

FLAMES[®] Evaluation License Agreement

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND TERNION CORPORATION GOVERNING YOUR USE OF FLAMES[®]. BY EXECUTING THIS AGREEMENT, YOU INDICATE THAT YOU AND THE INDIVIDUAL OR ORGANIZATION THAT IS EVALUATING FLAMES UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

- 1. PRODUCT DESCRIPTION.** This Agreement applies to the FLexible Analysis Modeling and Exercise System (FLAMES) products supplied to you to support your evaluation of FLAMES, products that may include executable programs, data files, documentation, object files, source code, media, and other materials. These products are sometimes herein referred to as "FLAMES". FLAMES products contain substantial trade secrets and proprietary data the development of which required the independent expenditure of considerable time and money by Ternion Corporation.
- 2. COPYRIGHT.** FLAMES, Copyright© 1991–2009 Ternion Corporation, is protected by United States copyright and patent laws and international treaty provisions. Violation of this Agreement may subject you to severe civil and criminal penalties.
- 3. GRANT OF LICENSE.** Ternion Corporation grants you a limited, non-exclusive, non-transferable, temporary license to use FLAMES on the computers for which you or your organization have received a license subject to the terms and conditions of this Agreement. This license is granted for evaluation purposes only and is valid only on the computer system(s) authorized by Ternion Corporation. For the purposes of this Agreement, "use" means installing FLAMES, copying FLAMES to the storage media of a computer, loading FLAMES into the memory of a computer, accessing FLAMES with any computer program, displaying or printing FLAMES, or otherwise accessing FLAMES. For the purposes of this Agreement, "evaluate" means examination of the product to determine its suitability for a certain application. FLAMES may not be used in an actual, for profit application. This Agreement does not provide you with title to or ownership of FLAMES but only a right of limited use. Ternion Corporation has sole and exclusive rights, title, and interest in and to FLAMES.
- 4. REPRODUCTION.** You may reproduce the portions of FLAMES supplied on magnetic or optical distribution media on the hard disk(s) of the computer system(s) authorized by Ternion Corporation. You may not make any other computer readable copy of FLAMES for any reason, including non-productive backup. You may not generate any hard copy of FLAMES data and source code. You may not reproduce any FLAMES documentation. No portion of FLAMES may be reproduced in any manner except as specifically stated herein. All copies of any portion of FLAMES must contain the copyright and restriction notices contained in the original and shall be subject to the terms and conditions of this Agreement.
- 5. MODIFICATION.** You may modify FLAMES data files and FLAMES source code files only as required to support your evaluation of FLAMES. No other portion of FLAMES may be modified in any way. Any file containing data supplied with FLAMES shall be subject to the terms and conditions of this Agreement. Any file containing source code supplied with FLAMES must also contain the copyright and restriction notices contained in the original source code file and shall be subject to the terms and conditions of this Agreement. Any object file or executable program generated using source code or object code supplied with FLAMES shall be subject to the terms and conditions of this Agreement.
- 6. DISTRIBUTION.** No portion of FLAMES may be distributed in any form to any party.
- 7. PRODUCT KEYS.** Hardware and/or software "keys" are often provided for FLAMES to restrict its use to properly licensed computer systems. You may not override, disable, or decipher or attempt to override, disable, or decipher any of these keys.
- 8. OTHER RESTRICTIONS.** You may not disassemble, decompile, reverse-engineer, or otherwise attempt to discover the inner workings or duplicate the functionality of FLAMES executable programs or object files. You shall ensure that all personnel that you authorize to use FLAMES understand and accept the terms and conditions of this Agreement. You shall protect FLAMES from unauthorized use.

9. **WARRANTY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TERNION CORPORATION DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO FLAMES, ITS QUALITY, OR ITS PERFORMANCE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FLAMES IS PROVIDED “AS IS,” AND YOU ASSUME THE ENTIRE RISK IN ITS USE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TERNION CORPORATION OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION BUT NOT LIMITED TO INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES FOR PERSONAL INJURY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) RESULTING FROM ANY DEFECT IN FLAMES OR THE USE OF OR INABILITY TO USE FLAMES EVEN IF TERNION CORPORATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **LICENSE TRANSFER.** Your rights under this Agreement may not be transferred or assigned to any other party. You may not sub-license, rent, or lease FLAMES. You may not transfer FLAMES to another computer system other than the computer system(s) authorized by Ternion Corporation without the prior written consent of and according to the terms defined by Ternion Corporation.

11. **TERMINATION.** This Agreement shall remain in effect for the term of your evaluation as defined by Ternion Corporation unless terminated as provided hereunder. Ternion may terminate this Agreement or alter the term of your evaluation at any time. You may terminate this Agreement at any time. This Agreement will also terminate immediately if a court or board of competent jurisdiction, after the expiration or exhaustion of allowable appeals, determines that you failed to comply with or violated any of the terms or conditions of this Agreement. Upon termination of this Agreement, all rights granted to you by this Agreement will terminate and revert to Ternion Corporation, and you shall promptly return to Ternion Corporation all portions of FLAMES and destroy any copies thereof that you have made, including any portions of FLAMES contained in other files or executable programs. The provisions of paragraphs 7, 8, 9, 10, 11, 14, 15, 16 shall survive any termination of this agreement.

12. **U.S. GOVERNMENT RESTRICTED RIGHTS.** FLAMES is a “commercial item,” as that term is defined by 48 CFR 2.101 (as amended through May 02, 2001), consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 CFR 12.212 (as amended through May 02, 2001). Consistent with 48 CFR 12.212, all U.S. Government users acquire FLAMES with only those rights set forth herein.

13. **INDEMNIFICATION.** Ternion Corporation hereby agrees to indemnify you and hold you harmless from and against any demand, loss, or expense, including reasonable attorneys' fees and expenses, arising out of a claim of infringement on any third party's intellectual property rights by FLAMES. You shall notify Ternion Corporation promptly of any such claim and, at Ternion Corporation's option and expense, shall provide to Ternion Corporation all reasonable information, assistance, and authority required to defend or settle such claim.

14. **GOVERNING LAW.** This Agreement is governed by the laws of the State of Alabama in the United States of America. Any litigation regarding this Agreement shall be resolved before the courts of the State of Alabama or the federal district courts with jurisdiction and venue over Madison County, Alabama. If you are a government entity or a corporate entity owned and/or controlled by a government, you hereby waive any defenses related in any manner whatsoever to in personam or in rem jurisdiction or to sovereign immunity, accept the jurisdiction and venue of the aforesaid courts, and represent that you are acting in a commercial capacity related to the evaluation of FLAMES and the acceptance of this Agreement.

15. **FULL AGREEMENT.** This Agreement is the full and complete agreement between you and Ternion Corporation relative to the evaluation of FLAMES and supersedes any other proposal, representation, or communication by or on behalf of Ternion Corporation relating to FLAMES. No modification of this Agreement may be made without the written approval of both you and Ternion Corporation.

16. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law or otherwise non-binding, the remaining provisions of this Agreement will remain in full force and effect.

Please complete the following information and fax a signed copy to (256) 881-9957.

Evaluation Platform (Microsoft® Windows). Review System Requirements at www.ternion.com.

Licensee: (please print clearly or type)

Organization/Department:

Signature: _____

Shipping Address (no PO boxes):

Name: _____

Title: _____

Date: _____

Phone: _____

Fax: _____

Email: _____

How did you hear about FLAMES?

What is your purchase timeframe?

What requirements do you hope to fulfill with FLAMES?

Would you like a technical rep to contact you about FLAMES?