

TrueGrid[®] Software Perpetual License Agreement

NOTICE

Please read this document carefully. This is a legal agreement between the person or organization purchasing TrueGrid[®] (herein referred to as the "Buyer") and XYZ Scientific Applications, Inc. (herein referred to as "XYZ"). The computer program known as TrueGrid[®] will be referred to as the "Software". A "Subscription" of the Software refers to one use of the Software on one computer at a time. By using the Software and its documentation, the Buyer is agreeing to be bound by the terms and conditions of the Software Limited License Agreement contained herein.

IF THE BUYER DOES NOT AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN THE SOFTWARE AND DOCUMENTATION TO XYZ.

SOFTWARE LIMITED LICENSE AGREEMENT TERMS AND CONDITIONS

1. GRANT OF LICENSE. XYZ hereby grants to Buyer a non-exclusive, fully paid, perpetual license for the Software and related documentation in accordance with terms and conditions hereof.

A designated computer or hardware key (dongle) will be authorized by an official of XYZ when a Subscription of the Software is purchased. Each Subscription of the Software will be authorized for one computer or hardware key (dongle) and can be run on any computer in the same network as the authorized machine or machine with the authorized hardware key (dongle), provided the physical distance from the authorized computer or machine with the authorized hardware key (dongle) is less than two miles.

All copies of the Software and documentation, including updates, are the property of XYZ, and no title or ownership of the Software or documentation is transferred under this agreement to Buyer. The Buyer may not rent or lease the Software. This license is restricted to use of the Software exclusively on the authorized computers or machines with the authorized hardware keys (dongles). Buyer shall not permit use of the Software through any computer system or terminals other than those described herein. Should designated equipment become inoperative, XYZ will authorize use of Software on alternative equipment during a reasonable period of repair.

2. TERMS OF PURCHASE OF LICENSE.

(a) PRICES. All prices are F.O.B. destination. Prices are in accordance with XYZ's current price list. XYZ reserves the right to change the price of any product offered without notice; however, written price quotes signed by an officer of XYZ shall remain in effect for a period of sixty (60) days. The changed price will apply only to orders not accepted as described below.

(b) ORDER AND ACCEPTANCE. All orders for the Subscription of the Software by Buyer shall be initiated by written purchase orders sent to XYZ by either US mail or by facsimile. Acceptance shall be in writing from XYZ to Buyer or by delivery of Software to Buyer.

(c) TERMS OF PAYMENT. Buyer shall remit full (net) payment within 30 days from date of delivery. Delinquent invoices are subject to 1.5% per month interest starting 10 days from invoice due date.

(d) PAYMENT OF TAXES. Buyer shall be responsible for the payment of all taxes in connection with this agreement, except for (i) any tax based on XYZ's net income, (ii) state or local privilege or excise taxes excluding sales or use taxes, imposed on XYZ based on gross revenue or gross income, unless and only to the extent the same are specifically permitted to be and are in fact separately stated and passed on to Buyer in accordance with the law of the taxing jurisdiction, and (iii) capital values, license or franchise taxes imposed on XYZ for the privilege of doing business in any taxing jurisdiction.

3. PROTECTING PROPRIETARY INFORMATION. Buyer shall safeguard proprietary Software and provide the same degree of care as exercised towards its own proprietary information. Buyer agrees that all information identified by XYZ as being proprietary to XYZ shall be treated by Buyer as being proprietary to XYZ and shall not disclose such information to any third party without the prior written consent of XYZ authorized Corporate Officer. Buyer agrees to use such proprietary information only for the operation and maintenance of Software. Buyer agrees not to reproduce, use or copy or allow any party to reproduce, use or copy such proprietary information, nor to disclose it, nor to permit it to be disclosed to any third party except pursuant to a license from XYZ. XYZ will permit Software and accompanying files to be copied for purposes of backup or failsafe.

Buyer shall not reverse compile, disassemble, reproduce, reverse engineer, modify, adapt, translate, distribute, network, lease, resell, or create derivative works based upon Software or any portion thereof and Buyer further agrees to take reasonable precautions to prevent third parties from doing so, except pursuant to a license from XYZ. The provisions of paragraph 3 shall survive termination of this agreement.

4. TERMINATION OF LICENSE. The license shall not terminate except upon the failure of Buyer to perform any of Buyer's obligations, or if XYZ fails to perform any of its obligations under this agreement. Upon termination of license, Buyer agrees to destroy all copies of the Software and return all program tapes, disks, hardware, and documentation supplied by XYZ.

5. SOFTWARE WARRANTY. XYZ warrants that for one year following delivery, the Software shall conform to its specifications on which Buyer has relied. XYZ's sole obligation hereunder for said one year period shall be to provide standard software maintenance services to Buyer, including correction of program errors and telephone support, at no additional charge to Buyer.

A defect report is deemed valid if Buyer supplies enough information so that XYZ can reproduce the reported problem in the specified operating environment. Buyer agrees not to submit any public, legal, or other outside claim against XYZ or the Software, if XYZ issues defect correction information, a restriction, or a bypass for the problem within thirty (30) days of receipt by XYZ of the written, valid, defect report.

XYZ DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE. IN NO EVENT SHALL XYZ, OR ITS DISTRIBUTORS, BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR DATA), WHETHER OR NOT XYZ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT.

6. LIMITATION OF LIABILITY. XYZ'S EXCLUSIVE LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE, AND BUYER'S SOLE REMEDY, SHALL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY BUYER TO XYZ UNDER THIS AGREEMENT.

7. ASSIGNMENT. Neither Buyer nor XYZ shall assign this agreement or any of either rights or obligations hereunder without prior written approval of the other.

8. GENERAL.

(a) ENTIRE AGREEMENT. This agreement constitutes the complete and exclusive statement of the agreement between the parties related to the subject matter hereof. All previous communications or negotiations, whether written or oral, are hereby waived.

(b) GOVERNING LAW. This agreement shall be governed by the laws of the State of California. XYZ's rights granted hereby are cumulative and in addition to any rights it may have at law or equity.

(c) ARBITRATION OF DISPUTES. Any dispute or controversy arising under, out of, or in connection with or in relation to this agreement, or the breach thereof, shall be determined and settled by arbitration to be held in Alameda County, California, in accordance with the rules of the American Arbitration Association, then in effect. Any award rendered therein shall be final and binding on each and all of the parties, and judgment may be entered thereon in the Superior Court of the State of California for the County of Alameda.

(d) NOTICES, AMENDMENTS, AND ALTERATIONS. All notices hereunder shall be in writing and shall be directed to Buyer or to XYZ at its respective address. Notices shall be personally delivered or sent by prepaid registered or certified mail, return receipt requested. Notices shall be deemed effective upon receipt. Any amendment, waiver or modification of this agreement must be made in writing and must be signed by an authorized corporate officer of XYZ.

(e) ATTORNEYS FEES. In any arbitration or legal action between the parties arising out of or in connection with this agreement, the prevailing party shall be entitled, in addition to damages and injunctive or other relief, to its reasonable fees and costs, including reasonable attorney's fees.

(f) PARTIAL INVALIDITY. If any provision of this agreement is determined to be unenforceable or invalid, the remaining provisions of this agreement shall not be affected and shall remain in full force and effect.

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