COMPANY

Address 1

Address 2

Address 3

To the attention of Mr/Mrs Xxxx XXXX

Saclay, the XX/XX/20XX

CEA Reference: DES XXXX (BALI: L XXXX)

In response to your request for the **licensing / purchase of maintenance of x year(s) of the Europlexus software**, please find enclosed a license agreement consisting of the special conditions and the general license conditions of this software. In case of contradiction between these two documents, the special conditions prevail over the general license conditions.

Please return two original copies of the present special license conditions, signed by your duly authorized representative, as well as the initialled appendix, together with the purchase order form for the coming year, **before XX/XX/20XX to the following address:**

**CEA SACLAY**

**DES/ISAS/DM2S/SEMT/DYN**

**Madame Sophie BOREL-SANDOU**

**Bât 607 – PC 116**

**91191 GIF SUR YVETTE CEDEX**

This Europlexus software license agreement covers the version of Europlexus in effect at the time of signing.

**It will be effective from XX/XX/20XX for a period of x year(s), until XX/XX/20XX.**

Thank you for your trust.

Best regards.

|  |  |  |
| --- | --- | --- |
| Commissariat à l’énergie atomique et aux énergies alternatives  Centre de Saclay l 91191 Gif-sur-Yvette Cedex  Secrétariat : +33 (0)1 69 08 23 60  Natalie.lemaintec@cea.fr  Etablissement public à caractère industriel et commercial l RCS Paris B 775 685 019 |  |  |

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| --- |
| **EUROPLEXUS SOFTWARE LICENSE** |
| **BETWEEN**  **Le Commissariat à l'énergie atomique et aux énergies alternatives, E**tablissement Public de recherche à caractère Scientifique, Technique et Industriel (The French Alternative Energies and Atomic Energy Commission, Public Institute for Scientific, Technical and Industrial Research), whose head office is located at Bâtiment Le ponant D, 25 rue Leblanc, 75015 PARIS (FRANCE),  registered in the Paris Trade and Companies Register under number R.C.S. PARIS B 775 685 019,  represented by Mr Stéphane SARRADE*,* in his capacity as Director of Energy Programs (DES/EC/DPE) of the Energy Department, at Saclay, bâtiment 121, 91191 Gif-sur-Yvette CEDEX,  hereinafter referred to as ‘**CEA**’  on the one hand,  **AND**  **COMPANY,**  Type of company (SA, ...), whose head office is located at ............................................................................., registered in the Trade and Companies Register ................................. under number ..............................., represented by Mr/Mrs ...................................................., acting in his capacity as ....................................................................................................................,  hereinafter referred to as “**Licensee**”  on the other hand |

**PRESENTATION OF THE EUROPLEXUS SOFTWARE**

EUROPLEXUS is a simulation software dedicated to the analysis of fast transient eventsinvolving interacting structures and fluids. The program is co-owned by the French Alternative Energies and Atomic Energy Commission (CEA) and the European Commission's Joint Research Centre. Its development is carried out within the framework of a Consortium involving the co-owners and so-called "Major" partners who have full access to the source code and development tools.

EUROPLEXUS is based on a discretization of space using finite elements, SPH (Smooth Particle Hydrodynamics) or discrete elements for structures, or using finite elements, finite volumes or SPH particles for fluids. The integration in time is performed via an explicit conditionally stable scheme.

The resolution algorithm is entirely non-linear, both at the geometric level (large displacements, large rotations) and at the material level (constitutive relations with plasticity and/or damage, for example).

The program integrates a large number of kinematic links between entities, for example for boundary conditions, contact between structures or fluid-structure interaction. EUROPLEXUS is characterized by a minimal use of non-physical parameters in the treatment of these kinematic links, such as penalty stiffness for example. It uses direct methods for calculating the linkage forces when possible and, otherwise, the links are dualized by means of Lagrange Multipliers, the forces sought being then obtained via the resolution of an additional linear system.

The developments at CEA are carried out in the Mechanical and Thermal Studies Unit (SEMT) of the Systems and Structures Modelling Department (DM2S) of the Energy Directorate (DES). They rely on the experimental skills of the unit to characterize the models and on its numerical skills to develop them, the validation being performed on real systems.

**SPECIAL LICENSE CONDITIONS**

**By this license agreement, the CEA grants the Licensee a right to use the EUROPLEXUS software in its version in force at the time of acceptance of the present agreement by the Licensee, in accordance with the following specific conditions chosen by the Licensee, and in accordance with the general license conditions attached hereto.**

**CHOICE OF LICENSE OPTIONS:**

**🞎 LICENSE OPTION A:** License with corrective maintenance and integrated technical support for a period of ......... (...) year(s) - Conditions specified in the Appendix of the present document. Upgradable maintenance excluded.

**🞎 LICENSE OPTION B**: License with permanent validity on the version in force at the date of signature of the present license, with integrated maintenance for one year for the current year - Conditions specified in the Appendix of the present document.

*The maintenance offer for option B includes the annual update of the EUROPLEXUS software for the current year, the corrective maintenance and the technical support (by electronic means).*

**ADDITIONAL MAINTENANCE FOR OPTION B:**

The maintenance option C below gives the holders of a permanently valid license (license option B) the possibility of extending the duration of the maintenance (update, corrective maintenance and technical support).

**🞎 MAINTENANCE OPTION C:** Maintenance of ......... (...) additional year(s)

However, holders of a permanently valid license are only entitled to a maintenance offer if there has been no break in maintenance for more than one year. If this is not the case, a new license (option A or B) must be purchased in order to acquire a new EUROPLEXUS version.

**TYPES OF LICENSES**

A license, of the *nodelocked* or *network* type (see appendix), is granted for installation on an identified machine, known as the "Host Machine" (workstation for the *nodelocked* license with no restriction on the number of users on this workstation, or server for the *network* license, with a limit of 5 users using this license simultaneously).

**CHOICE OF VERSIONS (OS), LICENSE TYPES AND QUANTITIES:**

Windows 64 bits quantity: \_\_\_\_\_ type of license: network/nodelock

Linux 64 bits quantity: \_\_\_\_\_ type of license: network/nodelock

For a total of **x** version(s).

**PRICE**

The total amount of the EUROPLEXUS license depends on the option chosen by the Licensee and the number of EUROPLEXUS versions ordered.

The unit prices are as follows, depending on the options chosen by the Licensee, regardless of the choice of the type of license *nodelocked* or *network*:

🞎 OPTION A: **6 000 € ex-tax** (annual license with maintenance)

🞎 OPTION B: **12 000 € ex-tax** (new permanent license and one year maintenance for this license).

🞎 OPTION C: **3 300 € ex-tax** (annual maintenance)

Total amount: **XXXXX € ex-tax**

These amounts are firm for a licensed version.

The VAT rate applicable is that in force on the date of the chargeable event.

**TERMS OF PAYMENT**

Invoices shall be payable in EUROS at the latest within thirty (30) days from the end of the month following the date of their issue, according to the following methods of payment:

**By bank transfer to :**

**BNP PARIBAS**

**Paris Agence Centrale Entreprises (00818)**

**9-11, Rue de Marivaux**

**75002 PARIS**

**IBAN: FR76 3000 4008 180 0212 1622 127**

**SWIFT: BNPAFRPPXXX**

**CEA CORRESPONDENTS:**

For all technical and commercial questions:

Name: Madame Claire GAUTHIER

Unit: DES/ISAS/DM2S/SEMT/DYN

Address: CEA Saclay – Bâtiment 607 – PC 116 – 91191 GIF SUR YVETTE CEDEX

Telephone: +33.1.69.08.95.57

For all legal questions:

Name: Madame Garance HUG GIOVANNETTI

Unit: DES/EC/DGCP/UJ

Address: CEA Saclay – Bâtiment 121 – PC 10 – 91191 GIF SUR YVETTE CEDEX

Telephone: +33.1.69.08.83.42

|  |
| --- |
| **SIGNATURES** |
| CEA signatory: Stéphane SARRADE  Function: Director of Energy Programs  Date:  Signature: |
| Licensee’s signatory:  Function:  Date:  Signature: |

*The information contained in this document is confidential and may not be duplicated or disclosed without the written permission of the CEA. It may only be used in the strict context of this proposal.*

**APPENDIX:**

**GENERAL EUROPLEXUS LICENSE CONDITIONS**

**The CEA** grants the **Licensee** the right to use the EUROPLEXUS software under the conditions defined below.

**ARTICLE 0. DEFINITIONS**

In this agreement, the following terms, when written with a capital letter, shall have the following meaning:

"**License**": means the license to use the Software granted by the CEA to the Licensee under the commercial offer signed by the Licensee;

"**Software**": refers to the binary code of the fast transient fluid-structure simulation software program called “EUROPLEXUS”, in its version in force on the date of acceptance of the license and in its subsequent versions as part of the upgrade maintenance, and whose operational features are described in the Software notices (internal documentation), and the Software notices, the documentation and the examples of datasets;

"**Licensee**": the natural or legal entity who/which has signed the special license conditions for the Software;

"**Workstation**": means a computer on which the EUROPLEXUS Software is executed;

"**Host** **Machine**": means the place where the license is installed (Workstation for the *nodelocked* license, server for the *network* license);

"***Nodelocked*** **License**": the EUROPLEXUS license is granted to the Licensee to use the program on a single Workstation identified at the time of installation without limitation of the number of simultaneous users;

"***Network*** **License**": the EUROPLEXUS license is granted to the Licensee to operate via a license manager running on a server identified at the time of installation, with use of the programme on one or more Workstation(s) belonging to the same network as the server, up to a limit of 5 simultaneous uses;

"**Option**": the license option (the OS version and the type of license) and possibly the maintenance option chosen by the Licensee in the special license conditions signed.

**ARTICLE 1. PURPOSE**

The purpose of this agreement is to define the terms and conditions under which the CEA grants the Licensee, for its own needs, a non-exclusive and non-transferable user license for the EUROPLEXUS Software and provides the associated maintenance services for the duration of the Option chosen.

**ARTICLE 2. DELIVERY AND INSTALLATION OF THE EUROPLEXUS CODE**

Transfer of the EUROPLEXUS Code

Within fifteen (15) calendar days after the date of entry into force of this agreement, the CEA shall transmit to the Licensee the EUROPLEXUS Code, in the form of an executable binary, and its associated documentation.

Installation

The Licensee shall be responsible for installing the EUROPLEXUS Code on the machines (workstations or servers) concerned, in accordance with the provisions of Article 3, as well as for any adaptation work that this operation may require. Assistance with these tasks shall be provided by the CEA by means of electronic mail via the address provided to the Licensee.

Any transfer of all or part of the EUROPLEXUS Code and/or its associated documentation to computers and/or sites not belonging to the Licensee is strictly prohibited.

**ARTICLE 3. RIGHTS GRANTED**

The CEA hereby grants the Licensee, who accepts, the right to use the Software for its own needs on the concerned Workstation(s).

This license is granted for France and for the period specified in the Option. Exceptionally, and with the express agreement of the CEA, the License may be granted for use outside France.

In particular, it is specified that the Licensee is not authorized to use all or part of the Software on a commercial basis. Commercial exploitation includes in particular any profit or commercial income obtained by supplying, transferring, selling, renting, distributing and/or making available all or part of the Software to a third party.

The Licensee may not reproduce all or part of the EUROPLEXUS Software, in any form whatsoever, with the exception of (i) reproduction strictly necessary for loading, displaying, executing or storing the EUROPLEXUS Code, for the sole purpose of using it, (ii) or making one backup copy and one copy only, taking all necessary precautions to avoid any dissemination thereof. If the copy is used, this License shall apply to it.

The Licensee may not translate, adapt, arrange or modify the Software, nor may he/she correct its defects, subject to the correction rights conferred by Article L122-6-1 of the French Intellectual Property Code. In the event that the Licensee corrects the Software, the latter undertakes to notify its corrections to the CEA, which may freely dispose of them.

The Licensee undertakes not to decompile, disassemble, seek to reconstitute the source code, except for the purpose of achieving interoperability under the conditions provided for by law, extract parts of the Software to include them in other codes, or merge the EUROPLEXUS Code with other programs, without the express prior authorisation of the CEA.

Any use of the EUROPLEXUS Code that does not comply with its intended purpose or on any other material or site, even if operated by the Licensee, is prohibited, unless the Parties sign an amendment to the contract.

The Licensee undertakes to allow the CEA to check that the use of the Software complies with the provisions of this article.

**ARTICLE 4. MAINTENANCE**

4.1- Types of maintenance concerned

***Corrective maintenance and assistance***

For the entire duration of the License, the CEA will provide, at the Licensee's request, the maintenance required to ensure that the Software functions in accordance with the technical specifications of the Software as described in the program manual.

The acts of maintenance are limited to:

- proposing a technical solution to remedy any reproducible defects in the Software (corrective maintenance),

- providing assistance in resolving problems that prevent the Software from operating in accordance with its specifications, which includes checking, diagnosing and providing a technical solution to hardware failures and errors in the Software.

Among the technical solutions, the search for workarounds will be preferred. If no such solution is feasible, the CEA will provide a correction. In all cases, a correction to the problem will be included in the annual update of the software.

The assistance does not include training in the use of the Software.

***Evolutionary maintenance***

Throughout the duration of the maintenance as provided for in the Option, the CEA will send the Licensee an updated version of the Software each year, under the same conditions as those provided for in Article 2.1. The updates consist of a version of the Software including the modifications and improvements made to the Software during the year, whether they are minor or major.

***Additional services***

Any other service not expressly provided for in the Agreement shall be requested by the Licensee and shall be formalised in a specific agreement.

4.2- Intervention terms and conditions

***Assistance and maintenance***

Corrective maintenance and assistance services will be carried out by the CEA without the need for its staff to travel, by electronic mail only.

The Licensee shall notify the CEA by e-mail and confirm by mail the malfunction of the Software. The Licensee undertakes to describe, as precisely as possible, the difficulty encountered and the circumstances in which it occurred and, whenever possible, to send the CEA a test case enabling the anomaly to be reproduced. This description of the anomaly must enable the CEA to characterise the incident.

The CEA undertakes to respond within seven (7) working days of the Licensee's request at the latest to notify the Licensee that it has been taken into account and to inform him/her of the actions that will be put in place.

Depending on the Licensee's description of the difficulty encountered, the CEA shall provide him/her with advice on how to remedy this difficulty.

4.3- Conditions of exceptions exempting the CEA from fulfilling its maintenance obligations

The CEA is not obliged to provide maintenance services under the terms of the License, when these are made necessary by one of the following events:

- software not used in accordance with the Software documentation,

- repairs, alterations or modifications not carried out by the CEA,

- malfunction, change or modification of the equipment on which the Software is installed, making the equipment non-compliant with Appendix 2,

- inadequate backups.

4.4- Maintenance exclusivity

All corrective maintenance and assistance services relating to the Software must be entrusted exclusively to the CEA.

**ARTICLE 5. WARRANTIES**

The CEA warrants to the Licensee that the functionalities of the Software comply with the specifications described in the special license conditions sent to the Licensee. The CEA does not warrant that the Software is suitable for carrying out a particular job or that it is adapted to the Licensee's own needs.

As the Software is part of state-of-the-art computer technology, it is not possible at the current state of computer science to test and verify all its possible uses. Consequently, the CEA cannot warrant that the Software is free of errors. Nevertheless, the CEA undertakes to make its best efforts to correct any reproducible errors that may be reported to it on the latest version of the Software.

The CEA does not warrant any defects or non-conformities affecting any computer program used in conjunction with the Software, nor any resulting defects or non-conformities in the Software.

The warranties mentioned in this article are exclusive of all other warranties.

**ARTICLE 6. LIABILITY**

The Software is used under the sole direction, control and responsibility of the Licensee.

The CEA is in no way responsible for incidents or damage caused to the Licensee's computer network, loss of commercial opportunities, loss of profits and revenues, loss of data or other economic benefits, interruption of activities, whether direct or indirect, accidental or not, due to the use of the software by the Licensee.

The CEA declines all responsibility for the use and the functionalities of the Software and for the consequences of its implementation, both from a technical point of view and in terms of the liability that may arise from it.

Responsibility in the context of maintenance

Under no circumstances may the CEA be held liable for the destruction of files or programs that occur during or as a result of its intervention. It is the Licensee's responsibility to implement the prior backups provided for this purpose.

The Licensee is responsible for the information he/she communicates to the CEA when he/she notices an incident, as well as for his/her handling errors, even involuntary.

**ARTICLE 7. CONFIDENTIALITY - PUBLICATION**

7.1 Confidentiality

The Licensee expressly acknowledges that the Software contains confidential information and agrees to receive and keep it as confidential information.

The Licensee undertakes to treat as confidential all confidential information, of whatever nature, communicated by the CEA or coming to its knowledge in connection with the performance of this agreement. The Licensee may only communicate the elements thus covered by secrecy to its employees, and this within the strict limits of its needs.

This confidentiality undertaking shall apply throughout the term of this agreement and for five (5) years following its expiry or termination for any reason whatsoever.

However, it does not apply to information:

- which is already in the public domain at the time of its communication or which may fall into the public domain through no fault of the Party receiving it,

- which the receiving Party can prove that it has also received without condition of secrecy from a third party authorised to disclose it,

- or which the receiving Party can prove that it was already in its possession at the time of disclosure.

7.2 Publication

Any publication or communication envisaged by the Licensee relating to knowledge communicated by the CEA for the use of the Software shall be subject to the prior written agreement of the CEA.

To do so, the Licensee shall notify its request to the CEA, which shall have a period of thirty (30) working days from the date of the request. In the absence of a response from the CEA within this period, its agreement shall be deemed to have been obtained provided that the publication or communication does not harm the industrial and commercial interests of the CEA.

Any publication in any form whatsoever relating to the results obtained from the use of the EUROPLEXUS Code must mention the name of the software: EUROPLEXUS, and its origin: Commissariat à l'Energie Atomique et aux Energies Alternatives CEA - DES/ISAS/DM2S/SEMT - www-epx.cea.fr. The list of references of these publications must be communicated to the CEA at the end of each calendar year.

**ARTICLE 8. COUNTERFEIT**

Any act of use of the Software that exceeds the scope of the rights granted by the CEA shall constitute an act of infringement and shall justify legal action by the CEA against the Licensee.

The CEA warrants the Licensee against any infringement action relating to the elements of the Software of which the CEA is the author.

In this respect, the CEA shall bear the cost of any damages and interest that the Licensee may be ordered to pay by a court decision that has become final and that is based exclusively on the demonstration of an infringement for which the CEA is responsible. However, the CEA shall not reimburse any costs incurred by the Licensee without its authorisation.

This warrant is subject to the following express conditions:

- that the Licensee has promptly notified the CEA in writing of the infringement action or the claim that preceded such action,

- that the CEA has been able to defend its own interests and those of the Licensee, and to this end, that the Licensee has cooperated loyally by providing all necessary elements, information and assistance,

- that the Licensee :

* has not used the Software with software not supplied, not recommended or not approved by the CEA,
* has not modified or used a version of the Software other than that supplied by the CEA.

In the event that the prohibition of use of the EUROPLEXUS Code is pronounced as a result of an infringement action or results from a transaction signed with the plaintiff in the infringement action, the CEA shall endeavour, at its choice and at its own expense:

- either to obtain the right for the Licensee to continue to use the Software under the conditions provided for in this agreement,

- or to replace the infringing programs with others, free of any third party claims and enabling the same functionality to be provided,

- or to modify the infringing programs in such a way as to avoid said infringement while ensuring the same functionality.

If it is found that none of these three alternatives can be envisaged, the CEA shall compensate the Licensee by returning to it, in exchange for the return of the Software, the amount of the royalty paid less the corresponding depreciation made by the Licensee.

The provisions set forth in this article establish the limits of the CEA's liability in respect of copyright infringement.

**ARTICLE 19. INTELLECTUAL PROPERTY**

This Agreement does not entail the transfer of any intellectual property rights in the Software to the Licensee. The Parties acknowledge that the Software remains the exclusive property of the CEA and the European Commission, which therefore reserve all ownership rights in respect thereof. Consequently, the Licensee may not pledge or assign it, nor sub-license it, nor lend it either free of charge or against payment.

The Licensee expressly undertakes:

- not to delete or modify in any way whatsoever the intellectual property notices or other property legends affixed to the Software, and

- to reproduce the said intellectual property notices or other property legends identically on the backup copy of the Software.

Similarly, no right to a trademark, trade name or any other distinctive sign is granted to the Licensee by this Agreement.

The Licensee undertakes not to infringe, directly or indirectly, the intellectual property rights of the CEA and to take all necessary measures with regard to its staff to ensure that the said intellectual property rights of the CEA are respected.

**ARTICLE 10. FINANCIAL CONDITIONS**

The sums owed by the Licensee to the CEA in return for the license of the rights granted in article 3 of this Agreement and for the technical assistance and maintenance services provided to the Licensee in accordance with the provisions of article 4 of this Agreement are those indicated in the special license conditions signed by the Licensee.

The conditions for invoicing the sums due by the Licensee are those indicated in the special license conditions signed by the Licensee.

**ARTICLE 11. ENTRY INTO FORCE AND DURATION**

The rights granted and the maintenance services are granted for the duration set in the special license conditions. At the end of this term, the license and/or maintenance services may be renewed by means of an amendment signed by both Parties for a specified period and after acceptance of either a new license by the Licensee or an additional year of maintenance.

Upon expiry or termination of this Agreement, the Licensee shall (i) immediately cease using the Software, (ii) return, at his/her own expense, to the CEA, within ten (10) calendar days, the Software, the user manuals, the associated digital and physical documentation as well as any documents that may have been provided to him/her by the CEA during the performance of this Agreement, and (ii) pay any outstanding amount, if any, to the CEA.

**ARTICLE 12. TERMINATION**

This Agreement may be terminated by either Party in the event of failure by the other Party to fulfil its obligations. Termination shall not become effective until three (3) months after the complaining Party has sent a registered letter with acknowledgement of receipt setting out the reasons for the complaint, unless within this period the defaulting Party has fulfilled its obligations or has provided proof of an impediment due to force majeure. The termination may be delayed to allow for the full completion of the operations in progress at the time it is pronounced.

**ARTICLE 13. SETTLEMENT OF DISPUTES**

The law applicable to this License is the French law.

The Parties shall endeavour to resolve amicably any dispute concerning the interpretation and/or performance of this Agreement.

In the event that the Parties do not reach an agreement within two months of its occurrence, any dispute relating to the interpretation and performance of this Agreement will be submitted to the competent courts of Paris.

**ARTICLE 14. MISCELLANEOUS PROVISIONS**

14.1- The fact that one or other of the Parties fails to invoke one or more of the provisions of this Agreement on one or more occasions shall in no way imply a waiver by the interested Party of its right to invoke it at a later date.

14.2- Under no circumstances may this Agreement and/or the rights contained herein be transferred or assigned by a Party without the prior written consent of the other Party.

14.3- In the event that one or more of the provisions of this Agreement should prove to be contrary to an existing or future applicable law or text, this law or text shall prevail, and the Parties shall make the necessary amendments to comply with this law or text. All other provisions shall remain in force and the Parties shall use their best efforts to find an alternative solution in the spirit of this Agreement.