

TERMS AND CONDITIONS

1 Definitions applicable to this license

- 1.1 **LICENSED SOFTWARE:** refers singularly and/or collectively to computer programs provided by the LICENSOR and shall include any improvements modifications or developments provided by the LICENSOR under the terms of this Agreement. The LICENSED SOFTWARE covered by this Agreement is detailed in Schedule A and any additions or amendments thereto.
- 1.2 **OBJECT CODE:** means the compiled form of the LICENSED SOFTWARE.
- 1.3 **SOURCE CODE:** means textual source form of the LICENSED SOFTWARE.
- 1.4 **PROGRAM DOCUMENTATION:** means any material or documentation relating to the LICENSED SOFTWARE provided by the LICENSOR.
- 1.5 **MAINTAINED SITE:** Unless otherwise stated in Schedule A, the MAINTAINED SITE is defined as the address listed in this Agreement for correspondence and for maintenance of the LICENSED SOFTWARE.
- 1.6 **SITE LICENCE:** Unless otherwise stated in Schedule A, the LICENCED SITE is defined as the address listed on the front cover of this Agreement.
- 1.7 **SECURITY DEVICE:** A software license manager which may be supplied with the LICENSED SOFTWARE. When the LICENSED SOFTWARE detailed in Schedule A includes the requirement to use a SECURITY DEVICE, the program will run only when the SECURITY DEVICE is correctly used and all references to the LICENSED SOFTWARE herein shall include and assume use of the SECURITY DEVICE.
- 1.8 A **DEFECT** is defined as a failure to perform any function specified in the published functions of the LICENSED SOFTWARE current at the date of its supply to the LICENSEE A limitation in performance shall not be construed as a DEFECT.

2 Term

- 2.1 This License shall be effective from the effective date shown in Schedule A and shall remain in force indefinitely unless issued for a fixed period as defined in Schedule A. Termination of this License and/or this Agreement shall be in accordance with Clause 9 of this Agreement

3 Software License

- 3.1 **RIGHT TO USE:** In consideration of the payment of a license fee by the LICENSEE to the LICENSOR as provided in this Agreement, LICENSOR grants to LICENSEE, a non-exclusive, perpetual paid-up irrevocable right to use the LICENSED SOFTWARE and the PROGRAM DOCUMENTATION, subject to the terms and conditions herein. The right to use is a right only to execute and load, copy or transmit to the extent necessary for such execution. The licence is for any one single user at a time unless otherwise stated in Schedule A

- 3.2 **TITLE:** Title, copyright and all other proprietary rights in the LICENSED SOFTWARE, manuals and all parts and copies thereof shall remain vested in the LICENSOR. No ownership of the LICENSED SOFTWARE is transferred to the LICENSEE.

- 3.3 **NO TRANSFER:** The LICENSED SOFTWARE may not be transferred, assigned, rented, leased, sold or otherwise disposed of or made available except as expressly provided herein.

- 3.4 **NUMBER OF USERS:** The LICENSE granted under this Agreement authorises the LICENSEE to use, subject to the obligations of confidence set forth in this Agreement, and to permit others to use in accordance with the provisions of paragraph 3.7 of this Clause the LICENSED SOFTWARE for such number of users as are licensed herein and specified in Schedule A.

- 3.5 **NO REVERSE ENGINEERING:** The right to reverse engineer or disassemble the LICENSED SOFTWARE (which is provided in OBJECT CODE format only) is specifically excluded, except to the extent that such exclusion is not permitted under the law of the country of authorised use. LICENSEE will do nothing to dis-enable any SECURITY DEVICE.

- 3.6 **LIMITED RIGHT TO COPY:** The LICENSEE may copy the LICENSED SOFTWARE for the purpose of making back-up copies of the LICENSED SOFTWARE supplied under this Agreement. LICENSED SOFTWARE may not be copied for the purpose of error correction.

- 3.7 **THIRD PARTY ACCESS:** The LICENSEE may grant access to the LICENSED SOFTWARE to consultants and contractors acting on behalf of LICENSEE who agree to substantially similar obligations and conditions of confidence as those binding the LICENSEE under this Agreement.

- 3.8 **NO DERIVATIVE WORKS:** The LICENSEE may not alter, modify or create derivative works based on the PROGRAM DOCUMENTATION without the written consent of the LICENSOR.

- 3.9 **DOCUMENTATION:** The LICENSEE will hold the LICENSED SOFTWARE and PROGRAM DOCUMENTATION in confidence. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this Agreement.

- 3.10 **AUDIT RIGHT:** Upon request and upon making reasonable arrangement with LICENSEE, LICENSEE will permit LICENSOR to examine at reasonable hours of business at LICENSEE's usual place of business LICENSEE systems only insofar as they relate to LICENSEE's use of the LICENSED SOFTWARE to ensure LICENSEE is using the LICENSED SOFTWARE in accordance with these license terms.

4 Fees

- 4.1 After the signing hereof of the grant of this License and Agreement, receipt of the LICENSED SOFTWARE the LICENSEE shall pay to the LICENSOR the fees specified in

TERMS AND CONDITIONS

Schedule A in accordance with the payment terms therein, subject however to the right of the LICENSEE to terminate this Licence and Agreement as provided elsewhere in this Agreement.

- 4.2 The LICENSEE shall be liable for lawfully applied sales taxes. Any such taxes will be listed separately on each invoice.

5 Installation

- 5.1 If the LICENSEE requests that a representative of the LICENSOR visits the LICENSEE's site for purposes connected with the installation or operation of the LICENSED SOFTWARE, the costs borne by the LICENSEE shall be limited to the support day rates stated in Schedule A plus agreed costs of documented and reasonable travel and accommodation sustained by the LICENSOR'S representative. Installation will be deemed to have been completed and the LICENSED SOFTWARE accepted upon successful execution of LICENSOR'S installation tests, or when the LICENSED SOFTWARE has been put into operational use, whichever is earlier. Additional installation charges may be imposed if LICENSOR is prevented from installing the LICENSED SOFTWARE according to the agreed schedule.

6 Warranty

- 6.1 **WARRANTY:** The LICENSOR warrants that for a period of ninety days from Delivery the LICENSED SOFTWARE shall perform substantially in accordance with the published specification of the LICENSED SOFTWARE, current at the time of supply and within the Operating Environment. Further, the LICENSOR warrants that use of the LICENSED SOFTWARE by the LICENSEE will not infringe any copyright, trade secret or proprietary interest of any third party.
- 6.2 **WARRANTY EXCLUSIONS:** The LICENSOR does not warrant that the functions of the LICENSED SOFTWARE will meet the LICENSEE'S requirements or that the operation of the LICENSED SOFTWARE will be entirely error-free or that all program Defects are capable of correction or improvement. All other warranties including but not limited to any implied warranties of merchantability, merchantable quality, satisfactory quality and fitness for purpose or ability to achieve a particular result are hereby excluded. In the absence of fraud, no oral or written information or advice given by the LICENSOR or its Agents, Distributors, or Dealers shall create a warranty or give rise to any other liability other than is given in this Agreement. LICENSEE's statutory rights as a consumer (if any) are not affected by these terms and conditions.
- 6.3 LICENSOR warrants that neither the performance nor the functionality of the LICENSED SOFTWARE will be affected by dates prior to, during and after the Year 2000. In particular:
- 6.4 No value for current date will cause any interruption in operation.
- 6.5 Date based functionality will behave consistently and correctly for dates prior to, during, and after the Year 2000.

- 6.6 In all interfaces and data storage, the century in any date will be specified either explicitly or in unambiguous algorithms or inferencing rules.

- 6.7 Year 2000 will be recognised as a leap year.

- 6.8 This warranty applies only if LICENSEE's operating system, network and any other software directly interacting with and affecting the functionality of the LICENSED SOFTWARE also satisfy the above criteria

7 Maintenance

- 7.1 **SERVICE:** Subject to the terms and conditions herein the LICENSOR agrees to provide the Maintenance and Support Service as described below for the LICENSED SOFTWARE installed at the MAINTAINED SITE provided that the annual Maintenance and Support Service Fee for the period during which such support has been requested has been fully paid.
- 7.2 **SERVICE DESCRIPTION:** The Maintenance and Support Service to be provided by the LICENSOR is as follows:
- 7.3 The Maintenance and Support Service shall be provided by the LICENSOR and its agents designated as qualified for the purpose by telephone, mail, E-mail or fax during normal working hours (local time) of the LICENSOR or its agents on Mondays to Fridays. The LICENSOR'S normal working hours are the hours in the period 9.00 a.m. to 5.00 p.m. from Monday to Friday but excluding public holidays.
- 7.4 The correction of detected DEFECTs in the LICENSED SOFTWARE.
- 7.5 The supply of improvements to the LICENSED SOFTWARE, which are released by the LICENSOR during the period of the Maintenance and Support Service together with supporting documentation, which are or will be part of the LICENSED SOFTWARE itself but to avoid any doubt, not including any separately identifiable tasks, modules or packages which the LICENSOR licenses under separate agreements.
- 7.6 The LICENSOR will use reasonable endeavours to deal promptly with DEFECTS in the LICENSED SOFTWARE by making available its personnel.
- 7.7 When the LICENSEE requests and the LICENSOR agrees to provide support on site, agreed travel, accommodation and subsistence expenses incurred by personnel working away from the LICENSOR'S offices in the execution of these obligations shall be for the LICENSEE'S account.
- 7.8 Updates or replacements of the technical manuals relating to the LICENSED SOFTWARE will be forwarded to the LICENSEE as they become available, at the agreed costs of reproduction and postage. Obligations of confidence set forth above apply to such updates.

8 Liability

- 8.1 **DELAY:** While LICENSOR shall use reasonable commercial efforts to meet delivery times, LICENSEE's only remedy for unreasonable delay in Delivery will be the right to terminate

TERMS AND CONDITIONS

this Agreement after service of notice of breach as set out below, plus a refund of any fees paid by LICENSEE for no benefit.

8.2 **OTHER EXCLUSIONS:** Save in respect of claims for death or personal injury arising from LICENSOR's negligence, in no event will LICENSOR be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of LICENSOR, whether such damages were reasonably foreseeable or actually foreseen.

8.3 **MAXIMUM LIABILITY:** Save in respect of claims for death or personal injury arising from the LICENSOR's negligence, LICENSOR's maximum liability to LICENSEE for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only, and will be limited to a sum equivalent to the price paid to LICENSOR for the products or services that are the subject of LICENSEE's claim, plus damages limited to twenty-five per cent of the same amount for any additional costs directly, reasonably and necessarily incurred by LICENSEE in obtaining alternative products and/or services.

8.4 **GENERAL:** LICENSEE's statutory rights as a consumer (if any) are not affected by the terms of this Agreement. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 8 "LICENSOR" includes its employees, subcontractors and suppliers. LICENSEE acknowledges that LICENSOR has been appointed as the agent of its employees, sub-contractors and suppliers to agree the provisions of this on their behalf. For the purposes of this Clause 8, "LICENSEE" means LICENSEE, its parents, subsidiaries and affiliated companies, and the officers, directors, employees, workers, agents, servants and invitees of LICENSEE, its parents, subsidiaries and affiliated companies.

9 Termination

9.1 **ROUTINE TERMINATION:** The LICENSEE and the LICENSOR shall each have the right to terminate the Maintenance and Support Service as to any applicable LICENSEE site without prejudice to the other rights and obligations of this Agreement, with effect from the date of expiry of the initial period set out in Schedule A and thereafter at the date of expiry of each annual period.

9.2 **TERMINATION FOR NON-PAYMENT OF FEES:** The LICENSOR shall have the right to terminate the Maintenance and Support Service as to any applicable LICENSEE site if the applicable current annual maintenance fee has not been received by the LICENSOR within thirty days after the expiry of the previous annual period.

9.3 **OBLIGATION TO SUPPLY IMPROVEMENTS:** The LICENSOR shall not be obligated to supply improvements of any nature and/or other software support services to the LICENSEE if the LICENSEE chooses not to subscribe for Maintenance and Support Service (on the terms set out in

this Agreement) and notifies the LICENSOR of this decision, or does not settle an issued invoice for maintenance services within 30 days of receipt. In that event such services can only be provided if renewed in accordance with LICENSOR'S renewal terms or on receipt by the LICENSOR of a purchase order from the LICENSEE confirming agreement to pay for the requested support services.

9.4 **TERMINATION FOR BREACH:** The LICENSOR shall have the right to terminate this License and Agreement in the event of the LICENSEE'S breach of copyright or other material terms thereof provided the LICENSOR has given the LICENSEE not less than thirty days prior written notice of breach and the LICENSEE shall have failed to remedy the same within such time period.

9.5 **CONSEQUENCES OF TERMINATION:** In the event of termination of this License and Agreement, the LICENSED SOFTWARE and PROGRAM DOCUMENTATION shall be returned promptly to the LICENSOR, and all copies of the LICENSED SOFTWARE shall be erased from the computer system and its back-up media. The LICENSEE shall confirm within 30 days in writing that all copies and the operational copy of the LICENSED SOFTWARE have been erased, or are in process of return to the LICENSOR. The expiry of this Agreement or the termination thereof for whatever reasons shall be without prejudice to the respective rights and liabilities of either of the parties accrued prior to such termination.

10 Confidential Information of LICENSEE

10.1 All information relating to the LICENSEE and the LICENSEE'S operations, including information relating to third parties which is made available to the LICENSOR in connection with this License and Agreement, shall be held strictly confidential by the LICENSOR notwithstanding termination of the License and/or Agreement.

10.2 The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSOR independently of this License and Agreement.

10.2 The LICENSOR will not use the name of the LICENSEE in connection with any advertising nor in any publication without LICENSEE'S prior written consent.

11 Confidential Information of LICENSOR

11.1 All information relating to the LICENSOR and the LICENSOR'S operations, including but not limited to SOURCE CODE and PROGRAM DOCUMENTATION which is made available to the LICENSEE in connection with this License and Agreement, shall be held strictly confidential by the LICENSEE, subject always to the provisions of paragraph 3.7, notwithstanding termination of the License and/or Agreement. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this License and Agreement.

TERMS AND CONDITIONS

12 Construction and Applicable Law

- 12.1 **LAW:** This License and Agreement and all the terms, provisions and conditions thereof and all questions of construction validity and performance hereunder shall be governed by the applicable laws of England.
- 12.2 **DISPUTES:** LICENSOR and LICENSEE hereby submit to the exclusive jurisdiction of the courts of England in the event of any dispute arising out of or connected with the subject matter of this Agreement, save that:
- 12.3 LICENSOR may bring proceedings to recover any amounts owing under this Agreement in any country where LICENSEE carries on business or has assets.
- 12.4 LICENSOR may bring proceedings to protect its intellectual property rights in any country where it appears that an infringement of its intellectual property rights is or is about to take place.
- 12.5 **HEADINGS:** The headings of Clauses in this License and Agreement are included herein for convenience and shall not be considered in construing this License and Agreement.
- 12.6 **SEVERABILITY:** In the event that any of these terms, conditions, or provisions shall be determined invalid, unlawful, or unenforceable to any extent, such term, condition, or provision shall be severed from the remaining terms, conditions, or provisions which shall continue to be valid to the fullest extent permitted by law.

13 Notices

- 13.1 Any notice given hereunder shall be deemed to have been sufficiently served if sent in writing by prepaid certified mail or communicated by fax addressed to the last known address of the addressee and the same shall be deemed to have been served when received

14 Miscellaneous

- 14.1 **FORCE MAJEURE:** A party hereto not responsible for delay or failure to perform due to causes beyond its reasonable control, including but not limited to, fire, flood, act of God or insolvency of subcontractors or suppliers or in the case of LICENSOR, inability to obtain products, licences or services from third party suppliers.
- 14.2 **WAIVER:** No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto.
- 14.3 **AMENDMENT:** This Agreement shall not be modified or amended except by agreement in writing by an authorised representative of each of the parties.
- 14.4 **PAYMENTS:** LICENSOR shall invoice LICENSEE for all fees due hereunder. Invoices should be sent to the address of the Maintained Site. Unless otherwise specifically stated, payment of correct invoices shall be due within thirty days of invoice receipt by LICENSEE.