End User Licensing Agreement (EULA) for Software Proprietary to DCS Computing GmbH
Industriezeile 35, 4020 Linz, Austria,
Company ID no. 374386v, Linz Regional Court
Last updated: 4. December 2018

1. Subject and scope:

1.1. DCS Computing GmbH, hereinafter termed DCS, grants the rights to the use of DCS programs and modules (hereinafter termed SOFTWARE), as laid out herein.

1.2. Parts of SOFTWARE are subject to commercial licence (hereinafter termed COMMERCIAL SOFTWARE for short) and parts to open source licence (hereinafter termed OPEN SOURCE SOFTWARE).

1.3. The Customer confirms having been fully apprised by DCS as to which parts of the SOFTWARE constitute COMMERCIAL SOFTWARE and which parts constitute OPEN SOURCE SOFTWARE. If in doubt, any part of software which is statically or dynamically linked during the compilation process to LIGGGHTS® and CFDEM®coupling is to be considered OPEN SOURCE SOFTWARE, and any other parts of SOFTWARE are to be considered COMMERCIAL SOFTWARE. Any part of SOFTWARE which interfaces to LIGGGHTS® and CFDEM®coupling via text interface or any other way which does not constitute a derivative work in the sense of the Open source license (see Section 2) is to be considered COMMERCIAL SOFTWARE.

1.4. The scope for rights of use relating to COMMERCIAL SOFTWARE and OPEN SOURCE SOFTWARE are outlined in Sections 2 and 3.

1.5. In addition to the SOFTWARE, the right of use also encompasses all associated documentation made available by DCS.

2. Open source licences:

2.1. The open source licences governing the OPEN SOURCE SOFTWARE is deemed to be integral to this contractual Agreement. The full license texts are available upon request and are contained in the shipment of the SOFTWARE or can also be downloaded under https://github.com/CFDEMproject/LIGGGHTS-PUBLIC/blob/master/LICENSE for LIGGGHTS® and https://github.com/CFDEMproject/CFDEMcoupling-PUBLIC/blob/master/COPYING for CFDEM®coupling.

2.2. DCS grants the Customer a fully-paid-up, royalty free, irrevocable license to OPEN SOURCE SOFTWARE, the CUSTOMER may use, copy, distribute, and create derivative works from the source code associated to OPEN SOURCE SOFTWARE.

2.3. The Customer notes, with approval, that the license of OPEN SOURCE SOFTWARE may be subject to change, e.g. in case the Free Software Foundation releases a new version of the license. DCS reserves the right to modify the licensing of the OPEN SOURCE SOFTWARE, whereby these new provisions shall also become integral to this contractual Agreement. In case of material changes, the Customer can terminate the Licensing Agreement by submitting written notification hereof to DCS. Any termination shall, under all circumstances, apply to all programs and modules.

2.4. On request by the CUSTOMER the source code for OPEN SOURCE SOFTWARE is transmitted by DCS at any time.

3. Commercial licence:

3.1. DCS grants the Customer personal, non-transferable and non-exclusive licensing rights to the own use of COMMERCIAL SOFTWARE legally acquired, registered and activated under that Customer's licence number.

3.2. The valid commercial licence (hereinafter termed LICENCE for short) governing COMMERCIAL SOFTWARE is being definitively agreed upon in the present contractual Agreement concluded between the Customer and DCS.

3.3. The LICENCE entitles the Customer to simultaneously use a single installation on a single machine with a single user account. The term 'machine' thereby denotes any physical machine equipped with a single processor (CPU) or with multiple processors, and any virtual machine or otherwise emulated hardware environment.

3.4. In the event that the Customer wishes to have the COMMERCIAL SOFTWARE simultaneously installed on more than one machine, each installation shall mandate its own licence, or obtain a floating license from DCS. This shall also apply to test systems that remain installed for a period in excess of 30 days.

3.5. The FLOATING LICENCE entitles the Customer to use a single installation consecutively on different machines. The term 'machine' thereby denotes any physical machine equipped with a single processor (CPU) or with multiple processors, and any virtual machine or otherwise emulated hardware environment.

3.6. The Customer acquires the LICENCE exclusively for own use. This means that only the Customer and the Customer's employees may access the COMMERCIAL SOFTWARE.

3.7. If the Customer wishes to make the COMMERCIAL SOFTWARE available to further natural or legal persons or other third parties for their own use, either online or by remote means, the Customer shall require an additional licence for each additional party.

3.8. DCS always supplies the latest version of the SOFTWARE. Only the latest version of the SOFTWARE is supported by DCS.

3.9. The Customer installs the programs independently, assuming responsibility thereof, or arranges to have them installed by third parties, assuming responsibility for such installation.

3.10. If SOFTWARE legally possessed by the Customer becomes wholly or partially damaged or is accidentally deleted, it shall be replaced free of charge by DCS, duly calculating expenses accruing to DCS on account of data carriers, administration time and shipping charges.

4. Terms of LICENCE use:

4.1. The Customer may only order and use the SOFTWARE on its own behalf.

4.2. The Customer is acquiring a simple, geographically unrestricted and non-exclusive right to use the COMMERCIAL SOFTWARE.

4.3. DCS reserves any and all rights that are not expressly granted to the Customer under this contractual Agreement. These include property rights, copyrights, patent rights, trademark rights and all other protection rights to the COMMERCIAL SOFTWARE, distribution rights, leasing rights, the right to issue sub-licences and the like.

4.4. The Customer shall be permitted to create backup copies of the program as required for secure operation. As far as it is technically possible, the backup copies must bear the copyright notice of the original data carrier and must be retained in safekeeping. Copyright notices may not be deleted, modified or obliterated. Copies that are no longer required are to be deleted or destroyed. The user manual and other documents handed over by DCS may only be copied for company-internal purposes.

4.5. It is prohibited for the Customer to pass on the COMMERCIAL SOFTWARE to third parties or to make it accessible to them in any form whatsoever.

4.6. Any form of utilisation of the proprietary LICENCE, relating to leasing, loaning and distribution thereof in tangible or intangible form, of the COMMERCIAL SOFTWARE by and for third parties (e.g. outsourcing, data processing centre operations, application service provision, offering software as a service) are not allowed without the prior, written consent of DCS.

4.7. The Customer shall not be permitted to modify or tamper with the COMMERCIAL SOFTWARE in any way. In particular, the Customer shall not be permitted to decompile or reverse-engineer it or to convert it to a readable or alterable format.

4.8. Contractual items, documents, suggestions, test programs etc. that are proprietary to DCS and to which the Customer obtains access before or after contractual conclusion shall be deemed to constitute intellectual property and business and operational secrets of DCS, and are to be treated in strict confidentiality.

4.9. The Customer shall be required to adopt suitable precautionary measures to ensure that all persons who have access to the programs also comply with the obligations by which the Customer is bound under the terms of this contractual Agreement.

4.10. DCS can monitor consent to the Licensing Agreement and compliance with the licensing provisions by making application of the COMMERCIAL SOFTWARE and application of updates, patches and the like subject to legal activation of the COMMERCIAL SOFTWARE. In addition DCS reserves the right to monitor data connected to use of LICENSE by transmitting information on the system environment, such as the IP address, MAC address, location information, server name and the like. DCS treats such information in strict confidence. DCS also has the right to have compliance with the provisions of the licence confirmed by a recognised auditing firm.

5. Privacy Policy

5.1. DCS will collect data associated to Licensing, as outlined in 4.9.

5.2. DCS and/or connected affiliated companies gather additional information if the customer uses the website www.cfdem.com. For information regarding the privacy policy, please see http://www.cfdem.com/privacy. Any of the terms and policies at http://www.cfdem.com/privacy may be subject to change at any time without prior notice. Your use of www.cfdem.com following any such change constitutes your unconditional agreement to follow and be bound by these Terms as changed. it is recommended that you periodically check if any changes have been made.

5.3. As part of the sales process, DCS will gather personal information such as contact information (information such as name, job title, company name, department, email address, physical mailing address, job description, telephone number). DCS has taken all necessary measures to ensure the safety of the processing under Art. 32 GDPR. For shipment and License management a part of the gathered personal information is processed by third parties. DCS makes sure that by DCS contracted third parties have taken all necessary measures to ensure the safety of the processing under Art 28 in conjunction with Art. 32 GDPR.

5.4. Data regarding unlicensed use and users may be collected and processed by DCS. If DCS believes that use of DCS's software is unlicensed DCS may also share that data with other software companies, organizations set up to counter software theft and law enforcement

5.5. The information gathered will be used by DCS or by DCS's distribution partners to provide the information, services or support the Customer requests and related after-sales services; to identify the Customer and to contact the Customer from time to time with product or service updates; to send other messages that are useful to the service DCS provides; to carry out any related administration; to promote DCS's services, or the services of DCS's partners, including via email; to detect, investigate and prevent activity DCS thinks may be potentially illegal, unlawful or harmful and to enforce the Privacy Policy and/or Terms referenced herein. The Customer may opt-out of receiving marketing communications at any time by contacting DCS directly.

5.6. DCS may disclose Customer's personal data to enforce DCS's policies, to comply with DCS's legal obligations or in the interests of security, public interest or law enforcement in any country where DCS has entities or affiliates. For

example, DCS may respond to a request by a law enforcement agency or regulatory or governmental authority. DCS may also disclose data in connection with actual or proposed litigation, or to protect DCS's property, security, people and other rights or interests.

5.7. DCS takes what it considers to be appropriate technical and organizational measures to guard against unauthorized or unlawful processing of Customer's personal data and against accidental loss or destruction of, or damage to, Customer's personal data. While no system is completely secure, DCS believes the measures implemented reduce DCS's vulnerability to security problems to a level appropriate to the type of data involved.

5.8. The Customer's data may be processed and stored on DCS's or third party providers' computers in Austria or other countries where DCS or DCS's services providers or distribution partners have a presence.

5.9. DCS will retain the Customer's personal data only as long as is necessary for the purposes set out in this Privacy Policy, or as is required by applicable law, and then DCS will delete it.

5.10. If the Customer wants his personal information to be deleted by DCS he has request a deletion in writing. DCS will only delete personal data in accordance with Art 17 GDPR on explicit request and only if the latest valid LICENCE has expired 48 months prior to the request.

6. Rights in the event of defects:

6.1. DCS guarantees that the contractually compliant use of the software by the Customer is not contested by third party rights. In the event of defects in title, DCS guarantees that it will grant the customer legally unobjectionable use of the software or equivalent software at DCS' discretion.

6.2. The Customer shall notify DCS immediately in the event that protection rights (e.g. copyrights or patent rights) of third parties to the software are asserted against the Customer. The Customer authorises DCS to attend to any disputes with such a third party on its own account. For the duration that DCS exerts such authority, the Customer shall not be entitled to independently recognise the claims of the third party without the consent of DCS; thereafter, DCS shall defend itself against the claims asserted by the third party at its own expense and shall indemnify the Customer against all costs associated with defence against these claims, provided the latter are not attributable to the Customer's failure to meet obligations (e.g. contractually non-compliant use of the programs).

6.3. The provisions of the open source licence shall be deemed covenanted specific to the OPEN SOURCE SOFTWARE.

6.4. The COMMERCIAL SOFTWARE is of high quality. However, it is not error-free. Minor functional impairments, or those functional impairments that are wholly or partially attributable to hardware defects, boundary conditions, incorrect operation or the like, do not constitute defects.

6.5. In the event of a defect, a claim in this respect may be asserted against the distribution partner that ceded the SOFTWARE to the Customer or installed it for the Customer's use within 12 months from initial installation or within 6 months from its update but in any event before the expiration of the acquired LICENSE. The defect is to be notified to the distribution partner immediately in writing.

7. Liability and limitation of liability:

7.1. The SOFTWARE should only be used by trained and appropriate qualified professionals. The SOFTWARE and the output created by the SOFTWARE don't supersede experiments, testing and the like.

7.2. DCS shall only be liable for proven damages caused directly by the COMMERICAL SOFTWARE itself. DCS shall not be liable for damages caused by any output or result created by the SOFTWARE.

7.3. In case defects arise from improper use or a lack of Customer's IT security DCS shall be free from any liability.

7.4. DCS's liability is in any event limited to the amount the Customer shall have paid in licensing fees.

7.5. DCS shall in no way be liable to the Customer or to third parties for any damage, loss, claims or costs and the like resulting from interruptions to operations, indirect or ancillary damage and consequential damage, such as loss of profit, unrealised savings and third party claims.

7.6. The Customer or any other user / recipient of the software (e.g. via contractually non-compliant or unlawful installation or use) shall be liable to DCS for any damage or loss resulting from the contractually non-compliant or unlawful installation, use or cession of the COMMERCIAL SOFTWARE.

8. Term and cessation:

8.1. The limited rights of use to the COMMERCIAL SOFTWARE shall be assumed by the Customer only upon delivery of the signed Licensing Agreement and complete payment of the agreed fee. However, the Customer shall have no entitlement whatsoever to any refund of licensing fees.

8.2. In the event that delivery of the signed Licensing Agreement or payment of the agreed fee also fail to be effected within an appropriate period of grace, DCS shall be entitled to solicit return of the SOFTWARE and/or written confirmation that these and all copies thereof have been destroyed.

8.3. The Customer can terminate the Licensing Agreement at any time by submitting written notification hereof to DCS. Any termination shall, under all circumstances, apply to all programs and modules of the COMMERCIAL SOFTWARE.

8.4. If the SOFTWARE is used in compliance with the contractual terms, DCS cannot terminate this Licensing Agreement. By contrast, if the Customer significantly infringes the Licensing Agreement, namely disregards the scope of the Licensing Agreement granted to the Customer or infringes copyrights proprietary to DCS, DCS shall be entitled to terminate this Licensing Agreement without prior warning and with immediate effect.

8.5. Upon dissolution of the Licensing Agreement, the Customer shall have no entitlement whatsoever to any refund of licensing fees. The Customer shall, nevertheless, be obligated to remove the installation and to also destroy any data

carriers received from DCS. If requested to do so by DCS, the Customer shall be required to confirm the destruction or the deletion of programs in writing.

9. General provisions:

9.1. The rights of the Customer vis-à-vis DCS are definitively recorded within this Licensing Agreement.

9.2. Additional or deviating licensing provisions shall be effective only if they are stipulated in writing and are duly signed by both contractual parties.

9.3. In the event that parts of this Licensing Agreement should be ineffective, the remaining provisions shall remain valid. In such an instance, the contractual Agreement is to be configured, drawing upon statutory and industry-specific regulations, such that commercial success is achieved to the greatest extent possible.

9.4. Austrian law shall be applicable; the agreed place of jurisdiction is Linz.

Approval

of the End User Licensing Agreement (EULA)

Company
Department

Contact person

Address

Post Code / Place	Telephone

Country	Licence number

Upon appending a legally valid signature, the Customer recognises the licensing provisions for the SOFTWARE.

Place, date

Name/signature:

Name/signature: