Term License. YOU are prohibited from making available any T.A. Content and/or Maple T.A. applications with functionality similar to or competitive with any Maplesoft Software (as determined by Maplesoft in its sole discretion). All Maplesoft Software used to develop or

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- (n) use the Placement Test Suite except as follows: use of Placement Test Suite shall be subject to additional rights, obligations and restrictions applicable of the Placement Test Suite license type set out in the Order Confirmation. Placement Test Suite may be licensed in either of the following manners:
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  - (ii) **Maple T.A. Unrestricted License.** This license gives YOU the right to use Placement Test Suite including, without limitation, the Maple T.A. functionalities of Placement Test Suite, to develop, deploy and deliver PTS Content and/or T.A. Content through a server owned, leased or controlled by YOU and accessed by any Entity permitted by the Order Confirmation through a Site.

YOU shall be prohibited from using Placement Test Suite to deploy and/or deliver PTS Content and T.A. Content (as applicable) unless YOU have a valid Term License for Placement Test Suite and have paid all fees and applicable taxes otherwise then due in respect of thereof. However, YOU shall continue to have the right to develop PTS Content and T.A. Content (if applicable) even if YOU do not hold a valid Term License. Placement Test Suite may be installed on the correct number of servers, set up to serve the correct number of users, leased or controlled by YOU, and as set out in the Order Confirmation. If YOU exceed the correct number of users, YOU are required to pay additional fees to Maplesoft to cover the excess users. YOU are prohibited from making available any PTS Content, T.A. Content (if applicable) and/or Maple T.A. applications with functionality similar to or competitive with any Maplesoft Software (as determined by Maplesoft in its sole discretion). YOU are permitted to provide access to PTS Content and, if permitted by this Agreement, T.A. Content, but YOU may not sell, license or otherwise make available for commercial gain, access to such content, or provide direct access to the underlying functionality of any Software;

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- (p) sell, license, or sublicense derivative works based on code generated by the Software to a Third Party for commercial purposes, without Maplesoft's prior written consent.

## 9. RETENTION OF RIGHT, TITLE AND INTEREST.

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- (a) **Termination on Notice.** Maplesoft may terminate this Agreement if YOU fail to comply with any provision of this Agreement upon written notice to YOU.
- (b) **Obligations upon Termination.** Upon termination of this Agreement:
  - (i) all rights and licenses to the Software and all obligations of Maplesoft hereunder shall terminate. Notwithstanding the foregoing, in the event this Agreement is terminated by Maplesoft due to YOUR failure to pay when due Fees and/or a breach of this Agreement by any YOU, then only the licenses granted corresponding to such unpaid Fees shall terminate;
  - (ii) YOU shall immediately discontinue use of the Software immediately and certify in writing to Maplesoft that all copies of the Software, in whole or in part, in any form, have either been returned to Maplesoft or destroyed;
  - (iii) Maplesoft may elect to continue or terminate YOUR purchase order then pending for which payment has not yet been received and Software has not been delivered; and
  - (iv) except as otherwise stated herein, all payments made by YOU to Maplesoft hereunder are non-refundable.
- (c) Notwithstanding any termination of this Agreement, Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19 and 20 shall survive termination of this Agreement. All other rights and licenses granted hereunder will cease upon termination.

#### 12. **FEES AND PAYMENT TERMS.**

The License Fee payable by YOU shall be the amount set forth in the applicable Order Confirmation, invoice or Web purchase confirmation, as the case may be. All payments shall be non-refundable except as otherwise expressly provided in this Agreement. All Fees payable by YOU to Maplesoft shall be paid in the currency set forth in the accepted Order Confirmation within 30 days of the date of such document unless otherwise agreed to by Maplesoft in writing. Any amounts due Maplesoft under this Agreement not received by Maplesoft by the date due shall be subject to a service charge of one and one half percent (1 1/2%) per month, being eighteen percent (18%) per annum, or the maximum charge permitted by law, whichever is less.

#### 13. **TAXES, DUTIES, CUSTOMS.**

Absent appropriate exemption certificates or other conclusive proof of tax exempt status, YOU shall pay all applicable sales, use, excise, value-added, and other taxes, duties, levies, assessments, and governmental charges payable in connection



with this Agreement or the Licenses granted hereunder (excluding taxes based on or measured by Maplesoft's income, for which Maplesoft shall be solely responsible). When Maplesoft has the legal obligation to collect such taxes, the appropriate amount shall be due upon invoice to YOU. YOU shall hold Maplesoft harmless from all claims and liability arising from YOUR failure to pay any such taxes, duties or charges.

#### 14. LIMITED WARRANTY.

Maplesoft warrants that the physical media, if any, on which the Software is recorded is free from defects in materials and workmanship under normal use and service for a period of thirty (30) days (the "**Return Period**") from the date of delivery to YOU. If such a defect exists and YOU are within the Return Period, YOU may return the entire package, including packaging, postage prepaid with a copy of the invoice to Maplesoft at the address below (or if the Software was downloaded, permanently delete and destroy all copies of the Software and certify such deletion and destruction to Maplesoft by written or electronic communication), and Maplesoft, at its option, shall either (a) return the purchase price or (b) replace the media. If failure of the media has resulted from accident, abuse, or misapplication, Maplesoft shall have no responsibility whatsoever to refund the purchase price or replace the media. In the event of replacement of the media, the replacement media will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is the longer. Except as set out in this Agreement, this remedy is YOUR exclusive remedy for a breach of warranty, and is Maplesoft's (or any of its affiliated corporations and their respective directors, officers, employees or shareholders) entire liability and only warranty made with respect to the Software.

Any claims made by YOU for the breach of a warranty, shall be made in writing and delivered to Maplesoft at the address set forth herein, and YOU shall provide Maplesoft a reproducible test case, if applicable, demonstrating the breach of warranty.

Maplesoft does not warrant that the Software will meet YOUR requirements, be error free, or operate without interruptions. YOU acknowledge that the Software operates in an environment that includes software and hardware of Third Party vendors and that Maplesoft does not control the products of Third Party vendors. YOU further acknowledge that YOU are possessed with superior knowledge with respect to YOUR operations and have relied upon YOUR own skill and judgment in selecting and licensing the Maplesoft Software. YOU further acknowledges that 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 in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("**High Risk Activities**"). Accordingly, Maplesoft, Third Party Licensors and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. YOU agree that Maplesoft and its suppliers and Third Party Licensors will not be liable for any claims or damages arising from the use of the Software in such applications.

#### 15. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY.

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.

#### 16. LIMITED LIABILITY.

**OTHER THAN AS EXPRESSLY SET OUT HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE SOFTWARE IS PROVIDED “AS IS” WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MAPLESOFT, ITS AFFILIATES, DEALERS, RESELLERS OR DISTRIBUTORS, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. YOU ASSUME THE ENTIRE RISK AS TO THE USE AND PERFORMANCE OF THE SOFTWARE OR DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL MAPLESOFT, ITS AGENTS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE AND/OR DOCUMENTATION BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUES OR PROFITS, BUSINESS INTERRUPTION, TESTING INTERRUPTIONS, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, THE INSTALLATION AND ACTIVATION OF THE SOFTWARE, THE TERMINATION OF THIS AGREEMENT, THE FAILURE OF EQUIPMENT RELATED TO YOUR COMPUTER OR DAMAGE TO YOUR COMPUTER, SOFTWARE OR OTHER PROPERTY RESULTING FROM YOUR USE OF THE SOFTWARE, EVEN IF MAPLESOFT OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM, OR IT IS FORESEEABLE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU IN SUCH A CASE. MAPLESOFT’S MAXIMUM AGGREGATE LIABILITY TO YOU SHALL NOT EXCEED THE AMOUNT PAID BY YOU FOR THE SOFTWARE. THE LIMITATIONS OF THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

**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;
  - (iii) YOU grant to Maplesoft the right to use the Personal Information for any purpose associated with the provision of its Elite Maintenance Program (if applicable) to YOU; and
  - (iv) 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 and the United States 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 services rendered by Maplesoft to YOU as described at [www.maplesoft.com/emp](http://www.maplesoft.com/emp).

“**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.

“**Maple T.A. Restricted License**” and “**Maple T.A. Unrestricted License**” have the meaning set forth in Section 8.

“**Maple T.A.**” means “**Maple T.A.™ Software**” enabling YOU (or users accessing Maple T.A. through YOUR Site) to develop, deploy and deliver web-based testing and assessment systems to create, manage and deploy tests and assignments (the “**T.A. Content**”) through a server owned, leased or controlled by YOU and accessed by any Entity permitted by the Order Confirmation through a Site.

“**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.

“**Möbius**” means “**Möbius Software**” enabling YOU (or users accessing Möbius through YOUR Site) to develop, deploy and deliver web-based course content (the “**Möbius Content**”) through a server owned, leased or controlled by YOU and accessed by any Entity permitted by the Order Confirmation through a Site.

“**Möbius Content**” means course content created, managed, or deployed using the Möbius 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.

“**PTS Content**” means the placement testing and assessment content that is bundled with Placement Test Suite.

“**Placement Test Suite**” means the version of Maple T.A. known as “**Maple T.A.<sup>TM</sup> MAA Placement Test Suite Software**” that enables YOU to deploy and deliver web-based placement tests in combination with the PTS Content through a server owned, leased or controlled by YOU and accessed by any Entity permitted by the Order Confirmation through a Site.

“**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 non-commercial research. For greater certainty, Student Use shall exclude use as an employee or otherwise for commercial gain, instruction, teaching or research.

“**T.A. Content**” means tests and assignments created, managed, or deployed using the Maple T.A. Software, excluding PTS Content.

“**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.

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