

ACADEMIC SOFTWARE LICENSE AGREEMENT

This Academic Software License Agreement (“Agreement”) is made and entered into by and between **Convergent Science GmbH**, Rg. No. FN 352568 h of the Regional-Commercial-Court Linz, Hauptstrasse 10, A-4040 Linz, Austria (“LICENSOR”) and **Università degli studi di Foggia** with principal offices located at Via Antonio Gramsci 89, 71122 Foggia FG, Italy (“LICENSEE”) and is effective as of the date that both parties execute this Agreement (“Effective Date”). **Convergent Science Inc.** with principal offices in Madison, Wisconsin, shall be referred to as DEVELOPER.

Recitals

LICENSOR provides a software application known as CONVERGE™ (“Licensed Software”) and LICENSEE represents that it is an academic institution or other non-profit organization. The parties have agreed that LICENSOR shall license the Licensed Software to LICENSEE at no expense solely for the purposes of teaching, degree-granting programs and/or academic research that are part of the instructional processes performed by LICENSEE (“the Designated Purpose”). Therefore, in consideration of the mutual covenants, terms and conditions set forth below, the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as follows:

1. Grant of License

- 1.1. LICENSOR hereby grants to LICENSEE, and LICENSEE hereby accepts, a limited, personal, royalty-free, non-exclusive, non-transferable object code license for authorised end users of LICENSEE (“End Users”) to use the CONVERGE™ computational fluid dynamics computer software, and subroutines, updates, revisions and enhancements and the software program(s), module(s), or component(s) as designated in the Proposal, along with the License Key File, therefore, made by LICENSOR (“Licensed Software”) under the terms of this Agreement and as further specified in the Exhibits. Each Super User must be specifically identified in Exhibit C and must agree to comply with the terms of this Agreement by appending their signature hereto.
- 1.2. No source code will be provided.
- 1.3. Any license granted herein is conditional on LICENSEE complying with all the terms of this Agreement.
- 1.4. The License Type shall be a Local Area Network (LAN) License, which allows the LICENSEE to use Licensed Software within a 5-mile radius from the License Site Location designated in Exhibit A.
- 1.5. LICENSOR shall provide LICENSEE access to the Licensed Software by delivering License Key(s) upon the acceptance of LICENSEE’S signed Agreement and completed Exhibits reflecting the License Site Location, Location Server and usage details. LICENSEE is responsible for the download and installation of the Licensed Software. License Keys shall be issued for a period of 12 (twelve) months, or other specified period, and will have to be reissued at respective increments upon expiry. License Keys may limit the use of the Licensed Software and require LICENSEE to obtain new License Keys from time to time.
- 1.6. The Licensed Software may be bundled with software programs that are owned by third-parties and distributed by LICENSOR under license from the third-party owner. These third-party software programs may be governed by their own license terms and, in such case, those terms will prevail over this Agreement as to LICENSEE’S use of the third-party software programs. Other third-party software programs may be sublicensed to LICENSEE under the terms of this License Agreement. In all cases, LICENSOR has no warranty or maintenance obligations for any third-party software products. Changes to the Licensed Software package that LICENSOR may make from time to time or the unavailability of sublicensing for such third-party software programs may make it necessary for LICENSEE to acquire, at its own expense, separate versions of the third-party software programs, if LICENSEE chooses to continue to use such third-party software or, if such third-party software programs are no longer available, LICENSEE may be required to stop using such third-party software programs. In the event LICENSOR is no longer able to sublicense a third-party software program to LICENSEE, LICENSOR may terminate the sublicenses for such software upon reasonable notice to LICENSEE.
- 1.7. Should the Licensed Software include any Open-Source Components, LICENSEE’S use of the Open-Source Components shall be governed by, and subject to, the terms and conditions of the related open-source and public licenses. LICENSOR can provide LICENSEE with the license name, author information, license source, access information, and other relevant information for Open-Source Components as required under the license terms for each Open-Source Component.

- 1.8. Except as expressly provided in clause 2 of these Terms and Conditions, no license is granted by LICENSOR to LICENSEE or its authorized employees, students and contractors under this Agreement to under any patents, copyrights, trademarks, trade secrets, or any other intellectual property rights, whether express or implied.

2. Conditions of Use, Prohibitions and Limitations

- 2.1. LICENSED SOFTWARE WILL ONLY BE USED BY LICENSEE FOR NOT-FOR-PROFIT ACADEMIC RESEARCH AND EDUCATIONAL ACTIVITIES; SUCH AS STUDENT INSTRUCTION, STUDENT PROJECTS, AND STUDENT DEMONSTRATIONS (“the Designated Purpose”). LICENSEE SHALL NOT USE, COPY OR DISTRIBUTE LICENSED SOFTWARE IN FURTHERANCE OF ANY COMMERCIAL, FOR-PROFIT ACTIVITIES, SUCH AS, BUT NOT LIMITED TO, PROVIDING CONSULTING SERVICES OR CREATING SPIN-OFF COMMERCIAL VENTURES FROM ACADEMIC RESEARCH.

- 2.1.1. LICENSEE agrees to use the provided Licensed Software exclusively for the activities described in the table below, subject to the condition that all material and publications arising from such academic and educational activities are fully publishable and made available to the LICENSOR. Where no such condition exists, then such activity is deemed to fall outside of the Scope of this Agreement/permissible activities.

License Type	Category / Activity	Conditions	Price
Academic Licenses (ASLA)	Teaching, student projects, student instruction, student demonstrations, training	Fully publishable	Free with Academic Agreement
	Diploma / PHD thesis at University	Fully publishable	
	University internal fundamental research	Fully publishable	

- 2.1.2. No license fees are payable in respect of the Grant of the License herein, however where the LICENSEE’s activities may surpass the mentioned scope and fall outside the conditions for Academic Licenses, these may be subject to additional agreements and fees.
- 2.1.3. In the event that any activity later evolves into a commercial venture of any form, or is restricted by a Non-Disclosure Agreement, then such activity shall be deemed to fall outside of the scope of this Academic Software License Agreement and the LICENSEE will be required to purchase project licenses or commercial licenses, depending on the venture undertaken. In this event the LICENSEE shall contact the LICENSOR to ascertain which License is required.

- 2.2. The rights granted herein are restricted for use solely by, and on behalf of, LICENSEE.

- 2.2.1. Any End User whose employment, contract, enrolment as a student or other affiliation with LICENSEE ends, is no longer an authorised End User, and LICENSEE shall require such End Users to return all copies of Licensed Software to LICENSEE prior to the termination of their employment, contract, enrolment or affiliation with the LICENSEE.

- 2.2.2. The Licensed Software shall only be used at the License Site Location stipulated in Exhibit A.

2.3. Usage Disclosure and Forecast

- 2.3.1. Before LICENSOR agrees to a possible renewal of the Licenses granted in terms hereof, LICENSEE shall be obliged to disclose to LICENSOR, as per Exhibit D, the details of the activities undertaken and of the published paper(s) while using the Licensed Software for the past year. Such disclosure shall include, but not be limited to, the details of the authors, the title, the nature of the activity, details of any published materials or presentations, how such activities are to be cited when being referenced, and the number of attendees or participants. LICENSEE shall further transmit the published paper(s) to LICENSOR.

- 2.3.2. Prior to any renewal of the Licenses, LICENSEE shall at each instance of renewal provide a forecast, as per the format of Exhibit E hereto, of the intended activities and publications that will be using the Licensed Software for the following year.

2.4. Publication

- 2.4.1. LICENSEE agrees to make its best efforts to publish technical papers using the Licensed Software.

- 2.4.1.1. LICENSEE agrees that results obtained from using the Licensed Software may be made available to LICENSOR and/or published.

- 2.4.1.2. Per written request by LICENSOR, LICENSEE shall provide LICENSOR all data files and presentations related to activities using the Licensed Software. LICENSOR may use these files without restrictions for applications including but not limited to: marketing, LICENSOR web site and publicly available training materials.
 - 2.4.1.3. LICENSEE agrees that any activities that it undertakes while using the Licensed Software will not be subject to a Non-Disclosure agreement incorporating a commercial interest with a third party. However, where such activities involve the use of data that is identified as protected intellectual property and may not be published, then such protected data need not be shared with the LICENSOR, however the results obtained from using the Licensed Software must be shared with the LICENSOR and that at a minimum the nature of the activities must be disclosed to LICENSOR.
 - 2.4.2. LICENSEE further agrees to cite and reference the use of Convergent Science software (CONVERGE CFD) in the presentation(s), as well as in the published paper(s), and to provide LICENSOR with copies of such published materials.
 - 2.4.3. Materials referencing LICENSOR'S or its Affiliates trade name, trademarks or logos and the Licensed Software will be subject to LICENSOR'S policies governing such use.
- 2.5. Limited/Restricted Use
- 2.5.1. LICENSEE may not use the Licensed Software for the following activities without first obtaining written approval from the LICENSOR for each specific activity:
 - 2.5.1.1. for projects or activities in terms of which data restrictions exist pursuant to a non-disclosure agreement with a third party;
 - 2.5.1.2. to conduct competitive analysis such as benchmarking studies or comparisons to other software. LICENSEE may only use the Licensed Software to conduct performance testing and benchmarking studies and research for its internal purposes only, and LICENSEE may not disclose or otherwise publish the results of any performance testing or benchmarking studies of the Licensed Software to any third-party without LICENSOR'S prior written approval in each instance. LICENSOR may, but is not obligated to, authorize LICENSEE to publish or otherwise distribute the results of such studies and research to third-parties only if, (i) LICENSEE provides a copy of the study and research results prior to any publication or distribution; and, (ii) LICENSOR has approved the methodology, assumptions, and other parameters of the study and research prior to such publication and distribution.
 - 2.5.2. Copies of the Software created or transferred pursuant to this Agreement are licensed, not sold, and LICENSEE receives no title to, or ownership of, any copy, or of the Software itself. Except as provided herein, and subject to the Open-Source Components license terms, no right is granted to LICENSEE to sell, copy, publish, license, sublicense, distribute, disseminate, rent, and/or lease all or any portion of the Licensed Software to third parties. LICENSEE is granted limited right to copy, and distribute all or any portion of the Licensed Software only to the extent necessary for use consistent with the terms of this Agreement and in respect of the identified End Users.
- 2.6. The LICENSEE shall **not**:
- 2.6.1. Use the Licensed Software for applications other than for the Designated Purpose;
 - 2.6.2. breach or circumvent any disclosed or undisclosed security device or intended protection used for or contained in the Licensed Software, including, but not limited to the License Key File;
 - 2.6.3. use the Licensed Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property rights or any applicable Law;
 - 2.6.4. use the Licensed Software for the purposes of (i) developing, using, marketing, or providing a competing software product or service; or (ii) any other purpose that is to LICENSOR'S detriment or commercial disadvantage;
 - 2.6.5. attempt to reverse engineer, decompile, disassemble, modify, translate, and discover the source code for, or to make derivative works from the Licensed Software;
 - 2.6.6. Install the Licensed Software on private computers or other infrastructure that is not owned and controlled by the LICENSEE.
- 2.7. LICENSEE shall take such reasonable actions with its employees, students, contractors and agents as necessary, in effect all End Users, to inform them, and give effect to the intent, of these provisions.

3. Fees

No license fees are payable in respect of the Grant of the Academic License.

4. Term and Termination

- 4.1. The term of this Agreement begins on the Effective Date and shall remain in effect for as long as LICENSEE receives a License Key to the LICENSEE, unless otherwise terminated as provided for herein.
- 4.2. Either party may, without cause, unilaterally terminate this Agreement upon 30 (thirty) days written notice to the other party.
- 4.3. LICENSOR may immediately terminate this Agreement and any license granted hereunder without notice if LICENSOR reasonably believes LICENSEE breached the sections of this Agreement related to Use, Prohibitions, Limitations and Confidentiality.
- 4.4. Upon expiration or termination of this Agreement, LICENSEE shall immediately (i) cease using the Licensed Software; and (ii) certify to LICENSOR in writing within 1 (one) month of such termination that LICENSEE has destroyed or has returned to LICENSOR the Licensed Software and all copies thereof in all forms, partial and complete, and all types of media and computer memory, and whether or not modified or merged into other materials.
- 4.5. After termination of this Agreement for any reason or upon expiration of the then current term without renewal, all rights granted to LICENSEE and its authorised employees, students and contractors under this Agreement cease, including but not limited to the Grant of License under clause 1 hereof, including any perceived right that the LICENSEE, or its authorised employees, students and contractors, believes to remain to access the Licensed Software after termination. LICENSEE may not download any Data or Software and shall not further access any such Data for the purpose of taking any additional materials-related decisions or analyses or otherwise analysing any material properties contained in the Data.
- 4.6. The following provisions will survive termination or expiration of this Agreement: Clause 2 (*Conditions of Use, Prohibitions and Limitations*), Clause 6 (*Confidentiality and Intellectual Property*), Clause 7 (*"AS IS" Warranty*), Clause 8 (*Limitation of Liability*) and Clause 9 (*Indemnification by LICENSEE*); and any other provision of this Agreement that must survive to fulfil its essential purpose.

5. Maintenance and Customer Support (MCS)

- 5.1. MCS will consist of (i) reasonable telephone or email support to trained authorised Super Users available during LICENSOR's regular business hours and (ii) New versions of Licensed Software.
- 5.2. MCS is at the sole discretion of LICENSOR. No additional maintenance or support is included in this Agreement unless otherwise provided in the Proposal.
- 5.3. LICENSEE is entitled to all Software Updates during the License Period. Each Update will constitute an element of the Software and will thereafter be subject to this Agreement's terms regarding Licensed Software, including without limitation license, warranty, and indemnity terms.
- 5.4. MCS does not include on-site training in the use of the Licensed Software, which is subject to separate training terms and conditions.
- 5.5. For countries where the LICENSOR maintains an authorized Independent Representative to distribute and/or support the Licensed Software, MCS may either be provided by the Independent Representative or LICENSOR directly. The entity providing MCS to LICENSEE at the beginning of the license term will be specified in the Proposal. LICENSOR reserves the right to change the entity providing MCS to LICENSEE at any time without penalty upon reasonable notice to LICENSEE.
- 5.6. LICENSOR and the Independent Representative will only be required to provide MCS for the two most current commercially available releases of the Licensed Software.

6. Confidentiality and Intellectual Property

- 6.1. "Confidential Information" means any information or material that is confidential, secret, or otherwise not generally available to the public, including, but not limited to, software, source code, object code, input file, software architecture, model, user interface, algorithm, formula, equation, pattern, method, process, compilation, technique, engineering, analysis, skill, invention, know-how, information, knowledge, technical data, design, drawing, template, training materials, user documentation, research and development project, prototype, non-public aspect of a party's business and operations, marketing plans and initiatives, business contact information, potential business affiliation, financial data, customer list, costing and mark-up information, and information that a party is required to keep confidential in accordance with confidentiality obligations to third-parties, regardless of whether disclosed in writing, verbally, observed visually, by electronic or other data transmission, or in any other form or media whatsoever, or obtained through on-site visits, and whether furnished or made available before or after the date of this Agreement.
- 6.2. "Intellectual Property" means any right recognized as intellectual property in any jurisdiction worldwide, or any information or materials eligible for recognition as intellectual property with the passage of time, filing of application, or other event. This shall include, but not be limited to, copyrights, Marks, trade secrets, source code, graphics, images, animations, video, and text, incorporated into the Licensed Software, Know-How, confidential information, patents, moral rights, the right to make a governmental application to register or issue any of them, and the right to prosecute an infringement action in respect of any of them.

- 6.3. LICENSEE acknowledges and agrees that the Licensed Software, subject only to the rights within any Open-Source Components, and this Agreement contain the Intellectual Property of LICENSOR or DEVELOPER that is protected by applicable intellectual property and other laws. Nothing in this Agreement grants any implied rights to LICENSEE, including by implication, waiver, or estoppel, in any intellectual property rights or other rights, title, or interest in any portion of the Licensed Software.
- 6.4. LICENSEE and its authorized employees, students and contractors shall not remove the copyright, trademark, or other proprietary notices (if any) from the Licensed Software, any onscreen display when the Licensed Software is accessed, or source code.
- 6.5. LICENSEE shall keep confidential and not disclose the Intellectual Property to any third-party or parties not directly affiliated with the LICENSEE. In addition, LICENSEE shall not use the Intellectual Property for the benefit of itself outside of the scope of this Agreement, or for the benefit of any third-party, or parties not directly affiliated with the LICENSEE, without the written consent of LICENSOR. Without limiting the generality of the foregoing, LICENSEE shall protect Intellectual Property with the same degree of care it uses to protect its own Intellectual Property of similar nature and importance, but with no less than reasonable care.
- 6.6. LICENSEE shall take such reasonable actions with its employees, students, contractors and agents as necessary, in effect all End Users, to effectuate the intent of this provision and the confidentiality obligations imposed by this Agreement. Upon learning of any disclosure, misuse or misappropriation of LICENSOR'S Intellectual Property not permitted under this Agreement, LICENSEE shall promptly notify LICENSOR of such disclosure, misuse or misappropriation and take all steps necessary to return any disclosed information to LICENSOR and to prevent further improper disclosures.
- 6.7. Before LICENSEE engages a third-party consultant to render assistance to LICENSEE in the implementation of the Licensed Software or in the operations of the Licensed Software, all such consultants must first sign a non-disclosure agreement with LICENSEE to protect LICENSOR'S Confidential Information with terms at least as restrictive as the non-disclosure agreement between LICENSOR and LICENSEE or otherwise.
- 6.8. The confidentiality and non-use obligations above shall not apply to any such information:
 - 6.8.1. which is or becomes publicly known through some non-confidential source other than LICENSOR or DEVELOPER and without any fault of or participation by LICENSEE;
 - 6.8.2. which was in LICENSEE's possession prior to the time it was received from LICENSOR or DEVELOPER or came into LICENSEE's possession thereafter, in each case lawfully obtained from a source other than LICENSOR and not subject to any obligation of confidentiality or restriction on use;
 - 6.8.3. which was developed independently by LICENSEE without reference to any information disclosed by or obtained from LICENSOR or DEVELOPER, as demonstrated by LICENSEE's written records; or
 - 6.8.4. which is required to be disclosed by court order, governmental agency, operation of law or pursuant to judicial, administrative or regulatory process, provided LICENSEE gives LICENSOR prompt notice of such prospective disclosure to permit LICENSOR and DEVELOPER an opportunity to move for a protective order or other appropriate relief.
- 6.9. LICENSEE acknowledges that any use or disclosure of LICENSOR'S or DEVELOPER'S Intellectual Property in a manner inconsistent with the provisions of this Agreement will cause LICENSOR, and/or DEVELOPER, irreparable damage for which remedies, other than injunctive relief, will be inadequate, and LICENSEE agrees that LICENSOR and DEVELOPER shall be entitled to seek injunctive *and* other equitable relief enjoining such use or disclosure, without the posting of a bond or other security, in addition to any other remedies available by law or under this Agreement.
- 6.10. After expiration or termination of this Agreement, LICENSEE shall continue to comply with this Confidentiality and Intellectual Property section indefinitely with respect to LICENSOR'S and DEVELOPER'S trade secret and source code information, and with respect to other obligations herein for at least 5 (five) years from termination of the agreement. Upon termination of this Agreement, LICENSEE shall return all copies of Intellectual Property to LICENSOR or certify, in writing, as to the destruction thereof.
- 6.11. This Agreement does not transfer ownership of any Intellectual Property or grant a license thereto, other than as provided for herein.
- 6.12. "Feedback" refers to any suggestion or idea for modifying any of LICENSOR'S products or services, including without limitation all intellectual property rights in any such suggestion or idea. Feedback will not constitute Intellectual Property, even if it would otherwise qualify as such pursuant to clause 6.1 above. LICENSOR has not agreed to, and does not agree to, treat as confidential any Feedback provided by the LICENSEE, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict LICENSOR'S rights to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting LICENSEE.

7. "AS IS" Warranty

- 7.1. THE LICENSED SOFTWARE IS PROVIDED "AS IS"; "WHERE IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EITHER STATUTORY, EXPRESS OR IMPLIED, ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE, NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, PATENT VALIDITY, OPERATION

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- 7.2. All open-source components and other third-party materials are provided “as is” with all faults and without warranty of any kind. Any open-source components or third-party representation or warranty is strictly limited to LICENSEE and the third-party owner or distributor of such open-source components and third-party materials and unrelated to LICENSOR.
- 7.3. LICENSEE’S SOLE REMEDY FOR ANY DISSATISFACTION WITH LICENSED SOFTWARE (INCLUDING BUT NOT LIMITED TO THE EVENT THAT THE LICENSED SOFTWARE FAILS TO PERFORM SUBSTANTIALLY AS WARRANTED IN THIS AGREEMENT) IS TO STOP USING THE LICENSED SOFTWARE AND TERMINATE THE AGREEMENT.
- 7.4. LICENSOR or DEVELOPER do not warrant the accuracy or applicability of the results obtained from the use of the Licensed Software. The Licensed Software is a mathematical analysis tool intended to assist LICENSEE in LICENSEE’s development and design processes and requires considerable skill and judgment for its correct use and for the interpretation of the computed results.
- 7.5. The LICENSEE is to ensure that the Licensed Software and affiliated Software (including License Manager and License) is properly installed and in working order upon installation. Notifications of any faults, such as License failure, shall only be deemed to be valid if LICENSOR is notified in writing immediately upon receipt of the Licensed Software affording the LICENSOR an opportunity to remedy the fault.

8. Limitation of Liability

- 8.1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF WHAT CAUSE OF ACTION OR CLAIM FOR RELIEF IS ASSERTED, UNDER NO CIRCUMSTANCES SHALL LICENSOR OR ITS OFFICERS, EMPLOYEES, SUCCESSORS AND ASSIGNS BE LIABLE FOR (I) DIRECT DAMAGES OR, (II) ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLES, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST LICENSEE OR ITS AFFILIATES BY ANY THIRD PERSON) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THESE TERMS OR THE SERVICES OR LICENSED SOFTWARE PROVIDED HEREUNDER, OR ANY SECURITY BREACH OR OTHER SECURITY INTRUSION; WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF LICENSOR OR ITS RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (III) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY LICENSOR TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND LICENSOR’S REASONABLE CONTROL; OR (IV) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.
- 8.2. This shall apply in particular to, but not be limited to, Intellectual Property rights held by third parties, for which reason LICENSEE excludes liability on LICENSOR's part for any infringement of third-party Intellectual Property rights.
- 8.3. Under no circumstances shall LICENSOR or its officers, employees, successors and assigns be liable to LICENSEE for any damages caused by LICENSEE's failure to perform its responsibilities under this Agreement.
- 8.4. If applicable law limits the application of the provisions of this clause 8, LICENSOR’s liability will be limited to the maximum extent permissible. For the avoidance of doubt, LICENSOR’s liability limits and other rights set forth in this Clause 8 apply likewise to LICENSOR’s affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.
- 8.5. Any infringement of these conditions by LICENSEE or its officers, employees, students, successors and assigns, shall render the LICENSEE liable to LICENSOR for damages, whether they be direct or indirect in nature.

9. Indemnification By LICENSEE

- 9.1. LICENSEE shall defend, indemnify and hold harmless LICENSOR and DEVELOPER against any third-party claim, loss, suit, expense, or proceeding, including attorney’s fees, liquidated damages, penalties or interest, arising out of, or related to, LICENSEE’s alleged or actual use, misuse of, inability to use, use beyond the scope of this Agreement, or failure to use the Licensed Software, including without limitation:
 - 9.1.1. claims by LICENSEE’s End Users, subscribers, students, employees, and customers, and
 - 9.1.2. claims related to unauthorised disclosure or exposure of personally identifiable information or other private information;
 - 9.1.3. claims related to information transmitted or stored through or on the Licensed Software;

- 9.1.4. other such “Indemnified Claims” include, without limitation, claims arising out of or related to LICENSOR’s negligence, any third-party claim, suit or proceeding arising out of, related to, or alleging direct infringement of any patent, copyright, trade secret, or other intellectual property right related to the Licensed Software;
- 9.1.5. provided, however, that LICENSOR shall have the right to approve, in its reasonable discretion, the selection of attorneys engaged by LICENSEE to settle or defend such claims or suits and LICENSEE shall not settle any claim or suit without the prior written approval of LICENSOR, which shall not be unreasonably withheld, conditioned, or delayed.
- 9.2. In particular, the strict product liability within the meaning of the law shall be restricted to liability for personal injury only.
- 9.3. To the extent that mandatory law does not provide for differently, LICENSOR is only liable for flagrant gross negligence and intent.

10. Data Protection; Secrecy

- 10.1. The Parties agree to treat the mutually exchanged information and the contents of the Agreement (“Confidential Information”) as strictly confidential. The Parties agree to keep the Confidential Information secret, not to make it accessible to any third party, not to publish same and to only use it for the Designated Purpose of the Agreement. Any release from this undertaking shall require express written approval from the respective party and all other parties concerned, or where mandatory statutory provisions override compliance with the obligation to maintain secrecy, the other party must be notified accordingly.
- 10.2. The obligation to maintain secrecy shall survive termination of the Agreement.
- 10.3. Notwithstanding the above provision the LICENSEE expressly agrees that LICENSOR is entitled to disclose Confidential Information to third parties to the extent this is necessary for performance of the Agreement (for example transmission of LICENSEE or User data to the DEVELOPER).
- 10.4. The Parties undertake to impose an obligation to maintain secrecy on their staff and other agents [Erfüllungsgehilfen as defined by Section 1313a of the Austrian Civil Code [ABGB]]. The Parties agree to comply with the applicable data protection law as amended from time to time (currently the Austrian Data Protection Act [Datenschutzgesetz/DSG]). LICENSOR, as a service provider as defined in the DSG, undertakes to sufficiently warrant lawful and secure use of data and to use the data exclusively in connection with the contracts concluded with the LICENSEE/Client, and to observe data secrecy as defined in DSG and to put its staff under an obligation to observe same.
- 10.5. The LICENSEE, as a controller, as defined in the DSG warrants that the statutory prerequisites for use of personal data of the controller by LICENSOR for performance of the contract are fulfilled, including transmission of data to the DEVELOPER. The LICENSEE shall indemnify and hold harmless LICENSOR in this respect.
- 10.6. LICENSOR takes commercially reasonable measures to manage and prevent the unauthorized disclosure or, access to, or use of User or LICENSEE Data (“Data Incident”). No data transmissions over the Internet can be guaranteed to 100% secure. Consequently, LICENSOR cannot guarantee or warrant the security of any information the LICENSEE transmits to it and this is done at the LICENSEE’s own risk.
- 10.7. Use of data for marketing purposes: Consent to receive advertising emails

LICENSOR assumes that the LICENSEE is interested in up-to-date information on standard software and related services. The LICENSEE agrees to receive a reasonable amount of information on standard software and related services from LICENSOR/DEVELOPER via email. In this connection the LICENSEE’s data, including its name and email address, shall exclusively remain with LICENSOR. The LICENSEE may revoke this consent at any time by letter or email. In every information email, LICENSOR will provide the LICENSEE with the possibility to decline receipt of further messages.

11. Software Security and Monitoring

LICENSOR reserves the right to embed a software security mechanism within the Licensed Software to monitor usage of the Licensed Software and to verify LICENSEE’S compliance with this Agreement. Such a security mechanism may store data relating to the usage of the Licensed Software and the number of times it has been copied, or may communicate with computers controlled by LICENSOR, or third parties, over any type of communications link to exchange communications and report data relating to the usage of the Licensed Software, its installation, the system on which it has been installed and the number of times it has been copied or accessed. LICENSOR reserves the right to use license administration software, a license authorization key to control access to the Licensed Software and/or a hardware lock device. LICENSEE may not take any steps to avoid or defeat the purpose of any such measures. Use by LICENSEE of any Licensed Software without any required security mechanism is prohibited. LICENSEE acknowledges and agrees that LICENSOR may use these features and other lawful measures to verify LICENSEE’S compliance and to enforce LICENSOR’S right under this Agreement.

12. Transfer, Assignment and Export

- 12.1. Except as otherwise provided in this Agreement, LICENSEE may not assign or transfer the Licensed Software or this Agreement to a third party without the prior written consent of LICENSOR, which may be withheld at the sole discretion of LICENSOR. Any attempt to do so without such consent will be null and void. Any change of control of LICENSEE shall be deemed to constitute an assignment for the purposes of this clause. A "change of control" includes (i) any merger, combination, consolidation, or similar business combination involving LICENSEE, (ii) a transfer of all or substantially all of LICENSEE'S assets, or (iii) a transfer of a majority of LICENSEE'S outstanding ownership units. LICENSOR is permitted to assign or otherwise transfer this Agreement to any third party without consent of LICENSEE. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, including that of the Developer, and their respective representatives, successors, and permitted assigns.
- 12.2. The Licensed Software and related technology and services are subject to the export laws, regulations, restrictions, and controls that prohibit export or diversion of certain products and technology to certain countries. LICENSEE acknowledges that it is responsible to comply with all applicable import, export and re-export control and sanctions laws, regulations and orders, as they may be amended from time to time, including without limitation those of the United States (U.S.), the United Kingdom (U.K) and European Union (E.U.), and jurisdictions in which LICENSEE is established and from which items are supplied. Under these laws, LICENSEE is responsible to not, and not permit its employees to, directly or indirectly, use, transfer, install/store, release, export or re-export the Software or technology in its possession and control, in violation of applicable laws, including:
- 12.2.1. to any country, destination or person that is the subject of applicable sanctions or embargo imposed by the U.S., the U.K. or the E.U. or pursuant to a resolution of the United Nations;
- 12.2.2. to persons designated by any relevant government as terrorists or any persons on the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons or the Bank of England Consolidated List, or on the U.S. Commerce Department's Denied Parties and Entity Lists, or equivalent lists of the U.K. or E.U. or other relevant jurisdictions; and
- 12.2.3. to not use, nor permit the use, sale, supply, transfer, export or re-export of any item, including Software or technology, provided by LICENSOR, its Affiliates and their LICENSORS where LICENSEE has been informed, is aware or has grounds for suspecting that such items will be used in connection with the design, development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons, or for prohibited military end-uses.
- 12.3. LICENSEE shall indemnify, defend, and hold LICENSOR harmless against all claims based on LICENSEE'S exporting or using the Licensed Software in contravention of the above restrictions.

13. Severability; Enforcement; No Waiver

- 13.1. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid, illegal or otherwise unenforceable, such provision will be interpreted to fulfil its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 13.2. The parties intend that the limitations, limited remedies and indemnities contained in clauses 7, 8 and 9 shall be valid and enforceable even if they fail of their essential purpose.
- 13.3. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorised representative in an explicit written waiver. Lack of enforcement of any term or condition in this Agreement shall not be construed as a waiver of any rights conferred by such term or condition.

14. Relationship

No joint venture, partnership, employment, or agency relationship exists between LICENSEE and LICENSOR or DEVELOPER as a result of this Agreement or use of or access to the Licensed Software.

15. Entire Agreement

This Agreement with all referenced Exhibits contains the entire understanding of the parties with respect to the subject matter hereof, and supersedes any prior agreement, understanding and communication between the parties, whether written or oral, with respect to such subject matter. Any terms on or referenced by any document issued by the LICENSEE which attempt to modify, contradict, delete from or add to the terms of the Agreement shall be rejected by all parties and shall not be applicable in governing the usage of Licensed Software. This Agreement can only be amended in writing and signed by the parties. In the event of any conflicts, this Agreement shall take precedence.

16. Survival Clause

The duties and responsibilities herein, which, either expressly or by their nature, extend into the future, shall extend beyond and survive the termination of this Agreement. In addition, the expiration or earlier termination of this Agreement shall not relieve either party of obligations incurred prior to the termination date.

17. Governing Law, Venue and Jurisdiction

17.1. This Agreement shall be governed by and construed in accordance with the laws of Austria, without reference to conflict of law principles that would apply to the substantive laws of another jurisdiction to the parties’ rights or duties; (b) the United Nations Convention on Contracts for the International Sale of Goods, (c) or other international laws.

17.2. The parties agree that the personal and exclusive venue and jurisdiction for all litigation arising out of or in connection with this Agreement shall be Linz, Austria or Dane County, Wisconsin (seat of the DEVELOPER), which will be decided at the discretion of Convergent Science GmbH.

17.3. In the event of any litigation between the parties arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys’ fees at the trial and appellate levels.

18. Notices

Notices pursuant to this Agreement shall be sent to the addresses stipulated above, or to such other address as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person, by email, or by certified mail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorised representatives as set forth below.

**Università degli studi di Foggia
(LICENSEE)**

**Convergent Science GmbH
(LICENSOR)**

_____ , _____

Date, Town

_____ , _____

Job Title

Print Name

Signature

LICENSE SERVER SPECIFICATION
EXHIBIT A (ASLA)

Convergent Science GmbH (LICENSOR) has provided licensed managed software to LICENSEE. LICENSEE is entitled to the following Licenses:

_____ Superbase solvers _____ Studio (pre-processor) _____ Tecplot (post-processor)

The Licensed Software may be used by LICENSEE at the License Site Location noted below by the authorized End Users.

LICENSEE is made aware that the aforementioned licenses are solely for academic research, teaching and other similar academic endeavors as stated in clause 2.1. Additional License packages for:

- Government/EU funded projects;
 - Commercial Projects;
 - Classroom/Workshop packages;
- can be made available upon request.

The licensed software is issued in respect of a specified server, the details of which are to be supplied by the LICENSEE hereunder.

SERVER INFORMATION

LICENSEE			
LICENSE SITE LOCATION <small>(Physical address where the Software and License will be installed)</small>			
HOSTNAME		MAC-address	

Virtual Machine

LICENSEE hereby confirms that the provided Server Information is correct and shall endure for the period of the issued license period. Any changes in the server information will necessitate new licenses having to be issued and accordingly LICENSEE may incur an additional fee as a result. In such an event the LICENSEE will be required to conclude a Server Change Agreement in terms of which the LICENSOR shall have the right, with reasonable notice to LICENSEE, to audit LICENSEE’s use of the software no more than once each calendar year to assure compliance with the terms of the License Agreement.

Date, Town _____, _____

Print Name _____

Signature _____

LICENSEE – IT and Administration

To issue the license, LICENSOR requires the Host ID and the Hostname of the License-Server, which can be obtained by:

Windows License Server: Start cmd (dosbox); ipconfig /all > ip.out	Linux License Server: Start a shell: ifconfig > ip.out; hostname >> ip.out For newer Linux versions use “ip addr show” instead of “ifconfig”
--	---

The LICENSEE is required to send the ip.out file to the LICENSOR.

Once the licenses have been delivered to the LICENSEE, the authorised End Users can register at <https://hub.converqecfd.com/register> for the software download.

LICENSEE CONTACT DETAILS

EXHIBIT B

LICENSEE: _____

ADDRESS: _____

Head of Department

Name _____

Email _____

Phone _____

Date, Signature _____

Person of contact for Licenses and Administration

Person employed at the institute.

Our contact person for license renewals and related questions.

Contact for approval of new End users and new registrations.

Eligible for download access and support.

Name _____

Email _____

Phone _____

Date, Signature _____

Person of Contact for IT and Software Installation

Person employed at the institute.

Responsible for installing software and IT - Trouble Shooting and eligible for download access and support.

Requires download access for our website.

Name _____

Email _____

Phone _____

Date, Signature _____

AUTHORISED END USERS LIST
EXHIBIT C

LICENSEE: _____

ADDRESS: _____

In terms of the Academic Software License Agreement signed between the parties, the LICENSOR has granted to LICENSEE licenses for Authorized End Users to use the Licensed Software.

In reference to the Academic Software License Agreement the persons listed herein will be added as authorised Super User/s and will have access to the download website and be eligible to receive support from the support team who can be contacted on +43 (0) 720 0 106601 or at SupportEU@convergecf.com. Super Users must be specifically identified herein and accordingly agree to comply with the terms of the Software License Agreement by appending their signature hereto. Please note that support is only intended for trained Super Users.

Other End Users not listed herein will be required to contact their internal IT Department, or any of the Super Users listed below, for assistance regarding any support they may require.

Further please note that only email addresses* associated with the LICENSEE will be authorised.

Name	Email* <i>(Only email addresses associated with the LICENSEE will be authorised.)</i>	Date; Super User Signature	Date; University License Administration Signature

EXHIBIT D

CONVERGE USAGE: DISCLOSURE FOR PAST PERIOD AND FORECAST OF USAGE FOR THE COMING PERIOD

(Please list all the past, present and future activities)

ACTIVITY	TITLE	SUPERVISOR / TEACHER	START DATE	END DATE	RESEARCHER / STUDENT NAME (Where applicable)

EXAMPLE - EXHIBIT E
PUBLICATIONS DISCLOSURE (CLAUSE 2.4)

TYPE OF PUBLICATION	TITLE	AUTHORS	Forum/Medium (e.g. SAE)	PUBLICATION DATE	LINK/FULL CITATION

EXHIBIT F
REFERENCE GUIDE *

This is a quick reference guide to be distributed to the End Users, e.g. Students, using the Licensed Software to highlight some of the important legal and administrative aspects.

Topic	Explanation
If you have a problem with installation or license:	Your institutions' IT Administrator or License Administrator has access to the software and can assist you with installation support, as well as all documentation and example cases.
Where to find information on CONVERGE:	The License Administrator or Super User has access to our download site which contains manuals, guidelines, example cases and other tools that you may require. They will be able to assist you for any of your needs.
Who to contact for support regarding the use of the software:	If you are an authorised Super User, contact Convergent Science Support. If you are another End User, contact a Super User.
What can you do with CONVERGE:	Anything with an Academic purpose, which includes teaching, student projects, student instruction, Thesis, Research at the University under the constraints of the license agreement between the institution and Convergent Science. If you have doubts contact a Super User or the License Administrator at your institution.
What can't you do with CONVERGE:	No benchmarking or comparing to other software May not copy, sublicense, sell, distribute May not discover, decompile or interfere with the source code in any way May not interfere or subvert any security device that is a part of CONVERGE May not use CONVERGE for any unlawful purpose or that which breaches another rights
When you cannot use CONVERGE:	Where you are a party to a Non-Disclosure Agreement with someone else, unless you have our approval For any commercial or consultancy projects
We would be highly appreciative if you could assist us with this:	Where you publish any thesis or teaching material or paper using CONVERGE, please send us a copy via your Super User or License Administrator To cite CONVERGE when used
If you plan to cite us, please follow this guideline:	<p>Media Kit link : https://api.convergecf.com/wp-content/uploads/cs-media-kit.pdf</p> <p>If you are publishing work that includes CONVERGE results in conference proceedings, journal articles, book chapters, etc., please cite CONVERGE as follows: Richards, K. J., Senecal, P. K., and Pomraning, E., CONVERGE 3.0*, Convergent Science, Madison, WI (2020). *Please note that you should cite the version of CONVERGE used in your work.</p> <p>In the Acknowledgements of any Academic works, please state: "Convergent Science provided CONVERGE licenses and technical support for this work."</p>

* This Reference Guide merely highlights and addresses some frequently asked questions pertaining to the legal administration of the Software License Agreement for End Users and it is not meant to be an exhaustive guide to the Software License Agreement. The terms of the Software License Agreement must still be referred to as the applicable terms and conditions.