

SOFTWARE EVALUATION LICENSE AGREEMENT

This Agreement is made by and between

FONDAZIONE BRUNO KESSLER, VAT 02003000227, established in Via S. Croce n. 77, 38122 Trento, Italy (hereinafter referred to as FBK) and which is represented by Dr. Paolo Traverso, who is duly authorised to execute this Agreement in his position as Director of the Information Technology Centre,

and

_____ (hereinafter referred to as Licensee) whose residence address is

(together or individually hereinafter referred to as “the Party” or “the Parties” as appropriate)

whereas

- FBK, through its Center for Scientific and Technological Research, has developed and owns the software product named “FSAP/NuSMV-SA” (hereinafter referred to as the “Software”) for applications related to safety analysis of complex systems;
- Licensee is interested in evaluating the Software and consequently FBK will provide Licensee with a copy of the Software;

now it is hereby agreed as follows

1 – Object

This Agreement shall cover the license of the Software (including documentation), in accordance with the requirements set forth below.

FBK hereby grants to Licensee a non-exclusive, non-transferable, no-cost, single-seat evaluation license, to use the Software in object code form at the Licensee site, for evaluation and teaching purposes, until such time as specified in art. 8 of this Agreement. In addition, the License entitles Licensee to install the software on at most ___ computers owned by _____ and located in _____.

2– Delivery

FBK shall provide Licensee with an internet link and access data to download the Software electronically from FBK site. The Licensee shall be responsible for the installation of the Software.

3 – Limited Right to Copy

FBK shall furnish to Licensee one (1) electronic copy of its documentation describing the use and operation of the Software (the “Documentation”). Licensee shall not copy the Software or Documentation, in whole or in part, without the prior written consent of FBK, except for what provided for by Art. 3. Licensee may make one (1) copy of the Software for backup purposes, provided that Licensee affixes thereto all copyright and proprietary notices of FBK.

4 – Proprietary Rights

The Software and the accompanying documentation are licensed, not sold, to the Licensee. The Software is exclusively owned by FBK and the Licensee cannot claim any property rights or title which are not specifically granted to the Licensee hereunder, including the ownership by FBK of all copyrights, trade secrets, and any other Intellectual Property Rights in Backgrounds, where Background means any pre-existing Technical Material of the Software and the accompanying information.

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Licensee shall not alter or remove any copyright or proprietary notices affixed by FBK to the Software or the Documentation.

Licensee agrees that the Software and Documentation, in whole or in part, shall be used solely for evaluation and teaching purposes, and shall not be distributed or delivered to any third party. Any use other than evaluation and teaching, including research activity and use for commercial applications, is forbidden.

Licensee shall not provide the Software for use by anyone except professors, teachers, instructors, students, administrators, and other personnel employed by, or enrolled in _____.

5 - Liability

FBK shall not be liable for any damages, including direct, indirect, incidental, special or consequential damages for loss of profits, revenue, data or data use, incurred by Licensee or any third Party, whether in an action in contract or tort, even if any person has been advised of the possibility of such damages.

6 - Warranties

FBK represents and warrants that it has the authority to grant the license(s) set forth in this Agreement.

FBK warrants that the Software will operate substantially in accordance with the applicable specifications set forth in the Documentation. FBK does not represent or warrant that the software is error free. THE FOREGOING WARRANTIES ARE IN LIEU OF ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

7 - Confidentiality

The Parties agree to keep all mutually disclosed information, in accordance with the provisions of the law, strictly confidential independently of the disclosure form, format and medium. Without prejudice to the generality of the aforesaid, the obligation hereunder shall apply to all information which is marked as being confidential and/or that information which has been notified in writing by the disclosing Party as being confidential within 10 days after the date of its disclosure.

Such undertaking shall not in any case be deemed to extend to any information which the receiving Party can show:

- was at the time of receipt published or otherwise generally available to the public,
- has after receipt by the receiving Party been published or become generally available to the public otherwise than through any act or omission on the part of the receiving Party,
- was already in the possession of the receiving Party at the time of receipt without any restrictions on disclosure,
- was rightfully acquired from others without any undertaking of confidentiality imposed by the disclosing Party,
- was developed independently of the work under the Agreement by the receiving Party,
- was necessarily divulged by marketing products or software in accordance with the Agreement;

Either Party undertakes not to use the confidential information received from the other Party for any purpose, other than that specified in the foreword of this Agreement, without prior written approval by an authorised representative of the disclosing Party.

The Parties shall use all reasonable endeavours to maintain confidentiality; in particular, confidential information shall only be supplied to such personnel, within the own organisation of the recipient Party, which necessarily and properly require such information to perform their duties under their employment.

The Parties undertake to keep all internal business information of which they, their employees or representatives become aware during the performance of their duties,

strictly confidential and not to divulge the same to any third parties. This shall apply in particular to all internal information relating to technical, design, manufacture, operational and organisational matters.

The Parties shall keep all documentation and records which contain confidential information in a secure and safe place.

8 – Duration

This Agreement has a limited duration, it shall come into force upon its execution by both Parties, and it shall terminate one year after the date of the most recent date of signature.

Licensee may terminate the license at any time by destroying the original and all copies of the Software.

The license will terminate immediately without notice by FBK if Licensee fails to comply with the terms and conditions of this Agreement. Within ten (10), days of any termination of this Agreement, Licensee shall immediately discontinue all use of the Software provided hereunder, and destroy the original and all copies of all such Software. All of Licensee's obligations under this Agreement shall survive the termination of the license.

9 – Publications

The use for scientific publications purposes of data or documents rising from the use of the Software requires a prior written agreement between the Parties.

10 - Indemnification

Licensee agrees to hold harmless, indemnify, and defend FBK, its Trustees, officers, employees, and agents from and against any loss, damage, liability, claim of loss, lawsuit, cause of action, or other claim asserted against them or any of them arising out of, or in any way connected with, the performance of any activity hereunder.

11- Export Controls

Licensee agrees that the Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the Italian export laws, restrictions, or regulations.

12 - Severability

The provisions of this Agreement shall be severable, and if any provisions of this Agreement shall be held or declared to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other provision hereof, given that the Parties would have signed this Agreement even without such provisions..

13 – Binding Agreement

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of FBK and Licensee; provided, however, that Licensee may not sublicense or assign this Agreement or any of its rights, duties or obligations hereunder, by operation of law or otherwise, without the prior written consent of FBK.

14 – Nature of Relationship

Nothing herein shall be construed to place the parties in a relationship of partners or joint ventures, or of agency, and neither party shall have the power to obligate or bind the other in any manner whatsoever.

15 – Applicable Law

Any controversy or claim of whatsoever nature arising out of or relating in any manner whatsoever to this Agreement or any breach of any terms of this Agreement shall be governed by and construed in all respects in accordance with the laws of Italy.

16 – Place of Jurisdiction

Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved by arbitration. The seat of arbitration shall be Milano (Italy) at the

International Chamber of Commerce. The language of the arbitration shall be English. The number of arbitrators shall be one, jointly appointed by the parties. If the parties are unable to appoint the arbitrator, the International Chamber of Commerce shall proceed to make the appointment. The arbitrator shall decide ex aequo et bono. The award shall be final and binding and there shall be no appeal.

17 - Entire Agreement

This contract shall be deemed to have effect from the date hereof and shall supersede any other Agreement between the parties whether written or oral with respect to the subject matter of this Contract.

Any terms and conditions in any purchase order or other instrument issued by Licensee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement shall not become a part of this Agreement and shall not be binding on FBK unless agreed to in writing by a duly authorized representative of FBK.

Any alterations to the present Agreement must be agreed between the Parties in writing and shall come into force between them only after signature by their respective legal representatives.

18 Contractual Expenses

Each party shall bear all costs and expenses incurred by it under or in connection with this Agreement.

FONDAZIONE BRUNO KESSLER
THE DIRECTOR OF IT CENTRE
DR. PAOLO TRAVERSO

(signature)

(signature)

(date)

(date)

SIGNATURE OF ACKNOWLEDGEMENT

(signature)

(date)