

Software License Agreement

Definitions:

"UNIDO" is the United Nations Industrial Development Organization, an international organization which is a specialized agency of the United Nations, headquartered in Vienna, Austria.

"LICENSOR" is the grantor of the right to use the software, the provider of the manuals and support. UNIDO is the LICENSOR in this Agreement.

"LICENSEE" is the purchaser of the right to use the software and payor of the license fee. The identity of the LICENSEE is specified in the signature section provided above.

"COMFAR *III Expert*", "COMFAR *III Business Planner*", "COMFAR *III MiniExpert*", (COMFAR) is the software along with the manuals which are the subject of this Agreement. The software and documentation are designed to be used by experienced trained individuals. LICENSEE undertakes to employ such individuals in the acquisition and the operation of the software. Payment of the fee listed above entitles the user to receive the COMFAR computer program on diskette or CD-ROM, the manuals to operate the program, the Protection Key, and the Manual for the Preparation of Industrial Feasibility Studies (for COMFAR *III Expert* and COMFAR *III Business Planner* only), which is usually sold separately.

1. **Grant of license:** In consideration of payment of the license fee, which is a part of the price LICENSEE paid, LICENSOR grants to the LICENSEE, and LICENSEE hereby accepts a non-transferable and non-exclusive license to use and display COMFAR under the following terms and conditions:

2. **Installation and use:** The license is for the use of COMFAR on a single computer by one user at a time. Should LICENSEE wish to use COMFAR on more than one computer or computer terminal (workstation), LICENSEE must acquire from UNIDO for each additional computer or computer terminal (workstation) the run-time license (protection key).

3. **Ownership:** This is a license agreement and not an agreement for sale. COMFAR as well as the related copyrights or other intellectual property rights are the property of UNIDO. This includes any enhancements or modifications made by UNIDO to COMFAR, and made available to the LICENSEE, with or without charge, during the duration of this Agreement. The LICENSEE acquires no right, title, or interest in COMFAR other than the license rights specifically granted herein.

4. **Copy restrictions:** The LICENSEE shall not make copies, in whole or in part, of COMFAR except to the extent necessary for the LICENSEE's own use in accordance with this Agreement and provided that such copy or copies shall remain subject to all the terms of this Agreement and shall be clearly marked with: "Copyright © 1995 (or other applicable year(s)), United Nations Industrial Development Organization, All Rights reserved", to indicate proprietary rights of UNIDO.

5. **Transfer restrictions:** The LICENSEE acknowledges that the rights granted under this Agreement are not subject to transfer and therefore agrees not to attempt to assign, sub-license or otherwise transfer its rights under this Agreement. In particular, the LICENSEE may not, except as provided in this Agreement or upon prior written permission of UNIDO, use, copy, modify, merge, or transfer copies of COMFAR.

6. **Interoperability:** COMFAR is designed to run on platforms (graphical interfaces) such as, WINDOWS. In the event that LICENSEE requires technical information regarding interoperability, LICENSOR agrees to provide such information at the cost of LICENSEE provided that the details do not violate other license agreements, copyrights, or reveal trade secrets.

7. **Use restrictions:** The LICENSEE agrees to maintain in confidence the software and documentation referred to as COMFAR, including the successive revised versions thereto, and undertakes to ensure that its employees, contractors or agents working with COMFAR shall be bound not to disclose the software or documentation to third parties. The LICENSEE agrees to use COMFAR solely in and for the purpose of its own activities or operations. It may not transfer or copy COMFAR, whether to allied or associated bodies, enterprises, firms, institutes or persons.

8. **Software support by UNIDO:** UNIDO agrees to provide advice at the time of the installation of COMFAR as may be necessitated by the particular requirements of the LICENSEE. The advice will be provided during UNIDO's normal business hours with the LICENSEE paying the costs associated with communication. At the request of the LICENSEE and at its cost, including travel, UNIDO agrees to provide initial training for the LICENSEE's personnel in the installation and operation of COMFAR.

9. **Tariffs, Duties and Taxes:** The LICENSEE shall be liable for the payment of any tariffs, duties or taxes, however designated, levied or based on COMFAR, imposed or levied by any government or governmental agency in respect of the use of COMFAR by the LICENSEE. Since the software and printed materials constituting COMFAR remain the property of UNIDO, they will benefit from the exemptions from tariffs, duties and taxes granted UNIDO in respect of its property and assets by the Convention on the Privileges and Immunities of the United Nations or the Convention on the Privileges and Immunities of the Specialized Agencies, as applicable.

10. Exclusive Rights of UNIDO and Unauthorized Use by Third Parties:

a. UNIDO represents that it has the right to grant the license referred to in paragraph 1;

b. If either party has knowledge that an action, suit or proceeding arising from a claim that COMFAR infringes any patent, copyright, alleged trade secret, or other proprietary right has been or may be instituted against either party, such knowledge shall be transmitted to the other party, and UNIDO agrees to defend or settle, at its option, any such action, suit or proceeding. In the event that a final injunction shall be obtained against the LICENSEE's use of COMFAR by reason of infringement of a patent or other proprietary right, or if, in the opinion of UNIDO, COMFAR is likely to become the subject of a claim of infringement of a patent or other proprietary right as a result of the actions of UNIDO, UNIDO, at its option and at its expense, either shall procure for the LICENSEE the right to continue using COMFAR, or shall replace or modify COMFAR so that it becomes non-infringing, or shall grant the LICENSEE a credit for COMFAR, as depreciated, and accept its return. The depreciation shall be an equal amount per year over the life of COMFAR as established by UNIDO. If there is such an injunction or potential claim in more than one jurisdiction, UNIDO shall have the right to select in each jurisdiction which of the foregoing options it shall exercise. UNIDO shall not have any liability to the LICENSEE under any provision of this paragraph if the infringement or claim thereof is based upon an enhancement or modification to COMFAR made by the LICENSEE, or the use by the LICENSEE of COMFAR in combination with other components, either hardware or software, where such infringement would not have occurred if COMFAR had not been used in such combination;

c. If the LICENSEE has knowledge that the proprietary rights to COMFAR are being infringed by a third party, such knowledge shall promptly be transmitted to UNIDO.

11. **Replacement of Defective Diskette(s) or CD-ROM(S):** UNIDO will replace defective diskette(s) when requested by the LICENSEE within a period of ninety (90) days from the date of shipment.

12. Disclaimer of Warranty and Limitation of Liability and of Remedies:

a. COMFAR is provided "as is" without warranty of any kind. UNIDO does not warrant, guarantee or make any representations regarding the use or results of use of COMFAR in terms of correctness, accuracy, reliability, currentness, or otherwise. The LICENSEE is solely responsible for the selection of COMFAR to achieve the LICENSEE's intended results and for the installation of, use of, and results obtained from COMFAR. The entire risk as to the results and performance of COMFAR is assumed by the LICENSEE. Also excluded is any implied warranty by UNIDO, such as merchantability and fitness for a particular purpose;

b. In no event will UNIDO be liable for indirect, consequential, incidental or special damages including, but not limited to, lost profits and lost savings arising out of the use or inability to use COMFAR, even if UNIDO has been advised of the possibility of such damages or for any claim by the LICENSEE based on a third party claim.

c. For any claim whatsoever related to the subject matter of this Agreement, UNIDO's liability for actual damages, regardless of the form of action, shall be limited to the greater of US\$ 5,000 or the money paid to UNIDO for the LICENSE for COMFAR that caused the damages or that is the subject matter of, or is directly related to, the cause of action.

d. The LICENSEE agrees to indemnify, defend and hold harmless, UNIDO for liability arising out of any negligent act or omission of the LICENSEE, its employees, contractors or agents with respect to COMFAR.

e. No action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has arisen, except for breach of the provisions in paragraphs 4 (copy restrictions), 5 (transfer restrictions) and 7 (use restrictions) in which four years shall apply.

13. **Arbitration:** Any dispute, controversy or claim arising out of or relating to this agreement, or the breach, termination or invalidity thereof, shall - unless it is settled by direct negotiation - be settled by arbitration in accordance with the arbitration rules established by the United Nations Commission on International Trade Law (UNCITRAL) in effect on the date of this agreement. The number of arbitrators shall be one. The language to be used in the arbitrary proceedings shall be English. The place of arbitration shall be Vienna. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute.

It is understood, however, that the provisions of this paragraph shall not constitute or imply the waiver by UNIDO of its privileges and immunities.

14. **Privileges and Immunities:** Nothing contained in the present agreement shall be deemed to constitute a waiver of the rights, privileges and immunities to which the UNIDO and its personnel are entitled pursuant to the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 or of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, as applicable.

15. **Notices:** Any notice permitted or required in connection with this Agreement shall be in English addressed and delivered to:

In respect of LICENSEE: to its address stated on the ORDER FORM;

In respect of UNIDO: To the Chief, Procurement Services Unit, Operational Support Services Branch, Programme Support and General Management Division (PSM/OSS/PRS), United Nations Industrial Development Organization, Vienna International Centre, P.O. Box 300, A-1400 Vienna, Austria.

16. **Entry into Force, Duration, Termination:** This License Agreement shall enter into force upon signature by the LICENSEE of the ORDER FORM, payment of the full charge, and UNIDO's confirmation of the order, and it shall remain in effect from the date of shipment of the order until terminated by either Party. The LICENSEE may terminate this Agreement upon giving ninety (90) days written notice to UNIDO along with the return of all software and manuals. If the LICENSEE is in default with respect to any of its obligations under this Agreement, UNIDO may issue a notice in writing of such default. If the LICENSEE has not remedied the default within sixty (60) days of the issuance of the default notice, UNIDO may, by written notice to the LICENSEE terminate this Agreement. If the LICENSEE is in breach of any of the provisions under paragraphs four (4), five (5) or seven (7), UNIDO may terminate the Agreement with immediate effect by written notice to the LICENSEE. Upon expiry or termination of this agreement, all copies of COMFAR shall be returned to UNIDO.

17. **This Agreement represents** the entire understanding and agreements regarding COMFAR and supersedes any prior agreements, discussions and communications, or representations made by the Parties.

18. **Severability:** Should any portion of this Agreement be found to be inapplicable or invalid, the rest of the contract will remain in full force.