

## CONSIDEO GmbH

### Software License Agreement for

### CONSIDEO STANDARD EDITION, CONSIDEO LIGHT EDITION, CONSIDEO COMMUNITY EDITION, CONSIDEO EDUCATION EDITION

#### Single Use License

IMPORTANT -- READ CAREFULLY: BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING ALL OR ANY PORTION OF THE CONSIDEO SOFTWARE YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, IN PARTICULAR THE LIMITATIONS ON: 3. RESTRICTIONS, 5. DISCLAIMER OF WARRANTIES, 6. LIMITATIONS OF LIABILITY. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT INSTALL, COPY, DOWNLOAD, ACCESS OR USE THE SOFTWARE, AND PROMPTLY RETURN IT TO YOUR PLACE OF PURCHASE FOR A REFUND.

YOU MAY OBTAIN A REFUND OF ANY AMOUNT YOU ORIGINALLY PAID IF YOU: (A) DO NOT USE THE SOFTWARE AND (B) RETURN IT, WITH PROOF OF PAYMENT, TO THE LOCATION FROM WHICH IT WAS OBTAINED WITHIN THIRTY (30) DAYS OF THE PURCHASE DATE.

The software and documentation accompanying this License ("Software") are licensed, not sold, to you by CONSIDEO GmbH (hereafter "CONSIDEO" or "**Licenser**") for use only under the terms of this License, and CONSIDEO reserves any rights not expressly granted to you. You own the media on which the Software is recorded or fixed, but CONSIDEO and its licensors retain ownership of the Software itself.

This License allows **you as a licensed party** to use the software under the terms and conditions of this agreement. "Use" or "Using" means to access, install, download, copy or otherwise benefit from using the functionality of the Software in accordance with the Documentation.

#### 1. Definition

"Software" means all of the contents of the files, CD-ROM(s) or other media with which this Agreement is provided, including but not limited to CONSIDEO or third party software information; related explanatory written materials or files ("Documentation"); and fonts; and upgrades, modified versions, updates, additions, and copies of the Software, if any, licensed to you by CONSIDEO.

#### 2. Non-Exclusive License

(a) The licensed party may install and use only one copy of the Software on a single computer (PC) at a time. In addition, the primary user of the computer on which the Software is installed may make a second copy of the Software for his or her exclusive use on either a portable Computer or a Computer located at his or her home, provided the Software on the portable or home Computer is not used at the same time as the Software on the primary computer. As an express condition of this License, the licensed party must reproduce on each copy any copyright notice and other proprietary notices that are on the original copy supplied by CONSIDEO.

(b) The Software license may not be shared or used concurrently on different clients or computers – including server use/internal network.

(c) Backup Copy. The licensed party may make one backup copy of the Software, provided the backup copy is not installed or used on any computer. The licensed party may not transfer the rights to a backup copy unless the licensed party transfer all rights in the Software.

(d) Upgrades and Updates. If the Software is licensed as an upgrade or update, then the licensed party may only use the Software to replace a validly licensed version of the same software. The licensed party agree that the upgrade or update does not constitute the granting of a second license to the Software (i.e., the licensed party may not use the upgrade or update in addition to the software it is replacing, nor may the licensed party transfer the software which is being replaced to a third party).

#### 3. Restrictions

(A) THE LICENSED PARTY SHALL NOT MODIFY, ADAPT, COPY OR TRANSLATE THE SOFTWARE. THE LICENSED PARTY SHALL NOT REVERSE ENGINEER, DECOMPILE, DISASSEMBLE OR OTHERWISE ATTEMPT TO DISCOVER THE SOURCE CODE OF THE SOFTWARE. THE LICENSED PARTY MAY NOT RENT, LEASE, LOAN OR DISTRIBUTE THE SOFTWARE OR DERIVATIVE WORKS BASED UPON THE SOFTWARE OR ANY PART THEREOF.

(b) SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, LIFE SUPPORT MACHINES OR OTHER EQUIPMENT IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

(c) THE LICENSED PARTY MAY NOT TRANSFER OR ASSIGN HIS RIGHTS UNDER THIS LICENSE TO ANOTHER PARTY WITHOUT CONSIDEO'S PRIOR WRITTEN CONSENT.

(d) NFR (Not for Resale) Copies: Notwithstanding other sections of the License, CONSIDEO software labeled or otherwise provided to the licensed party on a promotional basis may only be used for demonstration, testing and evaluation purposes and may not be resold or transferred.

(e) The CONSIDEO EDUCATION EDITION is only for educational purposes (System Dynamics courses for students) and may only be installed on single computers (PC) of a PC-Pool of the university. The installation of the software on a private PC/Notebook is prohibited as well as the usage of the software by staff members of the university for other purposes like research activities. The university is liable for all kind of misuse of the software. In the event of a misuse, the university has to pay the full current purchase price of the CONSIDEO STANDARD EDITION for each of all already installed EDUCATION LICENCES.

#### **4. Termination**

This License is effective until terminated. This License will terminate automatically without notice from CONSIDEO or judicial resolution if the licensed party fail to comply with any provision of this License. Upon such termination the licensed party must destroy the Software, all accompanying written materials and all copies thereof, and Sections 5-9 will survive any termination or cancellation of this License.

#### **5. Limited Warranty**

CONSIDEO warrants for a period of six months from your date of purchase that the Software as provided by CONSIDEO will perform substantially in accordance with the accompanying documentation.

CONSIDEO's entire liability and your sole and exclusive remedy for any breach of the foregoing limited warranty will be, at CONSIDEO's option, replacement of the Software, refund of the purchase price, or repair or replacement of the Software which is returned to CONSIDEO or an authorized representative with a copy of the receipt.

THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY CONSIDEO AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS OR OTHER TERMS, EITHER EXPRESS OR IMPLIED (WHETHER COLLATERALLY, BY STATUTE OR OTHERWISE), INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES, CONDITIONS OR OTHER TERMS OF MERCHANTABILITY, SATISFACTORY QUALITY AND/OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE AND ACCOMPANYING WRITTEN MATERIALS.

FURTHERMORE, THERE IS NO WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE OR AGAINST INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS BY THE SOFTWARE. CONSIDEO DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CONSIDEO OR AN AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, CONDITIONS OR OTHER TERMS THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE TERMS OF THIS DISCLAIMER AND THE LIMITED WARRANTY UNDER THIS SECTION 5 DO NOT AFFECT OR PREJUDICE THE STATUTORY RIGHTS OF A CONSUMER ACQUIRING THE SOFTWARE OTHERWISE THAN IN THE COURSE OF A BUSINESS, NEITHER DO THEY LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY CONSIDEO'S NEGLIGENCE.

#### **6. No Warranty: Special case for the CONSIDEO COMMUNITY EDITION/ EDUCATION EDITION**

WITH RESPECT TO THE FREWARE-STATUS OF THE CONSIDEO COMMUNITY/EDUCATION EDITION THE PARTIES AGREE ON THE EXCLUSION OF ANY WARRANTY. THE SOFTWARE IS BEING DELIVERED TO YOU AS A LICENSED PARTY "AS IS" AND CONSIDEO MAKES NO WARRANTY AS TO ITS USE, THE ACHIEVED RESULTS OR PERFORMANCE.

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE CONSIDEO SOFTWARE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CONSIDEO SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. CONSIDEO AND CONSIDEO'S LICENSORS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE CONSIDEO SOFTWARE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CONSIDEO DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE CONSIDEO SOFTWARE, THAT THE FUNCTIONS CONTAINED IN THE CONSIDEO SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE CONSIDEO SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE CONSIDEO SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR

ADVICE GIVEN BY CONSIDEO OR AN AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE CONSIDEO SOFTWARE PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER.

### **7. Limitation of Liability**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL CONSIDEO BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE CONSIDEO SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF CONSIDEO OR AN AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED FO THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. CONSIDEO'S AGGREGATE LIABILITY AND THAT OF ITS SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY.

### **8. Export Rules**

You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as export controlled items under the Export Laws, you represent and warrant that you are not a citizen, or otherwise located within, an embargoed nation and that you are not otherwise prohibited under the Export Laws from receiving the Software. All rights to Use the Software are granted on condition that such rights are forfeited if you fail to comply with the terms of this Agreement.

### **9. Place of jurisdiction, place of performance and application of law**

For all possible disputes with CONSIDEO from a business relation or its initiation – insofar legally admissible – the head office of CONSIDEO is agreed upon as place of jurisdiction. The place of performance is the head office of CONSIDEO.

### **10. Partial Ineffectiveness**

1. Should individual items of these clauses be ineffective, this does not affect the effectiveness of the other clauses. The ineffective clause is replaced by the valid clause which in its economic effect comes closest to the clause which is not effective.
2. This Agreement will be governed by and construed in accordance with the laws of Germany.

Date: 15. April 2005