GENERAL TERMS AND CONDITIONS
FOR
SOFTWARE MAINTENANCE AND SUPPORT

April 27, 2021

These General Terms and Conditions for Software Maintenance and Support (“General Terms”) apply between Thermo-Calc Software AB or its agent (as the case may be) (jointly “TCSAB”) and the entity which is granted a license to use TCSAB’s software Thermo-Calc including Thermo-Calc’s different Add-On Modules (e.g. the Diffusion module (DICTRA) and the Precipitation module (TC-PRISMA) and software development kits (such as TC-Python, TC-Interface, TC-API or TC-Toolbox for MATLAB®), (individually and jointly the “Software”). The entity granted a license to the Software is hereinafter referred to as “Customer”.

1. GENERAL PROVISIONS. All the provisions of the End User License Agreement (“EULA”) shall apply to these General Terms and these General Terms shall be comprised by the definition of the Agreement in the EULA. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the EULA. In the event of conflict between the terms and conditions in these General Terms and those in the EULA, the terms and conditions in these General Terms shall prevail.

2. MAINTENANCE FEE AND PAYMENT. Maintenance and support for Software which Customer has purchased as a perpetual license is subject to a maintenance fee (the “Maintenance Fee”), as notified by TCSAB. During the first year of the perpetual Software license, the Maintenance Fee is however included in the license fee for the Software. For maintenance and support of the Software for any subsequent years, TCSAB will issue a quote for the upcoming Maintenance Fee for Customer’s acceptance. Upon acceptance of the quote, TCSAB will invoice the Maintenance Fee for payment upfront.

If the Customer pays the fee for any additional Single User Node Locked License(s) or Network License(s) for the use of the Software, maintenance and support for such additional license(s) will be provided free of charge during the time period remaining (if any) of the maintenance and support of the first license ordered from TCSAB. Thereafter, Maintenance Fees for maintenance and support for each license will be charged annually in advance in accordance with the above.

Maintenance Fees may, at TCSAB’s discretion, be changed each upcoming year, at least 30 days prior to the upcoming year. The invoiced Maintenance Fee shall be paid by the Customer in accordance with the payment terms set forth in the invoice.

If the Customer lapses in any support and maintenance, the Customer must pay a reinstatement fee if the Customer wishes to resume maintenance and support. The reinstatement fee shall be calculated based on the number of years which the Customer was out of maintenance multiplied by the Maintenance Fee applicable at the time of reinstatement. The reinstatement fee shall be paid by the Customer in accordance with the payment terms set forth in the invoice.

There will be no Maintenance Fees for licenses which are limited in time. The Maintenance Fee is included in the license fee for such licenses.

3. REQUIREMENTS. In order to receive maintenance and support of the Software, the Customer must have

- paid the license fee for the Software,
- paid the Maintenance Fee for the upcoming year (if applicable),
- paid the reinstatement fee (if applicable),
- complied with all the terms and conditions set forth in the EULA, including without limitation, the Customer must have nominated a Contact Person and have used the Software in accordance with the license type the Customer has paid for, and
- installed the latest release of the Software, including without limitation, the Customer must have implemented all improvements and updates to the Software supplied by TCSAB.

4. MAINTENANCE AND SUPPORT. Provided the Customer has fulfilled the requirements set forth in section 3 above, TCSAB shall provide the Customer with

- assistance to correct errors in the Software or provide means to circumvent such errors, as determined by TCSAB in its own discretion,
- updates of the Software which will be provided at such times as determined by TCSAB in its own discretion,
- advice and help, up to a maximum of five (5) hours per year, to use the Software for a particular application, including using the Software’s user interfaces, and
- a new license key if the Customer uses a new computer as provided for in section 2 of the EULA.

For avoidance of doubt, no maintenance or upgrades are provided for Databases. In case the Customer wishes to receive new version upgrades to Databases, this is subject to a separate fee.

TCSAB will provide support during TCSAB’s regular business hours.

If the Customer desires advice and help in excess of the hours set forth in section 4 (iii) above, the parties may agree on such under a separate agreement.
The Customer shall provide such assistance as TCSAB may reasonably require in order to perform its obligations under these General Terms. The Customer understands that the level of assistance which TCSAB is able to provide is dependent upon the cooperation of the Customer and the quantity of information that the Customer can provide.

5. INFORMATION. TCSAB shall treat all information about the Customer’s business (the "Information") with the same degree of care it treats like information of its own which it does not want to be publicly disclosed or the subject of unauthorized access or use. TCSAB shall have the right to disclose the Information to its employees, agents, contractors, consultants, or representatives who reasonably require access to the Information for the purposes of providing the services under the General Terms. TCSAB’s obligation to keep the Information confidential will remain in effect for a period of five years from the expiry or termination of the General Terms. The obligation to keep the Information confidential does not include information that: (i) TCSAB can demonstrate was rightfully in its possession prior to disclosure by the Customer; (ii) becomes publicly available without fault of TCSAB; (iii) is rightfully obtained by TCSAB from a third party without restriction as to disclosure; or (iv) is shown by written record to be developed independently by TCSAB without use of the Information. Notwithstanding the foregoing restrictions, TCSAB may disclose information to the extent required by an order of any court or other governmental authority, but only after the Customer has, if permitted by applicable law, been so notified in writing and has had the opportunity (if possible) to obtain reasonable protection for the Information in connection with the disclosure.

6. ACCESS BY TCSAB. If requested by the Customer and deemed necessary by TCSAB for the purpose of performing TCSAB’s obligations under the General Terms, the Customer shall, at the Customer’s expense, provide TCSAB with priority access to the computer and server on which the Software is installed and shall make available its expert systems personnel to assist TCSAB’s personnel with all local system interfaces, including tapes, discs, CDs and plotting devices.

7. ERROR CORRECTION. Although TCSAB will strive to correct or circumvent errors in the Software within such timeframe as may be reasonable considering the error and all circumstances at hand, TCSAB does not warrant that TCSAB will be able to correct or circumvent an error, or that an error will be corrected within a certain period of time. If an error cannot be corrected or within reasonable time, the Customer may, as its sole and exclusive remedy, terminate the General Terms at the upcoming renewal period. In the event of any errors in the services provided hereunder, TCSAB shall, as Customer’s sole and exclusive remedy, have the right to re-deliver the services, provided that the Customer notifies TCSAB in writing no later than 30 days after the Customer became aware, or should have become aware, of the grounds for the claim. After such period, the Customer’s right to make any such claims shall be forfeited.

8. INTELLECTUAL PROPERTY RIGHTS. All rights to error corrections, updates, new releases, and any other product or material emanating from TCSAB or its partners, including all copyrights, patent and trade secret rights, in connection with the performance of the services provided under these General Terms (the "Results") are and shall remain the sole property of TCSAB or its partners, regardless of whether the Customer, its employees, agents, contractors, consultants, or representatives may have contributed to the Results and regardless of the Customer’s payment of the Maintenance Fee. Error corrections, updates and new releases shall be considered Software, and subject to the terms and conditions regarding Software contained in the EULA.

9. FORCE MAJEUERE. If TCSAB is prevented from or delayed in fulfilling its obligations under these General Terms due to a circumstance beyond TCSAB’s reasonable control, including but not limited to lightning, strike, labour dispute, fire, natural disaster, epidemics, pandemics, changes in regulations, governmental actions and/or a failure or delay in services provided by a subcontractor due to a circumstance stated herein, then this shall constitute a ground for release of performance and release from damages and other remedies. If the performance of these General Terms in substantial aspects is prevented for a period exceeding six months due to a circumstance stated herein, either party shall have the right to terminate the General Terms in writing. In the event of such termination, the Customer shall not be entitled to a refund of the Fee.

10. TERM AND TERMINATION. For perpetual licenses: These General Terms shall commence to apply upon the Customer’s payment of the license fee for the Software and shall remain in force until the end of a one-year (365 days) period following delivery of the license. Thereafter, these General Terms may be extended on the then current General Terms, for one year at a time, provided that, and as long as, the Customer pays the Fee and the other obligations in Section 3 are complied with. In the event the Customer does not pay the Fee before or on the due date set forth in TCSAB’s invoice, the General Terms shall terminate with immediate effect.

TCSAB shall have the right, without further obligation or liability to the Customer, to terminate the General Terms immediately upon the Customer’s breach of any provision of the General Terms. TCSAB’s termination of the General Terms shall be without prejudice to any other remedies that TCSAB may lawfully have by virtue of the Customer’s breach. The Customer shall have the right without further obligation or liability to TCSAB to terminate the General Terms if TCSAB breaches any material provision of this Agreement and fails to remedy such breach within 30 days of written notification. A party shall also have the right to terminate the General Terms prematurely if the other party enters into bankruptcy, initiates composition negotiations, is subject to a business reorganisation or is otherwise insolvent. The Customer’s obligation to pay all fees accrued as of the date of any such termination shall survive any termination (regardless of reason for its termination). The Customer will not be entitled to a refund of any fees paid under the General Terms in the event of premature termination. The General Terms will terminate automatically upon termination of the EULA.