General License Conditions

The following text defines the General License Conditions (GLC) for the use of KAPPA software, unless specifically agreed otherwise in a written contract between KAPPA and the CLIENT.

Article 1 - Definitions

- AGREEMENT: The agreement resulting from the combination of the SLA, the GLC and all other annexes listed in the SLA and/or later amendments signed by both parties.
- KAPPA: KAPPA Engineering S.A., a petroleum software and consulting company, owner of the proprietary and commercial rights of the product(s) supplied under the terms of the AGREEMENT, located at 17 rue Eugène Delacroix, 75116 Paris, France, and registered in Paris, France, under the registration number (RCS) #342.067.857 (Paris).
- SOFTWARE: a KAPPA program or set of programs, protected by copyright and subject of the present AGREEMENT. The SOFTWARE is developed and is the intellectual and commercial property of KAPPA.
- LICENSE: The right to use the SOFTWARE for any legal purpose according to this AGREEMENT.
- CUSTOMER: The company or individual that is granted the LICENSE to use the SOFTWARE. For a company this includes all affiliates owned, directly or indirectly, at a level strictly greater than 50% of the share capital.
- MAINTENANCE: A service provided by KAPPA to the CUSTOMER, including [1] access to all major new releases and minor updates of the SOFTWARE and its documentation, on physical support or from the KAPPA Web site. KAPPA commits to make at least one new release every year that corrects all errors detected in the previous version two months before this release. If no error is detected no release is contractually due; [2] Technical support (telephone, fax, e-mail) on the SOFTWARE usage limited for the period defined in the SLA. Such technical support does NOT include any training on methodology or any assistance on interpretations performed with the SOFTWARE. Technical support hours are the usual working hours of KAPPA regional offices.
- PERPETUAL: Describes a LICENSE where the CUSTOMER acquires the right, for an unlimited time and for any legal purpose, to use all versions of the SOFTWARE contractually delivered during the period of MAINTENANCE. The PERPETUAL LICENSE fee includes one (1) year of MAINTENANCE starting from the date of delivery of the SOFTWARE.
- RENTAL: Describes a LICENSE where the CUSTOMER acquires the right, for a limited time and for any legal purpose, to use all versions of the SOFTWARE delivered during the RENTAL period. The RENTAL LICENSE fee includes MAINTENANCE during the RENTAL period.
- KEY: A license protection device, which technically prevents or limits illegal usage of the SOFTWARE. The KEY may be based on a piece of hardware (‘dongle’ or ‘bitlock’ connected to the parallel or USB port of the computer), a piece of software (‘FlexLM’ license file linked to specific computer identification) or a combination of both (FlexLM license programmed to be run in conjunction with a bitlock).
- STAND-ALONE: Describes a LICENSE to use the SOFTWARE on only one (1) computer at a time.
- NETWORK: Describes a LICENSE for a defined number of simultaneous uses of the SOFTWARE on a computer network. The LICENSE KEY is installed on a LICENSE server.
- LAN (Local Area Network): Describes a NETWORK LICENSE where both the LICENSE server and the end users are located within the same metropolitan area.
- WAN (Wide Area Network): Describes a NETWORK LICENSE that is not a LAN LICENSE, i.e. where at least one end user is not located in the same metropolitan area as the LICENSE server.

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- EDUCATIONAL: Describes a LICENSE used by recognized academic institutions for the sole purpose of educating its students. An EDUCATIONAL LICENSE specifically excludes consulting services and training to commercial companies. Conditions specific to such LICENSE are described in the Educational License Conditions (ELC).
- COMPETITIVE UPGRADE: Describes a LICENSE delivered to the CUSTOMER at a preferential rate in replacement of an incumbent software product. Conditions specific to such LICENSE are described in the Competitive Upgrade Conditions (CUC).

Article 2 - LICENSE

KAPPA grants to the CUSTOMER a non-exclusive, non-transferable LICENSE to use the SOFTWARE, subject to the terms and conditions of the AGREEMENT. In order to preserve and protect proprietary rights under applicable laws, KAPPA does not sell any rights to the SOFTWARE, but only grants a limited right of use of the SOFTWARE. The CUSTOMER agrees to be bound by the terms of the AGREEMENT.

Article 3 - Interpretation

In the AGREEMENT, article headings are inserted for convenience only and do not affect interpretation. Words using the singular include the plural and vice versa. Words implying a gender include other gender. A reference to a person includes an individual, the estate of an individual, a firm, a body corporate, an association (whether incorporated or not), a government and a governmental, semi-governmental or local authority or agency. A reference to a clause is to a clause of the AGREEMENT.
In the event that KAPPA is requested by CUSTOMER to translate these General License Conditions or any other part of this AGREEMENT and/or related documentation into another language, or if the CUSTOMER makes such a translation as part of the AGREEMENT, in the event of conflict the English language version shall take precedence.

Article 4 - Termination

- Termination by KAPPA: Upon any default by the CUSTOMER in the payment provisions or upon any breach of the provisions of the AGREEMENT, KAPPA shall have the right to terminate the AGREEMENT without any judicial procedure by giving 30 days written notice to the CUSTOMER of such termination.
- Termination by CUSTOMER: CUSTOMER will have the right to terminate the AGREEMENT at any time sending a cancellation letter to KAPPA by registered mail 30 days prior to the cancellation date. Any relevant payment is due until the end of the notice period.
- For PERPETUAL LICENSES: Termination shall not be a waiver of any monies due to KAPPA or obligations owed to KAPPA other than reimbursement conditions described in Article 7.
- For RENTAL LICENSES: In case of termination the reference date will be the date the SOFTWARE leaves the CUSTOMER's office by registered or courier mail. Any RENTAL fee paid in advance will be refunded 'pro rata temporis'. However RENTAL fees are defined for a minimum RENTAL duration. No refund will be made if the effective RENTAL duration has not reached this minimum value, except under the conditions described in Article 7.

Article 5 - Material supplied with the LICENSE

KAPPA supplies, with each new copy of the SOFTWARE, [1] an electronic copy of the SOFTWARE and its documentation, either as a CD-Rom or a download from the KAPPA Web site, and [2] a KEY.
In case of termination the CUSTOMER will immediately return any hardware KEY, delete and never restore any software KEY, return or destroy the physical support of the SOFTWARE, and delete and never restore any copy of the SOFTWARE. However it is acknowledged that installations may be performed on computer networks where regular and systematic back-ups are performed by the CUSTOMER. The CUSTOMER will not have to delete the SOFTWARE from the back-up media provided that the SOFTWARE is not restored.
The applicable material should be returned by hand, by special carrier (DHL, Fedex, UPS, etc) or registered courier (France only). When reimbursement or complementary invoicing is applicable, the reference date will be the date at which the material leaves the CUSTOMER's office by courier delivery. In the case of loss, standard mail delivery will not be considered as a suitable method of returning the LICENSE.

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Files created by the SOFTWARE during the period of legitimate usage of the SOFTWARE remain the sole property of the CUSTOMER. For some KAPPA products, a subset of the SOFTWARE called a "Reader" is freely available on the KAPPA Web site. A Reader can load SOFTWARE files, print reports and export SOFTWARE data to ASCII format. The CUSTOMER has the right to keep permanently a copy of this Reader.

Article 6 – Conversion of a SOFTWARE LICENSE from RENTAL to PERPETUAL

The CUSTOMER may convert a RENTAL LICENSE into a PERPETUAL LICENSE at any time. The CUSTOMER is entitled to a credit equal to the amount of RENTAL paid in the last 12 calendar months for the same LICENSE before the conversion. However the MAINTENANCE period included in the PERPETUAL LICENSE will be shortened by the number of months of RENTAL credit. In other words, in case of continuous rental the effective start of the free MAINTENANCE will be the beginning of the credited RENTAL period.

Article 7 – Reimbursement in case of SOFTWARE failure

KAPPA acknowledges that the SOFTWARE should execute operations according to its written specification. Should, within one month from delivery of the SOFTWARE or the release of any new version of the SOFTWARE, the CUSTOMER identify that the SOFTWARE does not meet this specification, it will formally notify KAPPA with the description of the SOFTWARE failure. KAPPA will have 30 days to [1] prove that there is no failure or [2] rectify the problem and deliver a corrected version of the SOFTWARE. If KAPPA fails to do either within 30 days, the CUSTOMER will be eligible for reimbursement upon termination by CUSTOMER and the reference date will be the date of formal notification, under the following conditions:

- For PERPETUAL LICENSES: CUSTOMER will be eligible for reimbursement of the difference (if positive) between the PERPETUAL LICENSE fee paid by the CUSTOMER and the full RENTAL fee for the period between the delivery of the LICENSE and the date of formal notification. In other words, the CUSTOMER charge will be limited to the RENTAL fee for the period during which the SOFTWARE was satisfactory.
- For RENTAL LICENSES: Any RENTAL fee paid in advance will be refunded in proportion to the amount of time left to run in respect of the period for which advance payment was made. In this case, the minimum RENTAL durations described in Article 4 will not apply.

Article 8 – MAINTENANCE of PERPETUAL licenses

- The initial fee of a PERPETUAL LICENSE includes one year of MAINTENANCE. Beyond this initial period, MAINTENANCE is tacitly extended every year for a fee defined in the Software License Agreement, subject to the adjustment clause of Article 21. The CUSTOMER may cancel the MAINTENANCE by issuing a formal cancellation letter with one (1) month notice.
- Interruption or termination of MAINTENANCE is not a termination of a PERPETUAL LICENSE. A CUSTOMER that acquired a PERPETUAL LICENSE maintains the right to use, in perpetuity, the versions of the SOFTWARE that were released during the active MAINTENANCE period.
- No technical support will be delivered beyond the MAINTENANCE period, even on versions of the SOFTWARE released during this period, and only SOFTWARE errors ("bugs") formally notified to KAPPA by the CUSTOMER before the end of the MAINTENANCE period will be corrected.
- MAINTENANCE is a continuous process. If the CUSTOMER interrupts and later elects to resume MAINTENANCE, back –dated MAINTENANCE is due from the date at which the last MAINTENANCE fee ceased to the end of the current calendar year. Such fees will not exceed 50% of the purchase price of a new license with the applicable digressive discount.

Article 9 - Limited CUSTOMER rights

The SOFTWARE is not sold, but only licensed. The CUSTOMER's rights to the SOFTWARE, updates, documentation and technical support supplied by KAPPA, are strictly limited to the use of the proprietary rights in accordance with the terms of the AGREEMENT. No right of ownership, copyright, assignment, rent, sub-lease, modification, lending arrangement, pledge, mortgage or lien, expressed or implied, is granted under this AGREEMENT. Nothing confers or shall be deemed to confer on CUSTOMER any rights to use any intellectual property rights of KAPPA.

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Article 10 - Patents and Intellectual Property Rights

KAPPA shall defend the CUSTOMER at its sole expense (excluding fault by CUSTOMER) against any and all legal proceedings, brought against CUSTOMER or KAPPA, claiming infringement of patent or copyright of any intellectual property rights based upon any method, material or equipment (excluding any such method, material or equipment provided by CUSTOMER to KAPPA) used or provided by KAPPA in performance of the services, and KAPPA shall indemnify and hold CUSTOMER harmless from and against any judgment by a court or competent jurisdiction for damages arising from any such claim.

Article 11 - LICENSE KEY

The SOFTWARE can be installed on several computers, but usage restriction is enforced by a KEY. The CUSTOMER agrees not to attempt to modify, alter, reverse engineer or in any way interfere with the security provisions incorporated in the SOFTWARE and/or the KEY, and to implement appropriate measures to grant that all users of the SOFTWARE respect such measures.

For the replacement of hardware KEYS:

- Failing KEYS are replaced at no cost.
- Damaged KEYS are replaced at cost.
- Lost PERPETUAL KEYS are not replaced. However [1] the CUSTOMER may acquire a replacement KEY for 50% of the relevant digressive discount rate; [2] if the conditions of usage represent a high risk of loss, the CUSTOMER may decide to obtain a KEY with a RENTAL (limited duration) setting. In this case, only the penalty for the loss RENTAL KEY, described hereinafter, will apply.
- RENTAL KEYS are programmed to stop working after the date of expiration of the LICENSE. Security provisions neutralize the KEY if the computer date is arbitrarily changed, accidentally or in an attempt to by-pass this restriction. The CUSTOMER should therefore notify users to always check that the computer date is correct before using the SOFTWARE. Disabled KEYs can be reset and extended by KAPPA by telephone, E-Mail or connection to the KAPPA Web site. Should the KEY be lost, CUSTOMER will indemnify KAPPA for the cost of the remaining RENTAL period until the limit date of the lost KEY. Alternately, CUSTOMER may decide to only receive the replacement KEY on the date of technical expiration of the lost KEY.

Article 12 – Replacement of a NETWORK KEY

Should the CUSTOMER change the server on which a software KEY has been installed, KAPPA will require the CUSTOMER to acknowledge, by the completion of a signed statement, that replacement of this LICENSE could both potentially and materially allow the CUSTOMER to run the SOFTWARE on two servers. KAPPA will request in the same statement that the CUSTOMER commits to delete and not restore the existing KEY file. CUSTOMER acknowledges that failure to delete, or restoration of the existing KEY file would constitute a major breach of this AGREEMENT.

Article 13 – STAND-ALONE equivalent of NETWORK LICENSES

The KAPPA digressive price list is based on the number of STAND-ALONE LICENSES. The fee for a NETWORK LICENSE is based on an equivalent number of STAND-ALONE licenses according to the following:

- A LAN LICENSE for one (1) concurrent user is equivalent to 150% of a STAND-ALONE LICENSE.
- A LAN LICENSE for “N” (N > 1) concurrent users is equivalent to “N” STAND-ALONE LICENSES.
- A WAN LICENSE for one (1) concurrent user is equivalent to three (3) STAND-ALONE LICENSES.
- A WAN LICENSE for “N” (N > 1) concurrent users is equivalent to “2*N” STAND-ALONE LICENSES.

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Article 14 - Warranties

The CUSTOMER acknowledges that the SOFTWARE constitutes a 'good', (in French '*produit*') under the commercial code (in French '*code de commerce*') of France. The AGREEMENT specifically excludes all warranties, expressed or implied, including any warranty of merchantability or warranty of fitness for a particular purpose or application or warranties arising out of any course of dealing or usage or trade, all of which are hereby disclaimed and excluded.

Article 15 - Millennium compliance

The SOFTWARE has and will keep the ability to provide the following functions: [1] consistently handle date information before, during and after January 1st, 2000, including but not limited to accepting date input, providing date output, and performing calculations on dates or portions of dates; [2] respond to two digit date input in a way that resolves any ambiguity as to century in a disclosed, defined and predetermined manner; [3] store and provide output of date information in ways that are unambiguous as to century.

Article 16 - Waiver of Claims / liability

- Notwithstanding the guarantees described in Article 10, for which there is no waiver, the CUSTOMER waives any other claim against KAPPA and releases KAPPA, its Officers, Directors, Employees, Associated Consultants, Successors and Assigns for any and all claims, suits, causes of action, liability, damage including any form of indirect, incidental, and/or consequential damage and/or lost profits, revenues, goodwill, management time or anticipated savings, damage to property and direct or indirect injury or death to persons arising out of or resulting from the use of the proprietary rights and the licensed programs which are the subject matter of the AGREEMENT.
- Notwithstanding the guarantees described in Article 10, for which there is no limit, KAPPA's aggregate liability to CUSTOMER for any other breach of the AGREEMENT and/or arising from any infringement conduct or otherwise, resulting in damages to physical property and/or database, is limited to the fees paid by Customer within the last twelve (12) months before the breach.

Article 17 – Force Majeure

KAPPA shall not be liable for failure to perform any of its obligations under the AGREEMENT if such failure is caused by or arises as a result of an event of force majeure resulting directly or indirectly from any cause which is beyond its reasonable control including, but not limited to the following examples: fire, flood, strike, acts of God, changes of the regulatory environment, acts of governmental or military authorities, strike, civil unrest, terrorism and war.

As soon as reasonably possible, KAPPA shall notify the CUSTOMER in writing of any occurrence of an event of force majeure, the estimated extent and duration of its inability to perform its obligations under the AGREEMENT. KAPPA shall use all reasonable endeavors to minimize the effects of the force majeure event.

Article 18 – Unfair Competition

The CUSTOMER has the right to use any competitor software. However CUSTOMER will not use its knowledge of the SOFTWARE to develop, help develop or give specifications to improve a third party product that compete with the SOFTWARE. If the CUSTOMER decides to develop or help develop a product competing with the SOFTWARE, CUSTOMER will formally inform KAPPA and ensure that the conditions of this AGREEMENT are strictly enforced during the development of this competing product.

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Article 19 - Confidentiality

The CUSTOMER agrees not to permit disclosure of the proprietary rights to any third party, and agrees not to permit the use of the SOFTWARE or the proprietary rights by any third party, without prior written authorization by KAPPA. The CUSTOMER agrees to implement appropriate measures to grant that such measures are respected by all employees and external persons having authorized access to the SOFTWARE. The CUSTOMER acknowledges that the use of the SOFTWARE, access to KAPPA Web site, participation in various KAPPA meetings, may give to the CUSTOMER access to Confidential Information belonging to KAPPA. KAPPA acknowledges that occasional access to the CUSTOMER data for support, training and/or consulting purposes may give to KAPPA access to Confidential Information belonging to the CUSTOMER.

Both KAPPA and the CUSTOMER agree they will not disclose any Confidential Information related to this AGREEMENT to any person that is not specifically required to have access to such Confidential Information. Any person having legitimate access to any Confidential Information will be informed about the confidential nature of this Information.

Confidential Information will not include information from one party that [1] was or has become part of the public domain for cause different from an act or omission from of the other party; [2] was the legitimate possession of the other party before its disclosure, and or had already been obtained by the other party, directly or indirectly from the disclosing party: [3] was legitimately disclosed to the other party by a third person who had legitimate access to the Confidential Information independently of the other party. This article shall survive any termination of the AGREEMENT.

Article 20 - Taxes and Import/Export Licenses

The CUSTOMER shall be solely responsible for payment or reimbursement to KAPPA of all sales, use, property or similar taxes imposed by a governmental authority upon the transaction constituting the AGREEMENT, or the use of the proprietary rights by the CUSTOMER, whether due at the execution of the AGREEMENT or later or determined to be due by an audit of either KAPPA or the CUSTOMER. The LICENSE fee however includes any taxes due to the French fiscal authorities for the execution of the AGREEMENT.

The CUSTOMER agrees to provide KAPPA with any certificate requested to facilitate the exportation from France, whether due to French law or any agreement between the French and the CUSTOMER's national authorities, and will take care of any procedure with regards to the importation of the SOFTWARE in the CUSTOMER's country, and thereafter on any procedure to Import/Export the SOFTWARE between CUSTOMER locations.

Article 21 – Adjustment clause

KAPPA shall be entitled, every year, to revise and adjust the fees related to the SOFTWARE. Unless specifically agreed otherwise with the CUSTOMER, the increase will not exceed the cumulative European Union Consumer Price Index (or EU-CPI) since the date of the previous increase. The date of last increase of KAPPA price list applicable to this document was January 1st, 2005. If the European Union Consumer Prices index ceases to exist in its current form, the index shall be replaced by a similar index that reflects as closely as possible the evolution of the EU-CPI.

Article 22 - Governing Laws

The AGREEMENT shall be governed by the laws of France. Any dispute concerning the AGREEMENT and any relevant contractual documents that cannot be settled amicably between parties shall be finally settled to the jurisdiction of French courts in the event of any dispute concerning the AGREEMENT or the subject matter.

Article 23 - Assignment and Modification

The AGREEMENT is not assignable by any party without the prior written agreement of the other party. It may not be modified except in writing subscribed by both parties.

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Article 24 - Ethics

With respect to any activity undertaken in connection with the AGREEMENT, KAPPA warrants that any KAPPA director, officer, employee, agent and sub-contractor have been formally instructed to comply with the following rules of ethics:

- Not to violate nor fail to comply with any laws, regulations, rules, decrees and orders of any Governmental Entity of the country(ies) where the AGREEMENT will be executed;
- Never offer, give or loan money or anything of value to any CUSTOMER employee or persons acting on behalf of the CUSTOMER;
- Limit CUSTOMER employee entertainment and commercial gifts to levels accepted in the industry, such as (1) lunch or dinner invitations for a cost not exceeding 50 € per person, (2) reasonable tour of local places of interest in case of CUSTOMER employee visit to a KAPPA office, for a cost not exceeding 100 € per person, (3) promotional gifts of no resale value, for an amount not exceeding 20 € per gift;
- Enforce even stricter rules if and when formally requested by the CUSTOMER;
- KAPPA always favors direct transactions with the CUSTOMER; when a third party is imposed by the CUSTOMER or Governmental authorities as an intermediary for the transaction, KAPPA will strictly apply the same Rules of Ethics in its transaction with the third party. Any royalty and commission attributed to the third party (and deducted from the retail price) will have to be approved by KAPPA, in exchange of a real service, and once approved the information on the amount will be provided to CUSTOMER on CUSTOMER request. KAPPA will not guarantee the contents or the ethics of any transaction beyond its control if the third party was not selected by KAPPA.

Article 25 - Severability

If any provision of the AGREEMENT is found by an arbitral, judicial or regulatory authority having jurisdiction to be void or unenforceable, such provision shall be deemed to be deleted from the AGREEMENT and the remaining provisions shall continue in full force and effect. In such case parties shall agree to replace the void and unenforceable provision by a legally valid and enforceable provision which is as equivalent as possible to the original provision in economic terms.

Article 26 – Relationship of the parties

The AGREEMENT shall not form a joint venture or partnership or similar business arrangement between KAPPA and the CUSTOMER, and nothing contained herein shall be deemed to constitute a partnership or joint venture or similar business arrangement or make a Party the agent of the other Party for any purposes. No Party has authority or power to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose.

Article 27 – Variation and Waiver

No variation, amendment, modification and addition to or cancellation of any provision of the AGREEMENT shall be effective unless agreed upon in writing by both parties. No waiver by KAPPA of any default or defaults by the CUSTOMER in the performance of any provision of the AGREEMENT shall operate or be construed as a waiver in respect of the other further default or defaults whether of a like or different character.

Article 28 – Entire agreement

The AGREEMENT supersedes all prior or written understandings between the parties hereto, and constitutes the entire agreement with respect to the subject matter herein.

Article 29 – Final provision

None of the rights and obligations under the AGREEMENT shall be assigned or transferred by either party without the prior written consent of the other party. Any right granted by KAPPA to CUSTOMER to use the SOFTWARE is strictly personal. CUSTOMER may not resell that right or in any other way make the SOFTWARE provided to it available to any third party without the written agreement of KAPPA.

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