

ILNumerics GmbH, D - 10407 Berlin
End User License Agreement (the „Conditions“)
for the software ILNumerics Ultimate VS
valid from November 2015

1. **Scope.** These Conditions shall apply to the software ILNumerics Ultimate VS, including any Updates and bug fixes of the same (hereinafter: the **Software**) and any supplies and services related thereto provided by ILNumerics GmbH, Danziger Str. 219, D – 10407 Berlin (hereinafter: **ILNumerics**) to any customers who are not consumers pursuant to § 13 BGB (German Civil Code) - hereinafter: **Customer(s)**.

2. **No Other Terms and Conditions.** If ILNumerics and the Customer are starting contacts of any kind in connection with the Software or have entered into a contract for sale or rental of the Software or any service, license or other agreement related to the Software (each hereinafter: **Contract**), these Conditions shall apply except if and to the extent that the Contract provides otherwise.

In case the Customer is installing, copying or otherwise using the Software he is accepting to be bound by these Conditions. If the Customer does not agree to the Conditions or any part thereof, the Customer is not entitled to install, copy, use, evaluate, or replicate in any manner any part of the Software.

ILNumerics does not accept any terms or conditions which deviate from these Conditions, except if ILNumerics has agreed in writing expressly to such terms and conditions and has waived the validity of these Conditions. Such consent of ILNumerics shall be valid only for the specific Contract and does not extend to former or future Contracts.

3. **Negotiation and/or Performance of a Contract.** Any **cost estimates which** ILNumerics may indicate on the website of ILNumerics or otherwise shall not be binding on ILNumerics.

3.1. **Prices; Value Added Tax.** Value added tax shall not be deemed included in the prices quoted by ILNumerics, and, if applicable, it will be charged separately in the invoice at the statutory rate prevailing on the date of the invoice.

3.2. **Grant of License.** In case of conclusion of a Contract ILNumerics grants the Customer a non-exclusive, non-transferable license to install the Software on Customers computers and to use the Software for developing, executing and redistributing Customer Software (hereinafter: **Use**) , but only in strict compliance with the Contract and these Conditions. Customer Software is defined in clause 3.7.1

3.2.1 The Customer may purchase by a Contract the license for the Software and any supplies and services related thereto provided by ILNumerics for Use during a period as determined by the Contract starting with the purchase date of the Software, if not otherwise specified in the Contract. The Contract may also expressly include by a Maintenance Subscription the acquisition of ILNumerics valid updates and maintenance of the Software for Use and subject to the conditions of the Contract and these Conditions.

3.2.2 Customer shall be entitled to the Use of the Software only in the cases that (i) Customer has acquired from ILNumerics a Maintenance Subscription which is valid at the respective time or (ii) the right to the Use of the Software or parts of it is expressly granted in the Contract for each individual case; but, however, customer shall refrain from any other use of the Software.

3.2.3 The Customer shall be obligated to activate after conclusion of the Contract the installation of the Software as prescribed by ILNumerics. The Customer shall activate exactly one operating system user account on one computer (hereinafter: Developer Seat) in order to enable the use of the Software.

The activation process requires the transfer of activation data between the Customer and ILNumerics during the activation process and the storage of such data on the computer of the Customer during the contractual use of the Software as well as the storage and use of such data by ILNumerics.

3.3.1 The Software as well as any supplies and services of ILNumerics are described in the documentation which is made available by ILNumerics in the valid individual Contract or separately on request.

3.3.2 Customer may use the Szip software integrated with HDF5 as integrated with the Software to decode data and for internal activities that do not involve or result in the development of an Szip-based software product. In order to use Software to encode data based on Szip software or in the development of a Szip based software product, Customer must acquire an appropriate license from the appropriate licensing agent or by contacting info@ics-rhbd.com. In case of redistribution of the Szip software Customer is responsible for arranging and meeting any licensing requirements with the license owner of Szip software.

3.4.1 The Customer shall refrain from (i) using the Software for any purpose other than permitted under the Contract, (ii) copying and / or (iii) making available to **third parties** any **technical specifications**, cost estimates, quotations, images, drawings, calculation, software and other records which the Customer may receive from ILNumerics, in particular in connection with the negotiation or the performance of the Contract.

The Customer may not pass these items on to third parties except with the prior written consent of ILNumerics. ILNumerics reserves the copyright and all other rights in such materials.

3.4.2 The Customer shall refrain from (i) reverse engineering the Software or transforming it in any other way or (ii) modifying, adapting, translating or creating derivative works of the Software or its documentation, except in each case to the extent expressly permitted in these Conditions, in the Contract or under mandatory law. Any copies of the Software and its documentation shall contain all of the copyright notices, trademarks and trade names, and user information as shown on the original.

Neither Customer's right to copy and modify the Software to the extent expressly permitted by applicable mandatory legislation regarding back up or the elimination of errors nor Customer's right under applicable mandatory legislation regarding reverse engineering shall be restricted hereby.

3.5 In the event that the Customer violates the obligation(s) of clauses 3.4.1 / 2 ILNumerics shall be entitled to request immediate release and delivery of such materials, independent of any other rights of ILNumerics.

3.6 Customer shall refrain **making the Software, related supplies and services or parts thereof available to any third party**, whether by delivering a data medium, over a network, by a service or in any other form, whether or not for compensation, except with the prior written consent of ILNumerics. ILNumerics shall grant such consent if (i) Customer discloses to ILNumerics the name and address of such third party and the date of transfer, (ii) the third party acquirer assumes all obligation regarding the Software under the Contract and these Conditions and (iii) the Customer destroys all copies of the Software in its possession.

3.7 Redistribution

3.7.1 Notwithstanding the foregoing regulations in clause 3.6 Customer may make available to a third party (hereinafter: **Client**) unmodified copies of the redistributables contained in the Software package as set forth in the file “redist.txt” (hereinafter: **Redistributables**), together with Customer’s proprietary software generated using the Software (hereinafter: **Customer Software**). This right shall only apply to the extent that (i) such client has agreed to terms of use at least as restrictive as provided in these Conditions, and (ii) such Client may use Redistributables exclusively together with Customer Software provided by Customer together with such Redistributables.

3.7.2 Independent of all other rights of ILNumerics the Customer agrees to indemnify ILNumerics for any damage or loss suffered in connection with the infringement of these Conditions or any of ILNumerics Property Rights by a Client, and hold ILNumerics harmless from any claims asserted by Clients in connection with the use of, or access to, the Software, unless these are based upon a breach of the Contract by ILNumerics.

3.8 Customers Special Limitations of Using the Software.

3.8.1 Customer is not entitled to use the Software in such a way that results in Customer’s development of software products which are directly or indirectly competitive with the Software or other products of ILNumerics. In addition, Customer’s use of the Software must be for the purpose of developing Customer products that include significant value-added features.

It is not allowed to use the Software to create frameworks, wrappers, delegation layers, services, software development tools or other products that could be enabling anyone to reuse it programmatically.

3.8.2 It is not allowed to access the functionality of the Software by reflection or to use code injection techniques with the Software. Access to the Software is restricted to such methods which are explicitly marked for public access in the specification of the Software.

3.8.3 Independent of all other rights ILNumerics is entitled to immediately terminate the granted license, if the Customer shall not comply with his obligation(s) as mentioned in the clauses 3.7 and 3.8, especially in case of material breach of the Contract.

3.9 **Property Rights, Restricted Rights of Use.** Customer’s right to use the Software and its documentation, protected by intellectual property rights of ILNumerics, shall be strictly limited to (i) internal business purposes, (ii) use only on a Developer Seat by a **single (1) person** of its employees, which is destined by the Customer for Customer’s development with the Software and named to ILNumerics on request, (iii) otherwise as provided in the Contract and / or in these Conditions. ILNumerics reserves all other rights.

3.10 Terms of delivery. All Deliverables shall be delivered ex works (EXW) ILNumerics Berlin (Incoterms 2010); prices quoted by ILNumerics shall be deemed agreed on the same basis.

ILNumerics may provide the Software solely electronically via online download.

3.11 ILNumerics reserves the right to supply a **successor version** of the Software version ordered which has become available prior to delivery, provided that the successor version meets the agreed specifications, and is not more expensive than the version ordered, and the Customer has not explicitly precluded delivery of such successor version.

3.12 Special Responsibilities of the Customer. Customer shall be solely responsible to procure a system environment complying with any technical guidelines issued by ILNumerics or third parties relating to the use of the Software.

In the event that ILNumerics identifies to Customer a third party service provider for such system environment, ILNumerics shall not assume any liability with respect to the performance of such third-party service provider as far as legally admissible.

3.13 The Customer shall not distribute the Deliverables into countries and / or to users as prohibited under German or other statutory law; therefore the Customer shall not have a statutory right of recourse or any other right.

3.14 No Property Guarantees. Absent express written confirmation, ILNumerics shall not be deemed to have **guaranteed** certain properties of the Deliverables. The properties of the Software are described conclusively in the Software documentation.

4. Software Maintenance. ILNumerics provides to Customer all such new versions of the Software (hereinafter: **Updates**) free of charge as long as it is valid in accordance with the Contract resp. the valid Maintenance Subscription, which are approved by ILNumerics for distribution to the public.

ILNumerics intends to release Updates at reasonable intervals, but does not guarantee that particular Updates will be made available at a particular point in time.

Updates are accordingly subject to the regulations and especially to the restrictions of use set forth in these Conditions and in the Contract for the Software.

Customer acknowledges that any (i) remedies for Defects of Updates and (ii) any liability of ILNumerics for such Updates, regardless of the legal foundation they are based upon, is accordingly subject to the limitations set forth in the Contract and these Conditions, especially clause 6.

After the Customer has upgraded to a new Update, any right of use with respect to the former version(s) of the Software shall terminate automatically after an evaluation period of thirty (30) days after the date the Update has been installed.

5.1 Confidentiality. The parties mutually agree to keep strictly confidential all technical and commercial information which by its nature (notably the source code of the Software) or by explicit marking is confidential and was received from the respective other party (hereinafter: Information) and to refrain from using any such Information except as strictly required to perform the Contract. This restriction shall not apply to Information which the recipient can show was already published or known to the recipient at the time of disclosure or that was published later without the fault of the

recipient.

The parties represent that their respective employees, consultants and subcontractors are bound by, and all comply with the obligations as stipulated herein.

The recipient shall notify the disclosing party without undue delay if he receives notice from a court or authority or third party to disclose such information.

This confidentiality clause shall survive termination of the Contract as far as legally admissible.

5.2 Notwithstanding the foregoing regulations in clause 5.1 Customer shall grant ILNumerics the right to make publically available any materials Customer shall deliver to ILNumerics without written request and which are not strictly required to perform the Contract and are not marked as confidential. This shall expressly include but shall not be limited to code examples and general feedback for the Software and services related thereto, provided by ILNumerics.

ILNumerics, however, shall refrain from making publicly available any Information which shall allow a recipient to infer personal, commercial or otherwise sensible Information of Customer.

6. Limited Remedies for Defects (Warranty). Any deviation in the deliveries of ILNumerics from agreed specification(s) and / or any violation of rights of third parties shall be deemed as defect (hereinafter collectively: Defect(s)).

In accordance with the valid statutory law the Customer may exercise his remedies for repair or replacement of the Software and the documentation as well as the supplies and services and, only where that fails or in other exceptional cases as provided for under valid statutory law, withdraw from the Contract or demand a reduction of the agreed price (hereinafter Warranty Claims), subject to the following limitations:

6.1 The Customer shall inspect the Software and its documentation as well as any supplies and services of ILNumerics and notify ILNumerics of any Defect immediately upon delivery. In the absence of such immediate notice, the Customer shall be deemed to have accepted any Defect of the Software and its documentation as well as of any supplies and services of ILNumerics that could have been detected through due diligent review. Notably, such notice shall not be deemed immediate if it is received by ILNumerics more than 14 days after delivery.

6.2 Customer shall define for ILNumerics the details of an alleged Defect in writing or by Email and shall immediately answer any questions of ILNumerics. ILNumerics shall also be entitled to free and unrestricted online access to the Customer computer(s) to the extent necessary to define and investigate any alleged Defect and to repair or replace the Software and / or the supplies and services.

6.3 ILNumerics reserves the right whether to repair or to replace the Software and / or the supplies and services which proves to be defective.

If ILNumerics fails to exercise such right within a reasonable time limit, such right shall pass to Customer. ILNumerics shall have at least two attempts at such repair or replacement for every single Defect, except where (i) this should unduly prejudice Customer in individual cases or (ii) due to the nature of Defect or the Deliverable or other circumstances, a larger number of attempts is appropriate. Customer shall allow ILNumerics a reasonable period of time for each attempt.

6.4 Any Warranty Claims shall be excluded (i) unless the Defect in question substantially limits the suitability of the software for the agreed purpose and (ii) if and to the extent such Warranty Claims results from information, works or services or components provided by Customer.

6.5 Limitation Period. Customer's remedies for Defects of the Software – excluding the rights to claim damages – shall be subject to a limitation period of twelve (12) months.

Notwithstanding the foregoing, all remedies based on

- fraudulent concealment of defects, or
- (i) gross negligence, willful misconduct or (ii) death or personal injury, caused by negligence or willful misconduct, or
- guarantees of certain properties and / or
- the right to withdraw from the Contract based on a breach imputable to ILNumerics other than a Defect

shall be subject to the applicable statutory limitation periods.

The limitation periods shall begin on the date specified by the statute.

Repair or replacement of Software shall not result in a renewal of the limitation period for the Customer's warranty Claims with respect to the repaired Software. Notwithstanding the repair or replacement, such Warranty Claims shall be subject to a limitation period equivalent to the remaining limitation period applicable to the original Software, except that such limitation period shall at the earliest expire one month after such repair or replacement or ILNumerics unjustified refusal to undertake further attempts of repair or replacement.

6.6 Warranty Claims shall be excluded to the extent that the Customer (i) uses the Software for any purpose other than the contractual purpose or in violation of the relevant statutory or contractual requirements and/or guidelines issued by ILNumerics or third party manufacturers, or (ii) modifies the Software or uses the Software together with any hardware or software not approved by ILNumerics or any third party manufacturer for such purpose, unless, in each case, the Customer has obtained the prior written consent of ILNumerics, and except, in each case, where the foregoing circumstances did not cause the Defect.

6.7 Any Warranty for the Deliverables not infringing third party rights shall be limited to third party rights valid in the country of the address where Customer is allowed to use the Software pursuant to these Conditions. Furthermore any Warranty Claims for violation of third party rights shall be excluded unless the Customer enables ILNumerics to conduct the defense alone without any restriction and grants to ILNumerics the necessary powers and assistance, based on Customers cost.

7. Liabilities. ILNumerics shall be liable in damages, whether based on Contract or any other legal theory, only to the extent that the damage was caused by gross negligence or willful misconduct imputable to ILNumerics. In the event of death or personal injury, ILNumerics shall be liable also for slight negligence in accordance with statutory law. In addition, ILNumerics shall also be liable in accordance with statutory law for a slightly negligent violation of a fundamental duty under the Contract, but such liability shall be limited to the purchase price (excluding VAT) of such Contract which resulted in the damage. Customer herewith confirms that the total amount of any foreseeable damages does not exceed such purchase price.

Fundamental duties as used herein comprises all duties which must be fulfilled by ILNumerics in order to enable consummation of the Contract and the achievement of its purposes, provided that

Customer may reasonably expect fulfillment of such duties in view of the content and purposes of the Contract.

7.1 The liability of ILNumerics shall cover neither (i) damage caused by loss of data to the extent such loss could have been avoided by reasonable (at least daily, alternating) state of the art back-up, nor (ii) damage caused by use of any Software or distribution of Customer Software which could have been prevented by examination at regular intervals of the results of the use of the Software, notably thorough review of the properties and absence of defects of Customer Software. ILNumerics shall not be liable for any consequential damages.

7.2 Limitations on the liability of ILNumerics agreed in the Contract or these Conditions shall apply also to the personal liability of ILNumerics officers, employees and agents.

7.3 Where Software is provided free of cost (e.g. demo Software, Software subject to open source license terms, Updates, Maintenance, Tools) ILNumerics shall be liable for damages only in case of gross negligence or willful misconduct imputable to ILNumerics and / or fraudulent concealment of defects.

7.4 Any mandatory liability under the German Product Liability Act and/or arising from a guarantee of properties shall remain unaffected.

8. Indemnification. Customer shall hold ILNumerics harmless from all claims asserted by third parties that the Customer has violated statutes or regulations applicable to the business, including, but not limited, to statutes of unfair competition or data protection.

Customer shall hold ILNumerics harmless from all claims asserted by third parties and any other damage or loss based on (i) the Customer's representations vis-à-vis third parties with regard to properties or technical specifications of the Deliverables to the extent that such claims deviate from the specifications published and distributed by ILNumerics and (ii) use of the Customer Software by such third party.

9. Data Protection, Right of Use, References, Advertising. The Customer is hereby notified that ILNumerics shall comply with Data Protection as far as admissible in accordance with German mandatory law concerning Data Protection. ILNumerics shall also store, process and use personal data and other contact information provided by the Customer in the context of the business relationship for the purposes of contact management and advertising.

Customer also agrees that ILNumerics may name the Customer as disclosed by Customer as reference in any publication, notably in any advertising material. ILNumerics may in this context also disclose details of the respective Deliverable.

The Customer may withdraw his consent to the storage, processing and use of the data for advertising purposes at any time with a notice period of thirty (30) days by written notice

By using the Software as integrated part of Visual Studio® Customer shall agree that information shall be exchanged between Visual Studio® and ILNumerics for the purpose of update notifications.

10. **Notices.** Any notices, declarations or waivers which may be declared or made pursuant to the Contract or these Conditions shall be valid only if they are in writing unless explicitly agreed otherwise.

11. **No assignment.** The Customer shall not be entitled to assign any of its rights under the Contract - except for claims of payment – to any third party without the prior written consent of ILNumerics, which consent shall not be unreasonably withheld.

12. **Changes of these Conditions.** ILNumerics shall be entitled to change or amend these Conditions by unilateral notice with proactive effect, observing a one month notice period.

In such case the Customer shall have the right to withdraw from the Contract, observing a two weeks' notice period with effect to the effective date of the proposed amendment. Where Customer does not exercise this right, the amendment shall become effective.

The amendment shall not affect pre-existing perpetual licenses.

13. **Severability.** Should one or more provisions of the Contract or these Conditions be or become invalid or unenforceable, the validity and unenforceability of the other provisions shall not be affected. In this case the parties shall in good faith negotiate the provision in question in order to replace it by a corresponding provision legally permitted, reflecting the economic intention of the original provision as far as possible. Procedure shall be the same if a loophole requiring supplementation arises on performance of the Contract.

14. **Place of Performance** shall be Berlin, Germany.

15. Governing Law, Jurisdiction

15.1 The Contract and these Conditions shall be governed by the laws of Germany with the exception of the conflict of law rules and the UN Convention on the International Sale of Goods (CISG).

15.2 All disputes under or in connection with the Contract and / or these Conditions shall be submitted exclusively to the courts competent for Berlin, Germany, to the extent that the Customer is a commercial entity or a public law corporation, or a public law fund or trust.

The Customer hereby submits expressly to the jurisdiction of the courts competent for Berlin. The same shall apply if, at the time the claim is brought, the Customer's domicile is not in Germany or not known.

ILNumerics reserves the right to take legal actions against the Customer in the courts having general personal jurisdiction over the Customer.

The prevailing party in any legal action arising out of or relating to the Contract and / or these Conditions shall be entitled to an award of its reasonable attorneys' fees and costs, in addition to any award of damages or other relief, if any, awarded to the prevailing party; such claim shall be applicable even if the statutory law does not include a corresponding right.

Should you have any questions to these Conditions, contact us or write:

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