

## END USER APPLICATION, LICENSE, NON-DISCLOSURE AND COMPLIANCE WITH EXPORT REGULATIONS AGREEMENT (EULA)

This End User License and Non-Disclosure Agreement (the “Agreement”), effective as of the date on which Spectral Sciences, Inc. (“SSI”) accepts the order for the MODTRAN<sup>®</sup> software described in the Attachment to this Agreement (the “Software”) from the person or entity listed on the signature page (“Licensee”), is entered into by and between SSI and Licensee.

*This Agreement will not be valid unless executed by Licensee and accepted by SSI. Delivery of the Software to the licensee constitutes acceptance by SSI. This document will not be accepted if it has been modified. If you wish to modify this document, please contact Spectral Sciences Inc. at [orders@spectral.com](mailto:orders@spectral.com) (with MODTRAN in the subject line).*

In consideration of the mutual covenants set forth herein and other good and valuable consideration, SSI and Licensee agree as follows:

**1. Grant of License; Restrictions.** Pursuant to the authority granted by the “Patent and Trademark License by Department of the Air Force in favor of Spectral Sciences, Inc.,” SSI hereby grants to Licensee a non-exclusive, non-transferable license to use the Software, subject to the following conditions:

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- e. The Software is to be used by the Licensee solely for Licensee’s internal uses and shall remain the property of the U.S. Government and/or SSI. Internal uses *does not*

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- f. Licensee shall limit access to the Software provided hereunder to only those of its personnel as may be directly involved in Licensee's permitted uses hereunder and inform such personnel that said Software is the property of the U.S. Government and/or SSI, and Licensee shall provide to SSI a list of Licensee personnel having rightful access to the Software.
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- h. Licensee's use and access to the Software is set out in Exhibit A, and such use and access may be monitored and regulated through a license management tool (the "License Manager"). The License Manager will report such data to SSI. Licensee will not install or use the Software in a manner that circumvents or interferes with the operation of the License Manager or any other technological measure that controls access to the Software. Some configurations may require the Software to be installed only on designated servers. For those configurations, SSI will support four changes to the designated servers during any twelve-month period upon prior written notice.
- i. While modification of the code or databases is permitted for non-commercial use, any and all results produced with such modified code must be clearly identified as output from a "Modified Version of MODTRAN®"; and a copy of the modified coding and/or databases shall be transferred back to SSI and the U.S. Government, *to the extent that it corrects any unintended errata*, and shall be freely usable by SSI, the U.S. Government and their licensees.
- j. The license will renew annually so long as Licensee is in compliance with Licensee terms including payment of annual maintenance fee.

**2. Term and Termination.** The license granted pursuant to this Agreement will continue for the agreed upon term if a temporary license, or indefinitely for as long as Licensee remains in compliance with the terms hereof but shall terminate automatically if Licensee fails to comply with any term or condition of this Agreement. Upon the termination of this Agreement, Licensee will promptly return to SSI or destroy all copies of the Software and certify such return or destruction in writing to SSI. Licensee may also terminate this Agreement voluntarily by destroying the Software or returning all copies to SSI. Licensee

will not be required to destroy those copies generated through automated system backups that are not readily available to Licensee's employees, subcontractors or consultants. (Such copies shall be destroyed during the normal course of business). The return/destruction requirements of this Section 2, Sections 3 through 7, Sections 10 through 15, and any payment obligations hereunder shall survive any termination of this Agreement.

**3. Certain Licensee Responsibilities.** Licensee is responsible for the supervision, management and control of the use of the Software, including but not limited to: (i) complying with all laws in its use of the Software; (ii) selection of the Software to achieve Licensee's intended results; (iii) establishing adequate test and backup procedures to verify accurate data and to prevent the loss of data in the event of a malfunction of the Software; and (iv) establishing adequate test and backup procedures to verify accurate data and to prevent the loss of data in the event of a version upgrade of the Software. Licensee understands that the Software is a tool that can be used to create algorithms, processes and products that may infringe third party intellectual property rights. Licensee assumes full responsibility for the results of its use of the Software and agrees to indemnify and hold harmless SSI and its licensor from and against any claims that algorithms, processes or products created by Licensee using the Software infringe any third party intellectual property rights or other rights.

**4. Disclaimer of All Warranties.** Licensee understands and agrees that the Software and any documentation and maintenance provided therewith are provided "AS IS" and without warranty, express or implied, of any kind. WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND MAINTENANCE, SSI AND ITS LICENSOR SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

**5. Exclusion of Certain Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, SSI AND ITS LICENSOR EXCLUDE ALL LIABILITY FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR ANALOGOUS DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA OR LOSS OF PROFITS) ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SOFTWARE AND THE DOCUMENTATION AND MAINTENANCE PERTAINING THERETO, WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, AND WHETHER SSI OR ITS LICENSOR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6. Limitation of Aggregate Damages.** Licensee agrees that the aggregate liability of SSI and its licensor in connection with this Agreement and/or the use of the Software, documentation and maintenance provided hereunder shall not exceed the fees paid to SSI for the use and/or maintenance of the Software during the twelve months immediately preceding the event that gives rise to the alleged liability, whether such liability arises by contract, tort (including negligence) or strict liability. An essential purpose of the limitation on damages provided in this Section is the allocation of risks between Licensee, SSI and the U.S. Government, and Licensee acknowledges that SSI and its licensor would not have

been willing to license the Software to Licensee in the absence of the limitation set forth in this Section 6 and the exclusions set forth in Section 5 above.

**7. Ownership; Non-disclosure.** SSI and its licensor own and retain all right, title and interest, including without limitation all copyright, trademark, trade secret, patent and other proprietary rights, in and to the Software and the documentation (the “Proprietary Materials”). Except as specifically authorized by this Agreement, Licensee shall not disclose, sell, lease, transfer, sublicense, dispose of, or otherwise make available the Proprietary Materials or any portion thereof, in source or object code, to any third party. Licensee agrees that dissemination of the Proprietary Materials in breach of this Agreement would cause irreparable harm to SSI and its licensor for which monetary compensation alone would be inadequate, and SSI and/or such licensor are entitled to injunctive relief prohibiting any such dissemination without the necessity of posting bond, in addition to any other remedies available at law or in equity. This Agreement is NOT a sale of the Proprietary Materials or any copy of them. Licensee obtains only such rights as are provided in this Agreement.

**8. Maintenance.** The initial fees paid by Licensee to SSI include one year of maintenance beginning on the date of delivery of the Software and ending on the first anniversary of the delivery date. The maintenance services provided by SSI include minor code upgrades, response to email with technical questions, and access to the MODTRAN technical website. Additional one-year increments of maintenance services should be purchased from SSI. Such additional maintenance shall be subject to the terms of this Agreement.

**9. Point of Contact.** Licensee shall identify a point of contact (POC), who will be responsible for communicating with SSI in regard to the set-up, use and operation of the Software. SSI shall not have any obligation to instruct Licensee personnel other than the POC and registered Users in the use and application of the Software, including technical support. Licensee may, if available, purchase additional technical support from SSI to obtain expanded services.

**10. Payment.** For the license and maintenance provided hereunder, Licensee shall pay SSI the fees set forth on the MODTRAN E-commerce web site at [www.modtran.com](http://www.modtran.com). The price for additional years of maintenance is also set forth. All pricing is subject to change. Certain additional ordering procedures and the terms of payment are set forth on the MODTRAN website. Ordering, payment and customer inquiries are administered through that website. Payment is due in full prior to delivery of the product. The software is provided to Government Purpose Users royalty free, however annual maintenance fees may be levied.

**11. Force Majeure.** SSI shall not be liable for any failure to perform hereunder to the extent that such failure arises by factors outside SSI’s reasonable control, including but not limited to Acts of God, war, terrorism, natural disaster or third-party transportation and communications failure.

**12. Assignment.** Licensee may not sell, license, assign, or otherwise transfer the Software or the documentation without the written permission of SSI, which may be withheld in

SSI's sole discretion. Any such sale, license, sublicense, assignment, rental or transfer in breach of this provision shall be void.

**13. Amendment; Waiver; Severability.** No alteration, amendment, waiver, cancellation or other change to this Agreement shall be valid or binding unless agreed to in writing by both parties. No waiver by any party of a breach of any covenant or condition of this Agreement by any other party shall be construed to be a waiver of any succeeding breach of the same or any other covenant or condition. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties. The parties further agree to replace any such invalid or unenforceable provisions with valid and enforceable provisions designed to achieve, to the extent possible, the business purposes and intent of such invalid and unenforceable provisions.

**14. Choice of Law; Jurisdiction and Venue.** The terms of this Agreement shall be construed in accordance with the substantive laws of the Commonwealth of Massachusetts, without regard to its principles of conflicts of laws. Without limiting the generality of the foregoing, this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods even if such Convention would otherwise be applicable in some respect to this license of software. The parties agree that construction and enforcement of this Agreement and disputes pertaining thereto shall be subject to the exclusive jurisdiction of state and federal courts located in the Commonwealth of Massachusetts and the parties consent to such jurisdiction and venue in such courts.

**15. Compliance.** Upon SSI request, but not more than annually, Licensee shall provide a letter certifying compliance with all terms and conditions of this Agreement, including number of Users or Seats.

**16. U.S. Government Not a Party; Third Party Beneficiary.** Although, as licensor to SSI, the U.S. Government is not a party to this Agreement and Licensee cannot enforce SSI's obligations hereunder against the U.S. Government, Licensee agrees that the U.S. Government is a third-party beneficiary of the provisions that protect its interest in the Software and that it shall be entitled to enforce such provisions against Licensee. In case of such enforcement, Section 14 hereof shall be inapplicable and federal law shall control.

**17. Acknowledgement; Entire Agreement.** LICENSEE ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. LICENSEE FURTHER AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE LICENSE AGREEMENT BETWEEN LICENSEE AND SSI WHICH SUPERSEDES ANY PROPOSAL, OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN LICENSEE AND SSI RELATING TO THE SUBJECT MATTER OF THIS LICENSE AGREEMENT.

**18. United States Export Regulations Compliance:** Licensee understands that MODTRAN software is governed by the U.S. Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce. The Licensee understands that any

transfer of MODTRAN software to another individual or organization may constitute export, deemed export or re-export, and as such, must be in accordance with the requirements of the EAR. It is understood that the country of ultimate destination, end-user, or end-use could affect the applicable license requirements and exportability. The company agrees to consult various resources, such as the EAR, ITAR, and OFAC, by the U.S. Department of Commerce's Bureau of Industry and Security's ("BIS") Export Counseling Division, and other appropriate Government Sources to ensure that the transfer of MODTRAN software is done in accordance with all applicable laws.

- a. The Licensee understands that Spectral Sciences Inc. is not responsible for MODTRAN software that is exported by Licensee or transferred to another person and/or representative, domestic or foreign. If MODTRAN software is obtained with the intent of export, deemed export or re-export, Licensee accepts responsibility for any U.S. State Department or U.S. Commerce Department License.
- b. Licensee acknowledges that U.S. law prohibits the sale, transfer, export, deemed export or re-export or other participation in any export transaction involving U.S. products with individuals or companies listed in the U.S. Commerce Department's Table of Denial Orders, the U.S. Treasury Department's list of Special Designated Nationals or the U.S. Department of State's list of individuals debarred from receiving Munitions List items. Where applicable, Licensee agrees to consult appropriate resources, such as the U.S. Federal Register, to review the list of current embargoed countries, and to understand and comply with specific restrictions on the export or re-export of said products under these embargoes and sanction policies.
- c. Licensee understands that there may be restrictions on the ability to supply MODTRAN or any direct product thereof to specified end-users or for specified end-uses, as regulated by Part 744 (Control Policy: End-User and End-Use Based) of the EAR, unless there is prior authorization from the BIS. Licensee understands that MODTRAN must be used in compliance with the following regulations:

**§744.2 Restrictions on Certain Nuclear End-Uses**

**§744.3 Restrictions on Certain Rocket Systems and Unmanned Air Vehicles End-Uses**

**§744.4 Restrictions on Certain Chemical and Biological Weapons End-Uses**

Licensee agrees to limit use of MODTRAN to the end-uses disclosed in this Agreement.

- d. The obligations and requirements described in this section shall survive the expiration or termination of this Agreement.

**Certification of End-Use:**

\_\_\_\_\_ This product is for US domestic end use and will not be exported.

\_\_\_\_\_ This product is for export out of the United States. Destination/ end use application

is: \_\_\_\_\_

IN WITNESS WHEREOF, the licensee has executed this Agreement.

Organization: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Please return this document to Spectral Sciences Inc, 30 Fourth Ave, Suite 2, Burlington, MA 01803-3304, USA, [orders@spectral.com](mailto:orders@spectral.com) or fax to (781)-270-1161.*

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## EXHIBIT A

### SOFTWARE LICENSE PURCHASE SCHEDULE Educational or Commercial Use

#### **Description of MODTRAN Software:**

The MODTRAN software ('Software') models atmospheric transmittance, radiation and scattering as a function of wavelength, based on user defined geometries, weather conditions, and models. The products of MODTRAN include spectral data ("Spectra") and atmospheric path concentrations. MODTRAN has served as the U.S. Air Force and DoD standard moderate spectral resolution radiative transport model for wavelengths extending from the thermal infrared (IR) through the visible and into the ultraviolet (0.2 to 10,000.0  $\mu\text{m}$ ). MODTRAN includes line-by-line and band-model calculation methods.

#### **Type of License (Check applicable):**

- ☐ **Educational Use:** Educational Use licenses shall be used exclusively in connection with non-commercial research and educational activities conducted by academic institutions. Research efforts sponsored by or conducted on behalf of commercial entities do not qualify for Educational Use.
- ☐ **Student/Training Use:** Student licenses are temporary licenses distributed within an organization to students taking a course involving MODTRAN. These are temporary licenses that can be turned on at the beginning of the course and expire at the end of the course. The Licensee must acquire at least one Single User License for the instructor.
- ☐ **Commercial Standard Use.** Commercial Standard Use licenses shall be used solely for internal research and development purposes, or to enhance the value of the entity's or third party's commercial products if the total annual processing volume using the Software *or resultant Spectra* amounts to less than 100Gb of spectral data.
- ☐ **Commercial Production Use:** Commercial Production Use licenses shall be used by a commercial entity that will employ the Software, *resultant Spectra, information derived from Spectra, or algorithms derived from, based or trained on resultant Spectra* in a production processing environment for purposes of enhancing the value of the entity's or third party's commercial products, for instance, sale of the improved spectral data and/or data products such as maps and overlays.
- ☐ **Government Use.** Government Use licenses shall be used exclusively in connection with work being performed by or for the United States Government and the departments and agencies thereof (the "Government").

#### **Scope of License:**

Use of the Software is limited to Licensee's internal uses at one physical site, or in the case of personal laptop use, users whose primary place of business is a single physical site. Licensee may report on results obtained with the Software and should duly reference the Software in reports and papers. Modification of the Software and databases is permitted for non-commercial use, including incorporation into Licensee's *internal* software.



**Type and Number of Units (check applicable):**

☐ **Single User Desktop Use:**

The licensee may install the Software on up to four fixed or portable computers, and may permit use of the Software by up to three personnel who are part of a workgroup or unit. Authorization for larger site installations or additional users may be obtained as supplemental licenses. Names and email addresses of the authorized users should be listed below for support purposes.

Number of Licenses: \_\_\_\_\_

☐ **Enterprise Use:**

The licensee may install the Software on shared server platforms or personal computer systems within the licensee's organization. A license manager will permit concurrent use of the software by a number of personnel which may not exceed the number of purchased licensed seats.

Number of Seats: \_\_\_\_\_

☐ **Temporary Use:**

The licensee may install the Software on desktops or laptops for temporary use by students taking a course at licensee's organization. License management software and a license key limits usage to the agreed upon term.

Number of Seats: \_\_\_\_\_ Duration of Use: \_\_\_\_\_

**Licensee Contacts:**

POC name, address, phone and email: \_\_\_\_\_

\_\_\_\_\_

POC is responsible for providing updates and customer technical support for non-registered Users. Only registered Users have direct access to online modtran.com resources.

Names and email of authorized Users (Optional, for User Registration):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**SSI Contacts:**

Orders and inquiries: [orders@spectral.com](mailto:orders@spectral.com) (use MODTRAN in subject line)

Technical support: [modtran@spectral.com](mailto:modtran@spectral.com)

Phone: 781-273-4770, request MODTRAN support

Fax: 781-270-1161

Online: [www.modtran.com](http://www.modtran.com)