Software Licence Agreement

BoB (The Software)

PARTIES

1. BoB Biomechanics Ltd (BoB-Biomechanics) a company incorporated in England and Wales (registration number 10421225**)** (the "**Licencor**"); and

2. Name of Individual, Institution or organisation downloading the software (the "**Licencee**").

Effective date: Date on which the software is downloaded

We license use of the Software and Documents to you on the basis of this Licence. We do not sell the Software and Documents to you. BoB-Biomechanics remains the owner of the Software and Documents at all times.

AGREEMENT

1.   Definitions

1.1   Except to the extent expressly provided otherwise, in this Agreement:

"**Agreement**" means this Agreement including any Schedules, and any amendments to this Agreement.

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**Charges**" means the following amounts:

(a)   The amounts specified in Schedule 1 (Software Licence Particulars) or

(b)   such amounts as may be agreed by the parties in writing from time to time;

"**Documentation**" means the documentation for the Software produced by the Licencor and delivered or made available by the Licencor to the Licencee;

"**Effective Date**" means the date of execution of this Agreement;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights,

confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Maintenance**" means the supply to the Licencor and application to the Software of Updates and Upgrades

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means any services that the Licencor provides to the Licencee or has an obligation to provide to the Licencee, under this Agreement;

"**Software**" means the BoB software specified in Part 1 of Schedule 1 (Software Licence Particulars) as may be varied from time to time;

"**Software Defect**" means a defect, error or bug in the Software having an adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

(a)   any act or omission of the Licencee or any person authorised by the Licencee to use the Software;

(b)   any use of the Software contrary to the Documentation by the Licencee or any person authorised by the Licencee to use the Software;

(c)   a failure of the Licencee to perform or observe any of its obligations in this Agreement; and/or

(d)   an incompatibility between the Software and any other system, network, application, programme, hardware or software;

"**Term**" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2.

"**Update**" means a minor version update to the Software;

"**Upgrade**" means a major version upgrade of the Software.

"Version" means an Update or Upgrade of the Software, the release of that Update or Upgrade to the Licencee.

2.   **Term**

2.1   This Agreement shall come into force upon the Effective Date.

2.2   This Agreement shall continue in force from the Effective Date of the Agreement subject to termination in accordance with Clause 12.

3.   **Supply of Software**

3.1   The Licencor shall make the Software available for download by the.

4.   Licence

4.1   The Licencor hereby grants to the Licencee from the Effective Date until the end of the Agreement:

(a)   a node-locked single licence of the Software:

or

(b)   multiple node-locked licences of the Software

or

(c)   unlimited seat licences of the Software

subject to the limitations and prohibitions set out and referred to in this Clause 4.

4.2   The Licencee may not sub-license and must not purport to sub-license any rights granted under Clause 4.1

4.3   The licence granted by the Licencor to the Licencee in Clause 4.1 is subject to the limitations regarding the number of installations, the identity of users and the number of concurrent users set out in Schedule 1 (Software Licence Particulars).

4.4   The Software may only be used by the Licencee(s)

4.5   Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any licence granted under this Clause 4 shall be subject to the following prohibitions:

(a)   the Licencee must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;

(b)   the Licencee must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.

(c)   for unlimited seat licences the Licencess must take reasonable care to ensure the Software is not used by persons not associated with the Licensee.

4.6   The Licencee shall be responsible for the security of the Software supplied to the Licencee under this Agreement and shall use all reasonable endeavours (including all reasonable security measures) to ensure that the Software is not duplicated or replicated.

5.   Maintenance Services

5.1   The Licencor shall provide Maintenance Services in accordance with Schedule 1.

5.2   The Licencor may suspend the provision of any Maintenance Services if any amount due to be paid by the Licencee to the Licencor under this Agreement is overdue, and the Licencor has given to the Licencee at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

5.3   Maintenance services may be provided by the Licencor to the Licencee by separate agreement.

6.   No assignment of Intellectual Property Rights

6.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licencor to the Licencee, or from the Licencee to the Licencor.

7. Charges

7.1 The Licencee shall pay the Charges to the Licencor in accordance with this Agreement.

7.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated inclusive of any applicable value added taxes and payable by the Licencee to the Licencor.

7.3 The Licencor may elect to vary any element of the Charges by giving to the Licencee not less than 30 days' written notice of the variation.

8. Payments

8.1 The Licencee must pay the Charges within the period of 30 days after the request for the Software has been received by the Licencor in accordance with Clause 8.

8.2 The Licencee must pay the Charges by debit card, credit card, direct debit or bank transfer as In Part 4 of Schedule 1.

8.3 If the Licencee does not pay any amount properly due to the Licencor under this Agreement, the Licencor may charge the Licencee interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate, which interest will accrue daily until the date of actual payment and be compounded at the end of each named calendar month.

8.2 A refund of payments to the Licencee will only occur if the Software can be demonstrated to generate detrimental, erroneous output.

9. Warranties

9.1 The Licencor warrants to the Licencee that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.2 The Licencor warrants to the Licencee that:

(a) the Software as provided will conform in all respects with the Software Specification;

(b) the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs

9.3 The Licencor warrants to the Licencee that the Software, when used by the Licencee in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.

9.4 The Licencor warrants to the Licencee that the Software, when used by the Licencee in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person

9.5 If the Licencor reasonably determines, or any third party alleges, that the use of the Software by the Licencee in accordance with this Agreement infringes any person's Intellectual Property Rights, the Licencor may acting reasonably at its own cost and expense:

(a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification.

9.6 The Licencee warrants to the Licencor that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

10. Acknowledgements and warranty limitations

10.1 The Licencee acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Licencor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

10.2 The Licencee acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Licencor gives no warranty or representation that the Software will be entirely secure.

10.3 The Licencee acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification as in Schedule 1 (Software Licence Particulars); and the Licencor does not warrant or represent that the Software will be compatible with any other software.

10.4 The Licencee acknowledges that the Licencor will not provide any computing or software development advice under this Agreement or in relation to the Software; and, except to the extent expressly provided otherwise in this Agreement, the Licencor does not warrant or represent that the Software or the use of the Software by the Licencee will not give rise to any legal liability on the part of the Licencee or any other person.

10.5 The Software contains an example of a skeletal system, a muscular system and a cost function. No guarantees or warranties are provided as to the validity of these models in respect to their anatomical counterparts.

11. Limitations and exclusions of liability

11.1 Nothing in this Agreement will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law.

11.2 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this Agreement:

(a) are subject to Clause 11.1; and

(b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

11.3 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

11.4 Neither party shall be liable to the other party in respect of any loss of revenue or income.

11.5 Neither party shall be liable to the other party in respect of any loss of use or production.

11.6 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.

11.7 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software.

11.8 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

12. Termination

12.1 The Licencor may terminate this Agreement by giving to the Licencee not less than 30 days' written notice of termination, expiring at the end of any calendar month.

12.2 The Licencee may terminate this Agreement by giving to the Licencor not less than 30 days' written notice of termination, expiring at the end of any calendar month.

12.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party commits any breach of this Agreement, and the breach is not remediable;

(b)   the other party commits a breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied or

(c)   the other party persistently breaches this Agreement.

12.4   Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a)   the other party:

(i)   is dissolved;

(ii)   ceases to conduct all or substantially all of its business;

(iii)   is or becomes unable to pay its debts as they fall due;

(iv)   is or becomes insolvent or is declared insolvent; or

(v)   convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b)   an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c)   an order is made for the winding up of the other party, or the other party passes a resolution for its winding up, other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement; or

(d)   if that other party is an individual:

(i)   that other party dies;

(ii)   as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

(iii)   that other party is the subject of a bankruptcy petition or order.

12.5   The Licencor may terminate this Agreement immediately by giving written notice to the Licencee if:

(a)   any amount due to be paid by the Licencee to the Licencor under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

(b)   the Licencor has given to the Licencee at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 12.5.

13.   Effects of termination

13.1   Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect, Clauses 1, 8.2, 8.4, 11, 13, 15 and 16.

13.2   Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

13.3   For the avoidance of doubt, the licences of the Software in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the Licencee must immediately cease to use the Software upon the termination of this Agreement.

13.4   Within 10 Business Days following the termination of this Agreement, the Licencee shall:

(a)   return to the Licencor or dispose of as the Licencor may instruct all media in its possession or control containing the Software; and

(b)   irrevocably delete from all computer systems in its possession or control all copies of the Software,

and if the Licencor so requests the Licencee shall procure that the Licencee certifies to the Licencor, in a written document signed by that person and provided to the Licencor within 5 Business Days following the receipt of the Licencor's request, that the Licencee has fully complied with the requirements of this Clause 13.4.

14.   Notices

14.1   Any notice from one party to the other party under this Agreement must be sent by email and deemed to have been received upon receipt of an acknowledgement email being sent and received by the other party using the relevant contact details set out in Clause 14.2:

14.2   The parties' contact details for notices under this Clause 14 are as follows:

(a)   in the case of notices sent by the Licencee to the Licencor:

email address: info@BoB-Biomechanics.com,

and

(b)   in the case of notices sent by the Licencor to the Licencee,

The email address of the Licencee as provided by the Licencee on this Agreement.

14.3   The contact details set out in Clause 14.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 14.

15.   General

15.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

15.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect, unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted.

15.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

15.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

15.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

15.6 Subject to Clause 11.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

15.7 This Agreement shall be governed by and construed in accordance with English law.

15.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

16. Interpretation

16.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

16.2 The Clause headings do not affect the interpretation of this Agreement.

16.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The Licencee will have indicated acceptance of this Agreement by downloading the coder (specified in Part 3, Schedule 1, either coder7.p or coder7.exe) from www.BoB-Biomechanics.com/download.

SCHEDULE 1 (SOFTWARE LICENCE PARTICULARS)

1. Specification of the BoB Software

The Software is a modelling package for the human musculoskeletal system and graphical display environment. The motion of the musculoskeletal system is defined by listed joint angles or from motion capture data. Inverse dynamics methods are employed to calculate the torques generated at the anatomical joints. Muscle forces are approximated from the minimization of a cost function.

An example of a skeletal system, a muscular system and a cost function are contained within the package.

No guarantees or warranties are provided as to the validity of these models in respect to their anatomical counterparts.

2. Required Operating System for the BoB Software

For a Windows PC:
Windows 7 or later.
Any Intel or AMD x86-64 processor (4 logical cores. recommended)
Hardware accelerated graphics card supporting OpenGL 3.3 with 1GB GPU memory.
16Gb RAM.
Minimum 5Gb fee disc space.
Internet access required

For a Mac:
macOS Catalina (10.15) or later
Any Intel x86-64 processor (4 logical cores recommended)
Minimum 4Gb (8Gb recommended) RAM
OpenGL 3.3 recommended
Minimum 8Gb free disc space
Internet access required

The Software must be installed on the local hard drive of the host computer.

3. Delivery of the Software

By downloading the coder the Licencee agrees to the provisions of the Agreement

The Licencor grants to the Licencee from the Effective Date until the end of the Agreement:

      (a)   a node-locked single licence of the Software:
or
      (b)   multiple node-locked licences of the Software
or
      (c)   unlimited seat licences of the Software

subject to the limitations and prohibitions set out and referred to in this Clause 4.

The Software will be delivered to the Licencee by the Licencor subject to Clauses 7 and 8 of the Agreement.

The deliverable of the Software is either:

(a) p-code for MATLAB ®

or

(b) a standalone executable

4. Financial Provisions and Timetable for Delivery of the Software

The Licencee must pay the Charges as in Schedule 1 Part 4 of this Agreement by debit card, credit card, direct debit or bank transfer.

The Licencee must pay the Charges within the period of 30 days after the request for the Software has been received by the Licencor in accordance with Clause 8

The standalone executable will be downloaded by the Licencee from the Licencor's website and the Licencor will email the activation file within 10 Business Days of the payment being receiving.

The licence is provided with no support.

5. Support and Maintenance

Support of the Software will be provided by the Licencor for a pre-defined charging rate.

The licence can be transferred to another computer at the discretion of the Licencor and with payment of a transfer fee.