Visual Numerics, Inc. Software License Agreement

IMSL™ C Numerical Library, IMSL™ C# Numerical Library, and IMSL™ Fortran Numerical Library License (S) (Oct 2006)

IMPORTANT – READ CAREFULLY: THIS SOFTWARE LICENSE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND VISUAL NUMERICS, INC. IF YOU ARE INSTALLING THE SOFTWARE FOR PERSONAL USE, THIS AGREEMENT APPLIES TO AND BINDS YOU PERSONALLY. IF YOU ARE INSTALLING THE SOFTWARE AS PART OF YOUR WORK FOR AN ORGANIZATION, THIS AGREEMENT APPLIES TO AND BINDS SUCH ORGANIZATION. “LICENSEE” OR "YOU" AND "YOUR" REFER TO THE PERSON OR ENTITY THAT IS LICENSEE OF THE SOFTWARE. BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE THAT ACCOMPANIES THIS AGREEMENT, YOU OR SUCH ENTITY AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU OR SUCH ORGANIZATION DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT USE, COPY OR INSTALL THE SOFTWARE, AND SHOULD, WITHIN THIRTY (30) DAYS OF PURCHASE, RETURN IT WHERE YOU OBTAINED THE SOFTWARE, FOR A FULL REFUND.

1. Definitions.
   “Application(s)” means Your application(s) in object code created using a Development license (as defined below), which may or may not incorporate a file of the Software (as defined below).
   “Cluster” means an integrated multiple processor-computing system involving one or more Server(s) (as defined below) and/or Computer(s) (as defined below) accessed and used by one (1) or more end users.
   “Computer” means primarily a single (but not to exceed four (4)) processor-computing device used by a single end user. A “Computer” can be either a personal computer having up to but not more than two (2) processors and that utilizes IA-32-bit microprocessor technology (“PC”), or a workstation having up to but not more than four (4) processors and that does not utilize IA-32-bit microprocessor technology.
   “Copy” means a physical copy, as on a CD, or loading the Software or an Application into RAM or permanent memory of a Computer.
   “Deploy” or “Deployment” means each time You make a Copy of Your Application available to a User (as defined below) of an Application Deployment license for Internal use (as defined below).
   “Development” means a license for Internal use of the Software to create Applications.
   “Documentation” means printed, electronic or online documentation purchased from VNI or provided by VNI to licensees of its corresponding proprietary IMSL software libraries.
   “Floating” Users mean the maximum authorized number of Users that may concurrently use the Software at the Site (as defined below) for development or in connection with Development, as the case may be.
   “Internal” means use is limited to Licensee, its employees, and contractors performing work for Licensee’s benefit, but not Licensee’s customers or other third parties.
   “License Fee Agreement” means the business transaction document(s) between You and VNI (such as, but not limited to VNI quotations, Your purchase orders and VNI’s corresponding acknowledgements, and VNI invoices) which specify the applicable Software, define the agreed parameters of use of the applicable Software, including pricing, and which identify the number of processors and applicable Cluster(s), Server(s) and/or Computer(s) on which You may use the applicable Software. “License Fee Agreement” excludes each party’s preprinted boilerplate terms of purchase or sale on such transactional document(s) and all such preprinted terms and conditions of purchase or sale are hereby rejected.
   “Node Lock” means use is limited to a specifically identified Computer or Server.
   “Run-Time(s)” mean each instance in which the Software is compiled and linked to another program at the time of execution. Run-Times purchased only for Deployment (and not included as part of a Development license) apply only to Computers.
   “Server” means a single or multiple processor-computing device accessed and used by more than a single end user.
   “Site” is the geographical location of the Cluster(s), Server(s), and/or Computers (i) on which the Software is to be installed and used, as specified in Your License Fee Agreement with VNI, or, if not specified therein (ii) where the Software is delivered to You by VNI.
   “Software” means VNI's applicable proprietary IMSL software libraries in object code, and includes the corresponding Documentation and, if You have purchased support and maintenance, any Updates and New Releases (as those terms are defined in Exhibit A attached hereto and made a part hereof) subsequently provided by VNI to Licensee.
   “SUSS” means VNI’s annual Software Update Subscription Service, the terms of which are set forth in Exhibit A attached hereto.
   “User” refers (i) for Development licenses, to one or more identified individuals each of whom will Internally use a Copy of Software on only one (1) Computer or multiple users who may access the Software on a Server or in a Cluster, in either case for development of one (1) or more Application(s); and (ii) for Application Deployment licenses, to each Internal user of a Copy of Your Application(s) on a Computer, or to each Internal user of Your Application(s) who may access and use the Application(s) via a Server or a Cluster, or who may download the Application(s) from a Server or Cluster for Internal use on one (1) Computer. For clarity, if Your License Fee Agreement with VNI or this Agreement authorizes only a single person to use the Software, such person is the only authorized User of the Software under this Agreement.
   “VNI” and “Licensor” mean Visual Numerics, Inc.

2. Development License. Subject to the terms and conditions of this Agreement, and upon payment of the applicable fees, You are granted a perpetual, non-transferable, non-exclusive, fee bearing Development license to install one (1) Copy of the Software in object code for Internal use by the number of Users, with the number of processors and on the type of Computer(s), Server(s) and/or Clusters specified in Your License Fee Agreement with VNI, for the sole purpose of allowing Users to create and test Applications for Internal use. This Development license is limited to Internal use with the authorized number of processors (i) on the number of Computers with the number of individual Users specified in Your License Fee Agreement with VNI (and for which You have paid the applicable license fees), which License Fee Agreement may also specify Floating Users and/or Node Lock limitations corresponding to the number and type of licensed Computers or (ii) on one or more Servers permitting access as specified in Your License Fee Agreement with VNI, which License Fee Agreement may specify Node Lock limitations corresponding to the number and type of licensed Servers or (iii)
one or more Clusters permitting access as specified in Your License Fee Agreement with VNI, which License Fee Agreement may specify Node Lock limitations corresponding to the number and type of licensed Clusters. **IF NOT OTHERWISE SPECIFIED IN THE APPLICABLE LICENSE FEE AGREEMENT BETWEEN YOU AND VNI, YOUR DEVELOPMENT LICENSE SHALL BE FOR A SINGLE USER ON A PC.** You may make a single backup Copy of the Software for archival purposes, but You shall not make any Copies of the Software for use on any Computer, or on any Server, located outside the Site (except to access one (1) copy of the Software on a Computer’s memory for purposes authorized by this Agreement while off-Site for transitory, temporary business purposes). You shall not (x) allow more than the authorized numbers of Users to use the Software or Documentation for development of Applications, (y) allow any Users to use the Software or Documentation for any purpose except for development of Applications and (z) allow more than one (1) User to use the Software or Documentation on each Computer, unless specifically authorized otherwise by VNI. The Software may be used by You for development purposes to: (xx) create Application(s) which use calls to compile and link to the Software; and (yy) Copy and use Applications containing statically linked bound executable object code modules from the Software; or (zz) copy and use Applications containing the Run-Time version (e.g., identified in PC products as a “.dll” file) of any dynamically linked library (“DLL”) contained in the Software.

3. **Application Deployment License.**

(a) Subject to the terms and conditions of this Agreement, and upon payment of the applicable fees for the Development license granted pursuant to Section 2 of this Agreement, and fees for Application Deployment, if additionally applicable in Your License Fee Agreement with VNI, You are granted a perpetual, non-transferable, non-exclusive, fee-bearing Application Deployment license to use, Copy and distribute Your Application(s) limited to the number of authorized processors and Run-Time(s), and on the type of Computer(s), Server(s) and/or Cluster(s) specified in Your License Fee Agreement with VNI, in object code, for Internal use only at the Site. Each Application Deployment license is subject to any applicable limitations with respect to individual Users, Floating Users and/or Node Lock limitations specified in Your License Fee Agreement with VNI. **IF NOT OTHERWISE SPECIFIED IN THE APPLICABLE LICENSE FEE AGREEMENT BETWEEN YOU AND VNI, YOUR APPLICATION DEPLOYMENT LICENSE SHALL PERMIT ONLY ONE (1) RUN-TIME OF THE SOFTWARE BY A SINGLE USER ON A PC.** A Deployment software license only allows You to execute Internally (not develop, create or modify) one or more Applications developed using a VNI Development license for the Software.

(b) To the extent not prohibited by applicable state law, You agree to indemnify, hold harmless and defend VNI from and against any claims or lawsuits, including but not limited to attorney's fees, that are based on the use, deployment or distribution of Your Application(s). You agree to use reasonable efforts to restrict Users of Your Application from copying, sublicensing, modifying, reverse engineering, disassembling, decompiling, or redistributing the Software, or using Your Application as an application development tool. You may not Deploy or distribute Your Application(s) (i) externally, or (ii) to third parties, other than Your contractors who may use Your Application(s) for Your Internal benefit only; or (iii) for use in conjunction with a compiler, an interpreter language product, or an interface which forms a part of a programming language product; or (iv) which consists of a dynamically linked library (e.g., identified in PC products as a “.lib” file) contained in the Software. Your Application(s) (yy) may not provide Your User(s) with an Application Programming Interface (API) which facilitates programmatic access to the developer version of any dynamically linked library (e.g., identified in PC products as a "lib" file) contained in the Software (i.e. in PC products, in any form other than as bound executables); and (zz) may not be used to develop other software programs or applications.

4. **Prices and Payment.** Licensee shall pay license fees for the Software in accordance with the terms of Your License Fee Agreement with VNI, or if not specified therein, in accordance with VNI’s then-current price sheet for the Software. Unless otherwise agreed with VNI, Licensee shall pay all fees net thirty (30) days from date of invoice. Licensee shall pay all taxes arising from or related to its license or use of the Software, excluding taxes based solely on VNI’s net income, provided that Licensee shall have no such tax obligation upon presentation of satisfactory evidence of its exemption from applicable taxes.

5. **Limited Warranty and Limitation of Liability.** VNI warrants that the Software will perform substantially in accordance with the Documentation for a period of thirty (30) days from the date of receipt.

VNI’S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE, AT VNI’S OPTION, EITHER (1) RETURN OF THE PRICE PAID, OR (2) REPAIR OR REPLACEMENT OF THE SOFTWARE. THIS LIMITED WARRANTY IS VOID IF FAILURE OF THE SOFTWARE HAS RESULTED FROM ACCIDENT, ABUSE, IMPROPER INSTALLATION OR MISUSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VNI AND ITS RESELLERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

VNI WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST SAVINGS), EVEN IF VNI OR ITS RESELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGARDLESS OF THE BASIS ON WHICH YOUR CLAIM FOR DAMAGES AGAINST VNI, VNI’S ENTIRE LIABILITY TO YOU IS LIMITED TO NO MORE THAN THE AMOUNT YOU PAID FOR THE SOFTWARE. VNI WILL NOT BE LIABLE TO YOU FOR ANY THIRD PARTY CLAIMS OR DAMAGE TO OR LOSS OF YOUR RECORDS OR DATA.

This Agreement gives You specific legal rights. You may have others that vary by jurisdiction. In some jurisdictions exclusion or limitation of consequential or incidental damages, and/or exclusion or limitation of liability for personal injury, and/or limitations on duration of an implied warranty may not apply to You. This Agreement does not affect any statutory rights of consumers that cannot be waived or limited by contract.
6. **U.S. Government.** The Software and Documentation were developed at private expense and are “Commercial Items” as that term is defined at 48 CFR 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 CFR 12.212 or 48 CFR 227.7202-1 through 227.7202-4, as applicable. The Software and Documentation are licensed to U.S. Government end users only as Commercial Items and with only those rights granted to all other end users pursuant to the terms and conditions herein. The Software licensed to civilian agencies is licensed with Restricted Rights pursuant to FAR 52.227-19. The Software is unpublished - all rights reserved under the copyright laws of the United States and international treaties. The manufacturer is Visual Numerics, Inc., 2500 Wilcrest Drive, Suite 200, Houston, Texas 77042.

7. **Infringement Claims.** VNI will defend at its own expense, indemnify and hold You harmless in any action brought against You on a claim that the Software infringes any third party's patent or copyright, provided that You promptly notify VNI in writing of such claim, VNI has sole control over the defense of the claim and/or any settlement negotiations, and You cooperate fully in the defense of the claim. VNI will pay those costs and damages finally awarded against You in any such claim. At its option, VNI may, in lieu of any other claims by You for indemnification, obtain the right for You to continue using the Software, or repair it, replace it or terminate this Agreement, including any licenses granted herein. The foregoing states VNI’s entire obligation to You for indemnification of third party infringement claims.

8. **Term and Termination.** This Agreement shall take effect as of the date of Your acceptance of this Agreement and shall continue in effect thereafter until terminated by either party. If You fail to comply with any material term or condition herein, VNI may, at its option, without prejudice to any other rights, terminate this Agreement and/or any license(s) granted herein (including all perpetual Development and Application Deployment licenses) if such default remains uncorrected thirty (30) days after notice is sent to Licensee. Following termination, You must return or destroy, as requested by VNI, all copies of the Software and Documentation in Your possession (whether modified or unmodified). You agree to certify Your compliance with such requirement upon VNI's request. Sections 1, 5, 7, 9, 10, and 12, and this survival clause, shall survive termination of this Agreement. Unless terminated by VNI for Licensee's material breach in accordance with this Section 8, the Development and Application Deployment licenses granted pursuant to Section 2 and 3 of this Agreement shall survive any termination of this Agreement.

9. **Confidentiality.** You agree to maintain in confidence the confidential information of VNI, including any source code to any VNI software programs to which You have access. You further agree not to disclose such VNI confidential information to anyone other than Your employees or contractors who have a need to know or obtain access to such information in order to support Your authorized use of the Software who are bound, by a written agreement, to protect such information against any other use or disclosure.

10. **Ownership.** The Software and Documentation is copyrighted by Visual Numerics, Inc., and is licensed, not sold. VNI retains sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, and all copies thereof, subject only to the licenses expressly granted to You herein. This Agreement does not provide You with title or ownership of the Software and Documentation, but only a revocable license of limited use. Except as provided herein You may not rent, lease, loan, duplicate, distribute, publish, transfer, sublicense, or make the Software or Documentation available in any form to others. You may not reverse engineer, decompile, or disassemble the Software. You agree to reproduce any VNI proprietary and copyright notices concerning the Software on all copies of the Application that include VNI's copyrighted works as authorized by this Agreement.

11. **Support.** During the term of this Agreement, and in consideration for Your payment of fees for support and maintenance, VNI shall provide SUSS for the Software to You in accordance with the provisions of Exhibit A attached hereto and made a part hereof. Notwithstanding the foregoing, VNI reserves the right to suspend or discontinue offering SUSS for the Software at any time.

12. **Miscellaneous.** All notices or other communications required to be given hereunder shall be in writing and delivered via certified mail, Express Mail or Federal Express, return receipt requested, postage prepaid, addressed to the respective addresses set forth hereinabove (for VNI, ATTN: Sales Manager) or as otherwise specified by the receiving party. Notices shall be deemed effective upon receipt. This Agreement shall be exclusively governed by and construed and enforced in accordance with the laws of the United States of America (for agreements with the U.S. government and claims relating to copyright and federal trademark issues) or by the laws of the State of Texas, U.S.A. (for contract and other matters), all without regard to conflicts of law provisions. The UN Convention for the International Sale of Commercial Goods is hereby excluded. The headings or titles of each section of this Agreement are for convenience only and shall have no legal effect. Non-enforcement of any provision hereof shall not operate as a waiver. This Agreement (and the business terms of Your License Fee Agreement with VNI) is the complete and exclusive statement of the agreement between VNI and Licensee and supersedes all proposals, prior agreements (oral or written) and all other communications between VNI and Licensee relating to the Software. Any purported assignment, transfer, sublicense, modification, addition or condition of acceptance (e.g., in a purchase order) of this Agreement by You is void, unless approved in advance by VNI in writing, except that You may transfer the Software and Documentation in its entirety to a successor in interest of Your entire business who assumes the obligations of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, then that provision notwithstanding, this Agreement shall remain in full force and effect and such provision shall be deemed omitted. You may not export the Software or Documentation to another country without VNI's advance written consent. If VNI consents to Your export of the Software or Documentation, You agree to comply with all applicable export restrictions and laws.

Applicable terms of Your License Fee Agreement with VNI which specifies numbers of Users, number of Computers and/or Servers and/or Clusters, numbers of processors and Run-Times and license limitations (e.g., individual or Floating Users and/or Node Lock limitations) are incorporated herein by reference as if set forth in full. Additional licenses to use the Software and Documentation obtained by You subsequent hereto shall be subject to all the terms and conditions of this Agreement.
EXHIBIT A

Software Update Subscription Services

VNI's Software Update Subscription Services ("SUSS") are available by subscription on the terms and conditions in this Exhibit A. SUSS will only be provided if You subscribe to SUSS and pay the applicable fees, which are in addition to the license fees for the Software. A SUSS for a Development License allows Licensee to receive the services described in this Exhibit A only for development purposes. Unless otherwise agreed by the parties, the following SUSS services are not applicable to Application Deployment licenses purchased by Licensee pursuant to this Agreement.

1. VNI will provide remote access, by telephone, fax, or electronic mail, to VNI product support personnel, who will answer routine questions concerning use of the VNI Products from 8:00 A.M. to 5:00 P.M., CST, Monday through Friday, excluding holidays. For Software obtained outside the U.S. front line support will be provided by the local vendor or VNI office during its normal business hours, excluding applicable holidays.

2. VNI will provide minor product updates, error corrections, bug fixes and patches (all of which are "Updates," identified by a change in the product designation suffix, e.g., Version 2.1 to 2.2), at no additional cost, when such Updates are developed by VNI and generally made available at no additional cost to SUSS subscribers.

3. VNI may, in its sole discretion, determine that the addition of significant functionality or enhancements to Software is not an Update but is a New Release, identified by a change in a product's version number (i.e., designated by an increase in the whole number to the left of the decimal, e.g., from Version 2.1 to 3.0, a "New Release" herein) and charge a fee for the New Release and associated SUSS. Following a New Release, VNI will provide support services for the previous Software version to SUSS subscribers for a period of one (1) year, but shall not be obligated to provide such services thereafter.

4. For modifications of the Software or for any assistance or support not specifically identified in this Exhibit A, VNI may agree to perform such services on a time and materials basis.

5. VNI shall not be responsible for support of Software modified by Licensee. SUSS provided by VNI that are traceable to Licensee's modifications or code shall be billed at VNI's standard rates.

6. Licensee shall give VNI reasonable assistance and access to equipment, documentation and records, including sample output and other diagnostic information.

7. SUSS will be provided for one year from the date of VNI's invoice for SUSS, provided You pay all amounts due for SUSS. VNI will invoice Licensee annually for SUSS, in advance, at VNI's then-current rate, payable as stated on the invoice. If this Agreement is terminated early for any reason, no refund shall be payable to Licensee. VNI shall not be required to provide SUSS during any period in which any amount due for Support is delinquent. Costs of telephone and terminal equipment incurred by Licensee shall be the responsibility of Licensee.