

ATCOR

END USER LICENSE AND NON-DISCLOSURE AGREEMENT

This End User License and Non-Disclosure Agreement (the “Agreement”), effective as of the date on which ReSe Applications LLC (“ReSe”) accepts the order for the ATCOR (all versions, i.e. ATCOR-2, ATCOR-3, or ATCOR-4), including the MODTRAN® 5 based Look-Up-Tables as integral component of ATCOR (the “Software”) from the person or entity as listed during the Software registration process (“Licensee”), is entered into effect by ReSe Applications LLC and Licensee. In consideration of the mutual covenants set forth herein and other good and valuable consideration, ReSe Applications LLC 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 favour of Spectral Sciences, Inc.,” and subsequently granted to ReSe Applications LLC from Spectral Sciences Inc. by the “MODTRAN® Software Licensing Agreement” and from the German Aerospace Center DLR by the “ATCOR License Agreement” (hereafter named “Licensors”), the ReSe hereby grants to Licensee a non-exclusive, non-transferable license to use the Software, subject to the following conditions:

A. The number of copies of licenses is granted as follows:

- i. **Node-locked license:** The license is locked to a computer Host-ID and is only working if started on the specified computer. A backup-license valid for one year is included on a second machine for non-operational use as long as the maintenance contract is in effect.
- ii. **Floating license:** The license is granted by an internet-based license server and may be used in concurrent mode from all machines under control of the Licensee. A node locked backup/field license is included. Floating licenses are available only in the modality of annual subscription. Annual subscriptions cannot be paused or canceled.
- iii. **Dual license:** The Software is licensed to two independent computers or for one IDL installation number (for licensed IDL only). Up to two backup and in-field licenses valid for one year are issued upon request for software in maintenance or in annual subscription.
- iv. **Site license:** The Software is licensed to a pre-defined maximum number of computers at one specific site/institute identified by the site's internet domain address.

B. The use of the Software is restricted for Educational or Research Use licenses as follows:

- i. **Educational Use:** Educational Use licenses shall be used exclusively in connection with non-commercial research being performed by college and university researchers. Work being performed for commercial entities does not qualify as Educational Use.
- ii. **Research Use:** Research Use licenses are granted to research institutes, research groups, or universities for regular, but non-commercial processing of data within research within research projects.
- iii. **Commercial Use:** All licenses that are not Educational Use or Research Use licenses are deemed to be Commercial Use licenses.

- C. The Licensee agrees that the use of the Software license is tracked by the ReSe through the internet by date, time, license key, machine host-ID, and internet domain of the end user.
- D. The Software bears the legend “Licensed from the United States of America, as represented by the United States Air Force, under U.S. Patent Nos. 5,884,226 and 7,433,806 and U. S. Patent Pending Serial No. 11/398696” or a similar legend. Licensee shall not alter or remove this legend.
- E. The Software bears the legend “The MODTRAN® trademark is being used with the express permission of the owner, the United States of America, as represented by the United States Air Force.” Licensee shall not alter or remove this legend.
- F. The Software contains proprietary and confidential information of ReSe Applications LLC and the German Aerospace Center (DLR). Licensee agrees that it will not disclose the Software to any third party. Licensee may NOT include the Software in any commercial and/or proprietary venture or as a subroutine (including spawn, runtime executable, DLM, etc.) or feature of a deliverable product without first obtaining the requisite sublicense from the ReSe or unless previously negotiated under the terms of a separate sublicense with the ReSe.
- G. Licensee shall comply with all applicable laws and regulations governing the use and disclosure of the Software, including, without limitation, U.S. Export Administration Regulations, ITAR and other laws and regulations governing the exportation of computer Software and the products thereof.

2. Term and Termination.

The license granted pursuant to this Agreement will continue 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. Rental licenses are terminated automatically in compliance to the maximum duration as stipulated in the rental contract. Upon the termination of this Agreement, Licensee will promptly destroy all copies of the Software and certify such destruction to ReSe Applications LLC.

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. Software bugs are to be reported to the ReSe upon recovery. Licensee assumes full responsibility for the results of its use of the Software and agrees to indemnify and hold harmless ReSe Applications LLC and its Licensors 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. Warranty Conditions.

Licensee acknowledges that the Software and any documentation and maintenance provided therewith are provided “AS IS” and without warranty, express or implied, of any kind. The licensee acknowledges that it is not possible to produce Software free of mistakes based on the current state of technology and that herewith errors in the Software and its documentation can not be excluded. However, the license fee

may be refunded within 2 months after Software installation if the functionality is not given due to technical reasons and if the problem can not be solved within this time frame.

WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND MAINTENANCE, ReSe Applications LLC AND ITS Licensors SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

5. Exclusion of Certain Damages.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, ReSe Applications's LLC Licensors SHALL HAVE NO LIABILITY WHATSOEVER TO Licensee IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE. WITHOUT LIMITING THE FOREGOING EXCLUSION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS AGREEMENT EXCLUDES ALL LIABILITY OF ReSe Applications LLC AND ITS Licensors 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 ReSe Applications LLC OR SSI HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Limitation of Aggregate Damages.

Licensee agrees that the aggregate liability of ReSe Applications LLC in connection with this Agreement and/or the use of the Software, documentation and maintenance provided hereunder shall not exceed the fees paid to ReSe Applications LLC 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, ReSe Applications LLC, SSI and the U.S. Government, and Licensee acknowledges that ReSe Applications LLC would not have been willing and would not have the right 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.

ReSe Applications LLC and/or its Licensors 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 ReSe and its Licensors for which monetary compensation alone would be inadequate, and ReSe and its Licensors 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. Force Majeure.

ReSe Applications LLC and its Licensors shall not be liable for any failure to perform hereunder to the extent that such failure arises by factors outside ReSe Applications's LLC reasonable control, including but not limited to Acts of God, war, terrorism, natural disaster or third party transportation and communications failure.

9. Assignment.

Licensee may not sell, license, assign, or otherwise transfer the Software or the documentation without the written permission of ReSe Applications LLC, which may be withheld in ReSe Applications's LLC sole discretion. Any such sale, license, sublicense, assignment, rental or transfer in breach of this provision shall be void. Specifically, the granted license is not to be used for providing cloud services or Software rentals to third parties without written permission by the ReSe.

10. 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.

11. Support and Maintenance.

Maintenance releases to the Software are included for a duration of one year after acquisition as far as made available by the ReSe and if not indicated otherwise in the purchase contract. The Licensees acknowledges that ReSe Applications LLC and its Licensors have no obligation to provide any Software update service. Email-support by the ReSe is included in the license fee for a duration of one year after acquisition of Software. Support is limited insofar that ATCOR is an expert system and requires dedicated training for efficient use by an end user which can not be covered by standard email support in any case.

The names and email addresses of authorized users as well as the contact information regarding the site and workgroup or unit are to be provided upon registration of the Software with the ReSe.

12. U.S. Government and Spectral Sciences Not Parties; Third Party Beneficiaries.

Although the U.S. Government and Spectral Sciences are not a party to this Agreement and Licensee cannot enforce ReSe's obligations hereunder against the U.S. Government or Spectral Sciences Inc., Licensee agrees that the U.S. Government and Spectral Sciences Inc are third party beneficiaries of the provisions that protect their interest in the Software and that they shall be entitled to enforce such provisions against Licensee. In case of such enforcement by the Government, Section Swiss OR, Abschnitt 2, Sect. C, \$211-215, hereof shall be inapplicable and U.S. federal law shall control. In case of such enforcement by SSI, Swiss OR, Abschnitt 2, Sect. C, \$211-215 hereof shall be inapplicable and the law of the Commonwealth of Massachusetts without reference to its choice of law provisions shall control.

13. 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 ReSe Applications LLC WHICH SUPERSEDES ANY PROPOSAL, OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN Licensee AND ReSe Applications LLC RELATING TO THE SUBJECT MATTER OF THIS LICENSE AGREEMENT.

14. Final Clauses.

Upon ReSe Applications LLC request, Licensee agrees to provide certification of compliance with all terms and conditions of this Agreement.

The place of jurisdiction in any case is St.Gallen, Switzerland.

IN WITNESS WHEREOF, the Licensee has executed this Agreement by installation of the Software and the payment of the Software license fee.

The Licensor:

*ReSe Applications LLC
Langeggweg 3
9500 Wil
Switzerland*