



The Mathematical Association of America
1529 Eighteenth Street, NW
Washington, DC 20036

Site License Agreement for Calculus Modeling and Application, 2nd. Edition

This License sets forth the terms and conditions under which _____ with offices located at _____, will allow the Licensee to install **Calculus Modeling and Application, 2nd Edition**, CD-ROM (the “Product”) on a Site controlled by you. Carefully read the following Terms and Conditions before installing the Product. By installing the Product, you indicate acceptance of these Terms and Conditions. If you do not agree with these terms, you may return the Product along with all documentation and packaging, and your proof of purchase within thirty (30) days for a full refund.

Licensee hereby licenses the Product from The Mathematical Association of America, hereafter referred to as **MAA** and agrees as follows:

1. DEFINITIONS. The following terms shall be deemed to have the meaning as stated below:

(a) Licensee—The customer which has accepted this License and is responsible for payments for the Product and administration of this License.

(b) Site—A geographically contiguous office building, complex or campus location within Licensee’s control.

(c) Users—Those persons within Licensee’s Sites who are authorized by the Licensee to have access to the Product. Users must be bona fide faculty, students, researchers, librarians, executives or employees of the Licensee, and may also include users from the general public or business invitees who are permitted by the Licensee to access the Product from designated terminals within a Licensee-controlled Local Area Network (LAN). These designated terminals shall be physically located in premises such as libraries under the Licensee’s direct control and administration.

(d) The Product—The network version of Product, which includes content from the most recent release of the Product and the accompanying search and retrieval software program (“Software”) developed by (“Developer”), as well as the online or print user documentation (“User’s Guide”).

2. LICENSE.

(a) The **MAA** hereby grants to Licensee for the term hereof a nonexclusive, nontransferable and limited license to install and use, and arrange for authorized Users to have access to, the Product on a secure network located at _____ Site within Licensee’s control, on the terms and conditions set forth herein.

(b) The rights and restrictions governing access to the Product by individual Users are outlined in the attached User Terms of Service Agreement.

(c) Licensee shall not alter or change the Product in any way. Updates to material will be sent directly from the publisher.

3. TERM. This License is effective:

() Fall Semester 2010

() Spring Semester 2011 (a subscription renewal will be sent for Spring 2011)

4. AUTHORIZED USE OF SYSTEM. Licensee agrees to authorize a Network Administrator(s) to install and manage access to the Product. The Network Administrator hereby represents that the Product will only be used pursuant to the access restrictions contained herein.

Licensee and the Users may selectively download, modify, merge, and print limited content from the Product for their personal non-commercial use as specified in the User Terms of Service Agreement; provided, however, that any such portion of the Product will continue to be subject to the terms and conditions of this License.

This License grants access to the Product only to Users as defined herein. There is no restriction on the number of Users who may use the Product.

The User Terms of Service Agreement (including MAA's Rules of Use) must be read by each User before the User uses the Product. **MAA** reserves the right to modify the User Agreement as described therein.

The Licensee will:

(i) make access available to Users at their institution, undertake reasonable measures within its control to prevent access to and improper use of the Product by unauthorized persons and take responsibility for terminating any unauthorized access of which it has actual notice or knowledge; and

(ii) promptly notify **MAA** if any copyright infringement or unauthorized usage of the Product which comes to the Licensee's attention and cooperate with **MAA** in the investigation of such infringement or unauthorized use, and in any action which **MAA** takes to enforce its copyright, at **MAA** expense.

5. PROPRIETARY RIGHTS. Licensee acknowledges and agrees that the Product is the exclusive property of **MAA** and that the Product, Software and the User's Guide are licensed to Licensee only for the term of this License and strictly under the terms hereof. **MAA** owns all right, title, and interest in and to the content of the Product, and the Software contains copyrighted and confidential trade secret information that is the property of, or is licensed by, Developer. Except for the limited rights given to the Licensee herein, all rights are reserved by **MAA** and Developer.

6. TERMINATION. If Licensee or its Users should fail to perform in the manner required in this License, **MAA** may terminate this License or exercise any other rights it may have. Upon

termination, Licensee shall immediately uninstall the Product, and **MAA** may require that the Licensee destroy all of these materials and that it so certify in writing to **MAA**. All provisions of this License with regard to the protection of the proprietary rights of **MAA** shall continue in force after such termination.

7. WARRANTIES AND LIMITATION OF LIABILITY. Licensee recognizes that the Product is to be used only as a reference aid by research professionals. It is not intended to be a substitute for the exercise of professional judgment by the Users. THE PRODUCT IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. **MAA** NEITHER GIVES NOR MAKES ANY OTHER WARRANTIES OR REPRESENTATIONS UNDER OR PURSUANT TO THIS LICENSE. **MAA** does not warrant, guarantee or make any representations that the functions contained in the Product will meet the Licensee's particular requirements or that the operation of the Product will be uninterrupted or error free. The entire risk as to the results and performance of the Product is assumed by Licensee.

If the Product is found to be defective in workmanship or materials and **MAA** is given timely notice thereof, **MAA** sole and exclusive liability and Licensee's sole and exclusive remedy, shall be replacement of the defective system. If **MAA** is unable to provide a system that is free from such defects, Licensee may terminate this License by returning the Product and all associated documentation to **MAA** for a full refund.

IN NO EVENT SHALL **MAA**, THE DEVELOPER, OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE PRODUCT, SOFTWARE OR USER'S GUIDE BE LIABLE OR RESPONSIBLE FOR ANY LOSS OR INACCURACY OF DATA OF ANY KIND NOR FOR ANY LOST PROFITS, LOST SAVINGS, OR ANY OTHER DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED IN ANY WAY TO THE USE OR INABILITY TO USE THE PRODUCT, EVEN IF **MAA** OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL APPLY TO ANY CLAIM OR CAUSE WHATSOEVER WHETHER SUCH CLAIM OR CAUSE IS IN CONTRACT, TORT, OR OTHERWISE.

The limited warranty set forth above is in lieu of all other express warranties, whether oral or written. The agents, employees and distributors of **MAA** are not authorized to modify this warranty, nor to make additional warranties binding on **MAA** or Developer. Accordingly, additional statements such as distributor representations, whether written or oral, do not constitute warranties of **MAA** and should not be relied upon as a warranty of **MAA**. **MAA** pricing of the Product reflects this allocation of the risk and limitations of liability contained in this clause; in no case shall **MAA** liability exceed the amount of the license fee. No action, regardless of form, arising out of this License may be brought by Licensee more than one year after the cause of action has accrued.

8. GENERAL.

(a) This License shall be governed by the laws Washington, DC in so far as they do not conflict with U.S. Federal regulations, and each party submits to the personal jurisdiction of such court. If any provision of this License Agreement is deemed to be unlawful, invalid, or unenforceable, the remaining provisions shall remain in full force and effect as if the unlawful, invalid, or unenforceable provision has been omitted. Any legal action, suit, or proceeding arising out of or

relating to this License or the breach thereof shall be instituted in a court of competent jurisdiction in the District of Columbia and each party hereby consents and submits to the personal jurisdiction of such court and consents to service of process by registered or certified mail, return receipt requested, at the last known address of such party.

(b) The above warranties and limitations on liabilities shall survive the termination of this License.

(c) Sales tax on a “destination” basis.

(d) If the Licensee is located in Canada, Licensee agrees to the following: The parties hereto confirm that it is their wish that this License, as well as all other documents relating hereto, including notices, have been and shall be drawn up in the English language only.

(g) The User Terms of Service Agreement is incorporated herein by reference.

9. ACKNOWLEDGMENT. LICENSEE ACKNOWLEDGES THAT ITS AUTHORIZED AGENT HAS READ THIS LICENSE, UNDERSTANDS IT, AND LICENSEE AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. LICENSEE ALSO ACKNOWLEDGES THAT THIS LICENSE IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN MAA AND THE LICENSEE, AND THAT IT SUPERSEDES ANY PROPOSAL, PRIOR AGREEMENT, OR OTHER COMMUNICATIONS, WHETHER ORAL OR WRITTEN, BETWEEN LICENSEE AND MAA RELATING TO THE SUBJECT MATTER OF THIS LICENSE. THIS LICENSE MAY BE MODIFIED BY MAA BY WRITTEN NOTICE OF NEW TERMS AND CONDITIONS. IN SUCH CASE, LICENSEE’S CONTINUED USE OF THE PRODUCT SHALL BE DEEMED ACCEPTANCE OF THE MODIFIED TERMS. EXCEPT AS SET FORTH IN THIS PARAGRAPH, THIS LICENSE CANNOT BE MODIFIED OR AMENDED EXCEPT BY A FURTHER WRITTEN INSTRUMENT EXECUTED BY LICENSEE AND MAA.

User Terms of Service Agreement

The following Terms of Service dated as of _____, govern use by Users of **Calculus Modeling and Application, 2nd Edition** CD-ROM (the “Product”). Please read them using the Product. By using the Product you agree to the terms hereof.

Your institution may have subscribed to a License which permits you additional uses; contact your institution’s librarian/administrator for more information. The rights licensed to you under this Agreement by the publisher of the Product, MAA, Inc. (“MAA”) cannot be transferred, loaned, sold or rented to anyone else.

COPYRIGHT.

The entire contents of the Product are protected by copyright (unless otherwise indicated on the Product). As a User, you have certain rights set forth below; all other rights are reserved.

RULES OF USE.

A. To make the Product useful, the following rules apply to all Users:

You may download, view, copy and save to hard disk or diskette and store or print out single

copies of individual items for your own personal and non-commercial use, scholarly, educational or scientific research or study. You may transmit to a third party, in hard copy or electronically, a single item from the Product for that party's own personal and noncommercial use or scholarly, educational, or scientific research or study, or for corporate informational purposes. In addition, you have the right to use, with appropriate credit, figures, tables and brief excerpts from the Product in your own scientific, scholarly and educational works or similar work product.

B. Except as provided in Paragraph (A) above, you may not copy, distribute, transmit or otherwise reproduce material from the Product or systematically store such material in any form or media in a retrieval system; or download and/or store an entire alphabetical entry; or store content from the Product in electronic format in electronic reading rooms or print out multiple copies for inclusion in course packs; or transmit any material from the Product, directly or indirectly, for use in any paid service such as document delivery or listserv, or for use by any information brokerage or for systematic distribution of material, whether or not to another User and whether for commercial or non-profit use or for a fee or free of charge.

In order to protect the integrity and attribution of the materials in the Product, you agree not to remove or modify any copyright or proprietary notices, author attribution or disclaimer contained in the material or on any screen display, and not to integrate material from the Product with other material or otherwise create derivative works in any medium based on or including materials from the Product. This is not meant to prohibit quotations for purposes of comment, criticism or similar scholarly purposes.

Finally, you may not do anything to restrict or inhibit any other User's access to or use of the Product.

C. If you refuse or fail to abide by these rules or violate any other terms or conditions of this Agreement, **MAA** reserves the right in its sole discretion to suspend or terminate your access to the Product immediately without notice, in addition to any other available remedies.

ADDITIONAL TERMS.

MAA is not responsible for any charges associated with accessing the Product, including any computer equipment, telephone lines, or access software.

MAA may modify any of the terms of this Agreement at any time by providing notice to your institution's network administrator. Your continued use of the Product shall be conclusively deemed acceptance of such modification.

WARRANTY LIMITATIONS.

(i) THE PRODUCT AND ALL MATERIALS CONTAINED THEREIN ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE;

(ii) THE USE OF THE PRODUCT AND ALL MATERIALS CONTAINED THEREIN IS AT THE USER'S OWN RISK;

(iii) ACCESS TO THE PRODUCT AND THE ELECTRONIC TITLES MAY BE INTERRUPTED AND MAY NOT BE ERROR FREE; AND

(iv) NEITHER **MAA** NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING OR DELIVERING THE ELECTRONIC TITLES OR THE MATERIALS CONTAINED IN THE PRODUCT, SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USER'S USE OF OR INABILITY TO USE THE PRODUCT, AND ALL MATERIALS CONTAINED THEREIN.

This Agreement shall be construed and interpreted pursuant to the laws of Washington, DC applicable to contracts wholly entered into and performed in Washington, DC excluding that body of law dealing with conflict of laws. Any legal action, suit or proceeding arising out of or relating to this Agreement or the breach thereof shall be instituted in a court of competent jurisdiction in Washington, DC and each party hereby consents and submits to the personal jurisdiction of such court, waives any objection to venue in such court and consents to the service of process by registered or certified mail, return receipt requested, at the last known address of such party.

Licensee: _____
Signature

Title: _____

Date: _____