

This is a legal agreement between you (the "**Customer**") and Computer Aided Development Corporation Limited (the "**Supplier**"). By clicking on the "Accept" button, downloading, installing or otherwise making use of this software, you are agreeing to be bound by the terms of this Agreement.

1. Definitions and interpretation

1.1 In this agreement the following terms have the following meanings:

"**Commencement Date**" means the date upon which the Software is first installed by the Customer;

"**Confidential Information**" all information (whether written, oral or in some other form) disclosed to or obtained by one party (whether directly or indirectly) from the other (whether before or after signing this agreement), including all information relating to that other's business, operations, financing, personnel, affairs, strategies, trade connections or current, former or prospective clients, customers, contractors, suppliers or employees (together with copies made of any of the foregoing) and which information is marked as being confidential or might reasonably be assumed to be confidential;

"**Export Control Laws**" has the meaning set out in clause 3.8;

"**Guides**" means the operator and user support guides, if any, supplied with the Software (as a separate electronic file) or available online through the Supplier's website as the case may be, which explain how to install and use the Software and what it can do;

"**Indemnified Claim**" has the meaning set out in clause 7.2;

"**Intellectual Property Rights**" means all copyright, patent rights, trade or service marks, design rights, rights in or relating to databases, rights in or relating to confidential information, any other intellectual property rights (registered or unregistered) throughout the world, including all rights of reversion and rights to any applications and pending registrations and the right to sue for and recover damages for past infringements;

"**Key(s)**" means one of the following as the case may be, which permits a user to gain access to, and make use of, the Software:

- (i) a product identification key requiring input by a user of a unique alpha numeric string of characters which may be tied to a system identifier; or
- (ii) a licence file comprising a specific text file to be installed on a user's device which may be tied to a system identifier;

which are provided to the Customer upon the agreement of an Order by the Supplier.

"**Licensed Software**" means the machine-operable software identified in the Order but not including the Open Source Software (if any);

"**Order**" means an order in any form agreed by the Supplier and the Customer under which specific software may be requested and made available to the Customer;

"**Software**" means all human readable, machine operable and other forms of the Licensed Software and the Open Source Software, and incorporating all forms of any modifications to it supplied (or developed) under this agreement.

"**Open Source Software**" means any software that is distributed as open source software or similar licensing or distribution models (whether under licences approved by the Open Source Initiative or not) including software licensed or distributed under any of the following licences or distribution models: (1) GNU's General Public License (GPL) or Lesser/Library (LLGPL); (2) the Artistic License (e.g. PERL); (3) the Mozilla Public License; (4) the Netscape Public License; (5) the Sun community Source License (SCSL); (6) the Sun Industry

Standards License (SISL); (7) the BSD License; (8) the Apache License; and (9) the Microsoft Public License (Ms-PL), which is supplied by the Supplier to the Customer under this agreement together with or incorporated into the Licensed Software and which is required to make the Licensed Software operate materially in accordance with the Guides; and

"Update" means an updated or enhanced version of any of the Licensed Software, in object code format released by the Supplier to the Customer in accordance with clause 4. Updates shall include, for the avoidance of doubt, all bug fixes, patches, and maintenance releases.

1.2 For the purposes of this agreement, an **"Insolvency Event"** means, in relation to a party:

- (a) the party ceasing or threatening to cease to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or admitting that it is unable to pay its debts as they fall due);
- (b) the party giving notice to any of its creditors that it has suspended or is about to suspend payment of any of its debts or commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of financial difficulties;
- (c) a meeting of the party's creditors being convened or held;
- (d) an arrangement or composition with or for the benefit of the party's creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being entered into or proposed by or in relation to the party;
- (e) a moratorium coming into force in respect of the party in accordance with paragraph 8.1 of Schedule A1 to the Insolvency Act 1986 or the party applying to the court for an interim order under section 253 of the Insolvency Act 1986;
- (f) a receiver, administrative receiver taking possession of or being appointed over or a mortgagee chargee or other encumbrancer taking possession of the whole or any material part of the assets of the party;
- (g) any distress, execution or other process being levied or enforced (and not being discharged within seven days) on any asset of the party;
- (h) the party or its directors or the holder of a qualifying floating charge (as defined in Schedule B1 to the Insolvency Act 1986) giving notice of his, their or its intention to appoint an administrator in accordance with paragraphs 18 or 26 of Schedule B1 to the Insolvency Act 1986;
- (i) the party or its directors or any of its creditors or the holder of a qualifying floating charge (as defined in Schedule B1 to the Insolvency Act 1986) making an application to the court for the appointment of an administrator;
- (j) an administrator being appointed of the party under paragraphs 14 or 22 of Schedule B1 to the Insolvency Act 1986 or otherwise;
- (k) a petition being presented (and not being discharged within 14 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the party or the party being struck off the register of companies; or
- (l) the happening in relation to the party of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

1.3 In this agreement, unless it says otherwise:

- (a) reference to a person includes a legal person (such as a limited company) as well as a natural person;
- (b) reference to this agreement includes reference to the schedules and appendices and other documents attached to it or incorporated by reference into it (all as amended or added to from time to time);
- (c) reference to "**including**" in this agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words;
- (d) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation;
- (e) references to clauses or schedules shall be to those in this agreement;
- (f) reference to this agreement shall include reference to it after it has been amended, added to or replaced by a new agreement.

1.4 Any Software supplied or licensed under this agreement will not be treated as goods within the meaning of the Sale of Goods Act 1979. Firmware will be treated as part of the goods in which it is installed.

2. Supply of the Licensed Software and Guides

- 2.1 The Supplier will supply the Customer with copies of the Software as required by the Order, together with the Guides and any Key(s).
- 2.2 The Supplier shall not be responsible for installing or providing training for the Software unless otherwise agreed between the parties. Instructions relating to the installation of the Licensed Software are provided within the Guides.

3. Licence

- 3.1 In consideration of the fees payable under this agreement, the Supplier grants the Customer a worldwide, non-exclusive, non-transferable licence to use the Licensed Software (as permitted by the Keys), together with the Guides for its own personal use or, where the Customer is a business, for its own internal business purposes, for the duration of this agreement, subject to the remaining provisions of this clause 3 set out below.
- 3.2 Where the licence granted under this agreement is specified in the Order for use in a development or testing environment the Customer is only permitted to set up or test the functionality of the Software. The licence does not permit the use or deployment of the software in any other way.
- 3.3 Where the licence granted under this Agreement is granted for a limited time period, unless the Supplier agrees to the renewal of the licence, the Customer must immediately stop using the Licensed Software on expiry of the time period for which use of the Licensed Software is permitted. The Licensed Software may have a time-lock function incorporated within it so that, on expiry of the time period for which use of the Licensed Software is licensed, the Licensed Software may cease to operate. The Customer shall be informed by the Supplier in the Order or on delivery of the licence to the Customer whether a time-lock function is incorporated within the Licensed Software.
- 3.4 The Licensed Software is permitted to be used as set out below:
 - (a) the Customer may only use as many copies of the Licensed Software as it has valid licences for;
 - (b) the number of copies of the Licensed Software for which the Customer has valid licences will be set out in the relevant Order;
 - (c) each copy or instance of the Licensed Software in use will count as one, regardless of whether that copy or instance is operating on a physical or virtual machine. So, for example, if the Customer uses

the Licensed Software on five virtual machines installed on a single physical server, it will require five licences, not one;

- (d) if the Licensed Software is licensed for use on a network, the Customer may install as many copies of the Licensed Software on the network as it wishes, provided that the Customer may not at any time have more concurrent users of the Licensed Software than the number of copies for which it has valid licences. So, for example, the Customer may be licensed to have up to 100 concurrent users accessing and using the Licensed Software at any one time, but has 150 desktop computers connected to the network. Provided that the Licensed Software is licensed for use on a network, all of the 150 desktop computers may have the Licensed Software installed on them provided that, at any given time, there are no more than 100 users accessing and using the Licensed Software concurrently; and
- (e) otherwise, the Licensed Software may be used on a single stand-alone basis (and not on a network). The Customer may install, use and operate a copy or instance of the Licensed Software on a single device as is permitted by the relevant Order or otherwise expressly permitted in writing by the Supplier. Each additional copy to be used by the Customer on a device will require a separate licence, and the Customer may not use more copies of the Licensed Software on more devices than it has licences for.

3.5 The Customer acknowledges and agrees that:

- (a) the Licensed Software may require a Licence Key to function; and
- (b) the Licence Key may work so as to prevent use of the Licensed Software outside the restrictions for which it is currently licensed. So, for example, if the Customer has a licence for 100 concurrent users on a network, the Licence Key may prevent use of the Licensed Software on that network by more than 100 concurrent users;
- (c) the Licence Key may work so as to lock to a single physical machine or other hardware device such as a dongle or ID key;
- (d) the Licence Key may have a time-lock function incorporated within it, so that on expiry of the time period for which use of the Licensed Software is licensed, the Licence Key shall cease to operate; and
- (e) the Licence Key may require a live internet connection in order to verify and validate the Licensed Software for Customer's use.

3.6 The Customer may make as many backup copies of the Licensed Software and of the Guides and Key(s) as are necessary to support the Customer's lawful use of the Licensed Software in accordance with this agreement, and provided that any such copies are used only for backup purposes and not in a live system environment. The Customer will require a valid licence for each copy of the Licensed Software in use at any given time.

3.7 All copies of the Licensed Software, the Guides and the Key(s) shall be subject to the terms of this agreement to the same extent as the originals.

3.8 Except to the extent set out in this clause 3 or otherwise agreed in writing between the parties, the Customer:

- (a) may not grant sub-licences to use or otherwise transfer the Licensed Software, Guides or Key(s);
- (b) may not allow any third party to use the Licensed Software or the Guides, or use the Licensed Software, Guides or the Key(s) on behalf of any third party (which includes providing use of the Licensed Software on a service basis for third parties, operating any form of facility on behalf of anyone else, or operating a software bureau or similar service).

- (c) may permit third parties to access the Licensed Software via a website provided that the Customer's licence permits use of the Licensed Software as part of a website. Any websites operated by the Customer which provide third party access to the Licensed Software on a subscription basis shall require an additional licence from the Supplier;
- (d) will ensure that use by the Customer includes use by the Customer's employees and contractors only provided that such use is solely on behalf of the Customer and for the purposes of the Customer's business;
- (e) will not distribute to any third parties any Licensed Software which has been integrated within products, computer software programs or other applications of the Customer or third parties, without obtaining an additional distribution licence from, or the prior written consent of, the Supplier;
- (f) will not modify, adapt or create derivative works from the Licensed Software, Guides or Key(s) or copy the Licensed Software, Guides or Key(s) except as permitted under this agreement and then only in order for the Customer to use it in accordance with this agreement;
- (g) will not reverse engineer or decompile the Licensed Software except to the extent permitted under applicable law;
- (h) will not obscure, amend or remove any copyright notice, trade mark or other proprietary marking on, or visible during the operation or use of, the Licensed Software or the Guides;
- (i) will only use the Licensed Software in accordance with normal operating procedures and conditions notified to the Customer by the Supplier. The Customer will allow the Supplier access to any premises controlled by the Customer in order to allow the Supplier to check that the Software, Guides and the Key(s) are being used only as permitted;
- (j) will only use the Licensed Software with the type of client device and operating system that has been specified or approved by the Supplier in accordance with the Order. Use of the Licensed Software on any other type of client device is prohibited without the prior written consent of the Supplier; and
- (k) will comply with all applicable laws and regulations in relation to the use of the Licensed Software.

3.9 The Customer shall not export, directly or indirectly, any data acquired from the Supplier under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including (but not limited to) United States export laws and regulations, to any country for which the government or any regulatory or administrative body thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

3.10 The Customer undertakes to:

- (a) contractually oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, provide the Supplier with any reasonable assistance, at the reasonable cost of the Supplier, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

3.11 If the Customer wishes to use more concurrent copies of the Licensed Software for which it is currently licensed, it shall purchase the required number of additional licences from the Supplier.

3.12 Except to the extent expressly set out in this clause 3, the Customer has no other rights in relation to the Licensed Software, Guides or the Key(s).

4. Software upgrades and modifications

- 4.1 The Supplier may, from time to time, develop and make available Updates and other modifications for the Licensed Software. If the Customer wishes to receive any Updates and modifications, it shall be required to purchase such Updates and modifications, at an additional cost, from the Supplier unless the Customer has entered into a support and maintenance agreement, which has not expired at the time of such request, under which it has been agreed that such Updates and modifications shall be provided to the Customer.
- 4.2 The Supplier may, within a reasonable time period, cease to support previous versions of the Software. A statement containing details of those previous versions supported by the Supplier is available on its website or from its registered office on request.
- 4.3 Where a new version of the Licensed Software is provided to the Customer, the Customer may continue to use both old and new versions of the Software, but its overall use (or both old and new versions together) shall be restricted to the number of copies of the Licensed Software for which it has valid licences. So, for example, if the Customer has licences for 100 copies and is using two versions of the Licensed Software (old and new), it cannot use any combination of old and new versions in excess of 100 copies.

5. Charges

- 5.1 The Order sets out the licence fees and other charges payable by the Customer under this agreement. The charges are due on the dates set out in the invoice.
- 5.2 The Supplier may invoice the Customer for the charges as soon as the Licensed Software is despatched or made available to the Customer for download.
- 5.3 Unless otherwise agreed in writing between the Supplier and the Customer, the Customer shall comply with the Supplier's standard terms and conditions of sale, such terms to be made available to the Customer either:
- (a) as an Appendix to this agreement;
 - (b) directly by the Supplier sending a copy to the Customer;
 - (c) as a download from the Supplier's website; or
 - (d) as otherwise made available to the Customer by the Supplier from time to time.
- 5.4 If there is any conflict or inconsistency between this agreement and the Supplier's standard terms and conditions of sale, the provisions of this agreement shall, only to the extent of any such conflict or inconsistency, take precedence.

6. Warranties and Other Terms

- 6.1 The Supplier warrants that the Licensed Software will, for a period of three months after the date on which it is first installed, be free from defects which have a materially adverse impact on the operation of the Software in accordance with the Guides.
- 6.2 If the warranty in clause 6.1 is breached, the Customer must tell the Supplier as soon as possible. The Customer must give the Supplier a reasonable time to fix the problem and (if necessary) to supply the Customer with a corrected version of the Licensed Software or a way to work-around the problem that is not materially detrimental to the Customer. This will be done without any additional charge to the Customer. If the Supplier is able to do this within a reasonable time, the Supplier will have no other obligations or liability in relation to that breach. If the Supplier is unable to do this within a reasonable time or the Supplier does not think that it is a sensible way to deal with the problem, then the Supplier may, if it wishes, elect to take back the Licensed Software and the Guides and to refund to the Customer all of the money which the Customer has paid to the Supplier under this agreement.

- 6.3 It is a condition of this agreement that the Supplier is entitled to supply the Licensed Software and the Guides to the Customer and to allow the Customer to use them in accordance with the terms of this agreement.
- 6.4 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.
- 6.5 Any Open Source Software is listed within the Supplier's software under the "Help/About" menu options. Where appropriate the licence which governs the use of the Open Source Software will be available with the installation files, for download from the Supplier's website or on request in writing from the Supplier. The Open Source Software may be used according to the terms and conditions of the specific licence under which the relevant Open Source Software is distributed but it is provided on an 'as is' basis.
- 6.6 Apart from the terms set out above in this clause 6, no conditions, warranties or other terms apply to the Licensed Software or the Open Source Software or its supply or license under this agreement. In particular, no implied conditions, warranties or other terms relating to satisfactory quality or fitness for any purpose will apply to anything supplied under this agreement. The Supplier does not warrant or enter into any term to the effect that the Software will be entirely free from defects or that its operation will be entirely error free.
- 6.7 The Supplier will not be liable for breach of any of the warranties in this agreement, under the indemnities in clauses 7 or 8 or under any other terms in this agreement to the extent that the breach or right to indemnity arises or would otherwise arise from:
- (a) use of the Software other than in accordance with normal operating procedures as described in the Guides or as otherwise notified to the Customer by the Supplier;
 - (b) any alterations to the Software made by anyone other than the Supplier or someone authorised by the Supplier;
 - (c) any incompatible configuration of, or problem with, the client device or network server on which the Software is installed, any equipment connected to any such client device or network server or any other software which is installed on that client device;
 - (d) any abnormal or incorrect operating conditions;
 - (e) use of the Software together with any un-permitted hardware or software, unless such use has been approved by the Supplier in writing (either in the Order or subsequently).

7. Intellectual property rights

- 7.1 All Intellectual Property Rights and other rights in the Licensed Software, Guides and the Key(s) (including all Intellectual Property Rights in any copies, enhancements, modifications, adaptations, improvements and/or derivative works of the Licensed Software, Guides and the Key(s)) will remain with the Supplier. The Customer will have no rights in or to the Licensed Software, Guides or the Key(s) other than the right to use them in accordance with the terms of this agreement.
- 7.2 The Supplier will indemnify the Customer against any loss or damage suffered or incurred by the Customer as a result of any claim by a third party that the use or possession by the Customer in accordance with this agreement of the Licensed Software infringes the Intellectual Property Rights of any third party. In order for this indemnity to apply:
- (a) the Customer must notify the Supplier as soon as the Customer becomes aware of a claim under this clause 7 and give the Supplier as much information as the Customer can in relation to it (an "**Indemnified Claim**");
 - (b) the Customer must not admit any liability or agree to any settlement or compromise of such Indemnified Claim without the prior written consent of the Supplier;

- (c) the Supplier shall, at any time from notification in accordance with clause 7.2(a) above, at the Supplier's request, cost and expense, be entitled to assume exclusive conduct of the Indemnified Claim (which shall include the right to conduct any proceedings or action in relation to, negotiate settlement of, and to conduct all discussions and dispute resolution efforts in connection with the Indemnified Claim, provided that no settlement of a claim which would or might affect any rights of the Customer or entail any admission of liability on the part of the Customer shall be entered into without the Customer's written consent); and
- (d) the Customer shall, at the Supplier's request, cost and expense, give the Supplier all reasonable assistance in connection with the conduct of the Indemnified Claim.

This indemnity will not apply to any claim:

- (a) that arises in relation to any changes to the Software which have not been made by the Supplier or any combination or use of the Software with anything else where that combination or use has not been approved by the Supplier; or
- (b) relating to any intellectual property rights subsisting outside the area of permitted use under this agreement.

8. Indemnity

- 8.1 The Customer will indemnify the Supplier against any loss or damage suffered or incurred by the Supplier as a result of breach of the Customer's obligations in this agreement relating to the protection, marking, manner and extent of use of the Software, Guides and Key(s). Without limiting the foregoing, where the Customer exceeds its permitted use of the Licensed Software under this agreement, or allows a third party to copy and use the Licensed Software, the Customer shall be responsible for payment to the Supplier of such rates (as specified in the Order) relating to any additional use or, where such use is unspecified, the prevailing rate shall be the Supplier's standard published rates for the equivalent licensed use.

9. Exclusions and Limitations

- 9.1 Neither party's liability:

- (a) for death or personal injury caused by its negligence or the negligence of its employees or agents;
- (b) under Part I of the Consumer Protection Act 1987;
- (c) for breach of clause 6.4, clause 7.2 or clause 8;
- (d) for fraudulent misrepresentation or for any other fraudulent act or omission,

is excluded or limited by this agreement, even if any other term of this agreement would otherwise suggest that this might be the case.

- 9.2 Other than as set out in clause 9.1, neither party shall be liable (whether for breach of contract, negligence or for any other reason) for any:

- (a) loss of profits;
- (b) loss of sales;
- (c) loss of revenue;
- (d) loss of any software or data;

- (e) loss of use of hardware, software or data;
- (f) loss of, or damage to, property;
- (g) indirect, consequential or special loss.

and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

9.3 Subject to clauses 9.1 and 9.2, the Supplier's liability under this agreement and in relation to anything which the Supplier has done or not done in connection with this agreement (and whether the liability arises because of breach of contract, negligence, misrepresentation or for any other reason) shall be limited to:

- (a) the licence fee payable by the Customer which relates to a particular Licensed Software in relation to which a claim has arisen; and
- (b) under no circumstances shall the Supplier's total aggregate liability in relation to this Agreement exceed the total amount of fees for all of the Licensed Software licensed to the Customer under this Agreement.

9.4 If the Software covered by this Agreement is purchased by a consumer, the exclusions and limitations contained in this Agreement do not affect any statutory rights to which a consumer is entitled and which may not under applicable law be excluded or limited.

10. Confidentiality

10.1 Each party will:

- (a) keep confidential all Confidential Information of the other party which it receives in connection with this agreement;
- (b) not copy or reproduce any part of such Confidential Information without the prior written approval of the other party, except as strictly necessary for the performance of its obligations under this agreement;
- (c) apply to such Confidential Information no lesser security measures and degree of care than those which it takes in protecting its own Confidential Information and in any event no less than that which a reasonable person or business would take in protecting its own confidential information;
- (d) only use such Confidential Information as strictly necessary for the performance of, or exercise of its rights under, this agreement;
- (e) not disclose such Confidential Information to any third party without:
 - (i) notifying the recipient of its confidential nature;
 - (ii) ensuring that the recipient enters into and complies with an agreement with the other party agreeing to protect the Confidential Information on terms at least equivalent to those in this agreement; and
 - (iii) obtaining the other party's prior written consent;
- (f) promptly, upon request and, in any event, upon termination of this agreement (for whatever reason), return to the other party all materials (in whatever form) incorporating, embodying or recording any such Confidential Information in its possession or control and, if requested by the other party, certify in writing that it has done so.

- 10.2 The obligations as to confidentiality in this agreement will not apply to any information which:
- (a) is available to the public other than because of any breach of this agreement;
 - (b) is, when it is supplied, already known to whomever it is disclosed to in circumstances which do not prevent them from disclosing it to others;
 - (c) is independently obtained by whomever it is disclosed to in circumstances which do not prevent them from disclosing it to others;
 - (d) is trivial or obvious; or
 - (e) is required to be disclosed by any law, regulation or by any court or tribunal with proper authority to order its disclosure (but only to the extent of such requirements).

11. Data protection

11.1 In relation to all "**Personal Data**" (as defined in the Data Protection Act 1998, which also defines "**Processing**" and "**Controller**") provided or disclosed by the Customer under this agreement:

- (a) the Customer will identify it clearly as such, when this is not obvious, and disclose it to the Supplier only when reasonably necessary;
- (b) the Customer acknowledges that it is the data Controller of such data, and that the Supplier is only acting on the Customer's behalf;
- (c) the Supplier:
 - (i) will comply with the Customer's reasonable instructions relating to the security and confidentiality of the Personal Data, and will in any event keep it reasonably confidential and secure from disclosure to unauthorised third parties; and
 - (ii) will Process that Personal Data only in accordance with the instructions of the Customer.

11.2 Each party:

- (a) will obtain and maintain all appropriate registrations and consents under the Data Protection Act 1998 in order to allow that party to perform its obligations under this agreement;
- (b) will Process Personal Data in accordance with the Data Protection Act 1998; and
- (c) will use reasonable efforts to make sure that no act or omission by it, its employees, contractors or agents results in a breach of the obligations of either party under the Data Protection Act 1998.

12. Term and Termination

12.1 This agreement will commence on the Commencement Date. If the Order provides that this agreement is for a fixed term, then it will last for the period of time specified (unless terminated earlier in accordance with this clause 12) and will then end automatically. Otherwise this agreement will continue indefinitely until terminated in accordance with this clause 12.

12.2 Either party may terminate this agreement if the other:

- (a) materially breaches any term of the agreement and it is not possible to remedy that breach;

- (b) materially breaches any term of the agreement and it is possible to remedy that breach, but the other fails to do so within 30 days of being asked to do so; or
- (c) the other suffers or undergoes an Insolvency Event.

For the purposes of this clause 12.2, in order for it to be possible to remedy a breach it must be possible to take steps so as to put the other party into the same position which (save as to the date) it would have been in if the breach had never occurred.

- 12.3 The Supplier may terminate this agreement if the Customer fails to pay the charges due under clause 5 of this agreement;
- 12.4 Apart from any other rights which the Supplier might have, if the Customer breaches this agreement the Supplier may suspend performance of any of its obligations or any of the Customer's rights under this agreement until the Customer remedies the breach to the reasonable satisfaction of the Supplier.

13. Consequences of Termination

- 13.1 If this agreement is terminated (regardless of who terminates it and regardless of the reason) the Customer will immediately on termination:
 - (a) cease using the Licensed Software and the Guides;
 - (b) return all copies of the Licensed Software, Guides, dongles and any Key(s) to the Supplier or (if the copies are on media which is non-removable and forms part of equipment belonging to the Customer) permanently delete and destroy all copies in such a way that they cannot be recovered; and
 - (c) confirm to the Supplier in writing that both of the above things have been done.
- 13.2 Termination of this agreement will not affect any accrued rights or liabilities which either the Supplier or the Customer may have by the time termination takes effect.

14. Assignment and sub-contracting

- 14.1 The Customer may not assign or sub-license any of the Customer's rights under this agreement.
- 14.2 The Supplier may sub-contract the performance of any of the Supplier's obligations under this agreement. The Supplier may assign this agreement or any of the Supplier's rights or obligations under this agreement to a third party, provided that the Supplier notifies the Customer in writing if it does so. The Supplier will remain liable to the Customer for any breach of this agreement if it sub-contracts or assigns as set out above.

15. Notices

- 15.1 All notices and consents relating to this agreement must be in writing. Notices must be sent to the address of the recipient set out in this agreement or otherwise notified by the relevant party in accordance with this agreement.
- 15.2 Notices addressed to the Supplier must be sent to the Supplier's registered office or sent by email to: cadcorp@cadcorp.com
- 15.3 Notices addressed to the Customer must be sent to the address or email address provided by the Customer when it places an Order unless an alternative address or email address is subsequently notified to the Supplier by the Customer.
- 15.4 For the purposes of this clause 15 reference to an email being received shall, in the case of a party which is a corporate body or partnership, mean receipt at the first device hosting electronic communication services for

that corporate body or partnership at which it is received and, in the case of a party who is an individual, shall mean receipt on a device owned (or used for reading email) by the individual which receipt shall be deemed to have occurred 96 hours after sending.

16. Audit

16.1 The Supplier may, upon giving the Customer not less than fourteen (14) days' notice (or such other shorter period where the Supplier suspects that the Customer is in breach of clause 3 of this agreement), audit your system, records and other relevant documents and/or take or demand copies or extracts thereof solely to verify that you are in compliance with the terms of this agreement.

16.2 It is possible that the Software may, from time to time, require access (whether such access is on a permanent and continual basis or an intermittent basis) to the Internet in order for the Supplier to remotely monitor the Customer's use of the Software in accordance with the terms of this agreement.

17. Miscellaneous

17.1 The Supplier will not be liable to the Customer for any breach of this agreement which arises because of any circumstances which the Supplier cannot reasonably be expected to control.

17.2 If any provision of this agreement is held for any reason to be ineffective or unenforceable, this shall not affect the validity or enforceability of any other provision of this agreement or this agreement as a whole. If any provision of this agreement is so found to be ineffective or unenforceable but would be effective or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it effective and enforceable.

17.3 Unless the parties expressly agree otherwise in writing, if a party:

- (a) fails to exercise or delays exercising or only exercises partially any right or remedy provided under this agreement or by law; or
- (b) agrees not to exercise or to delay exercising any right or remedy provided under this agreement or by law;

then that party shall not be deemed to have waived and shall not be precluded or restricted from further exercising that or any other right or remedy.

17.4 All variations to this agreement must be agreed, set out in writing and signed on behalf of both parties before they take effect.

17.5 Except to the extent that this agreement expressly provides otherwise, nothing in this agreement shall or is intended to create a partnership or joint venture between the parties, constitute one party as an agent of the other or give either party authority to make or enter into commitments, assume liabilities or pledge credit on behalf of the other party. Neither party may act as if it were, or represent (expressly or by implying it) that it is, an agent of the other or has such authority.

18. Entire agreement

18.1 This agreement sets out all of the terms that have been agreed between the Supplier and the Customer in relation to the subjects covered by it. Subject to clause 9.1(d), no other representations or terms shall apply or form part of this agreement. The Customer acknowledges that it has not been influenced to enter this agreement by anything the Supplier has said or done or committed to do, except as expressly recorded herein.

19. Third party rights

- 19.1 No term of this agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.

20. Governing law and jurisdiction

- 20.1 This agreement is governed by English law. Both the Supplier and the Customer submit to the exclusive jurisdiction of the English courts in relation to any dispute concerning this agreement but the Supplier is also entitled to apply to any court worldwide for injunctive and other remedies in order to protect or enforce its Intellectual Property Rights.

APPENDIX 1

SUPPLIER'S STANDARD TERMS AND CONDITIONS OF SALE

These Terms will apply to the provision of any Software and Services under this Agreement. Terms that are capitalised have special meanings, as set out at the end of these Terms.

1. Provision of Software, Services and Deliverables
 - 1.1 Unless otherwise agreed, Customer may use the Software on a single computer and only one person at a time may use the Software on that computer.
 - 1.2 Customer will: (a) only use the Software for its internal business purposes; (b) not copy or reproduce the Software or any part of the Software in any form or medium except to the limited extent strictly permitted by these Terms; (c) immediately notify Cadcorp of any unauthorised use or reproduction of the Software of which it becomes aware; (d) not decompile, reverse-engineer or otherwise disassemble the Software except to the limited extent permitted by mandatory law; and (e) not remove any copyright or other proprietary notices from the Software.
 - 1.3 Cadcorp will provide the Services and any Deliverables in accordance with this Agreement.
 - 1.4 Cadcorp will deliver the Software and any Deliverables on an agreed media, and will use its reasonable efforts to deliver the Software and any Deliverables by any agreed delivery date. If no delivery date has been agreed, Cadcorp will deliver the Software or Deliverables within a reasonable time of Customer's acceptance of the relevant Quote.
2. Intellectual Property Rights
 - 2.1 The Intellectual Property Rights in any content and material supplied by Customer to Cadcorp to enable Cadcorp to provide the Services and Deliverables (the "Content") will be owned by Customer or its licensors. Cadcorp will have a non-exclusive licence to use, copy, modify, adapt, and translate the Content and any other material supplied by Customer for the purpose of providing the Services and Deliverables under this Agreement.
 - 2.2 The Intellectual Property Rights in the Software and any pre-existing or generic material (including any software) used or created by Cadcorp in providing the Services will be owned by Cadcorp or its licensors.
 - 2.3 Unless otherwise agreed, the Intellectual Property Rights in any Deliverables will be owned by Cadcorp or its licensors, and Customer will have a non-exclusive licence to use such material or Deliverables as specified in the relevant Quote
 - 2.4 Subject to clause 2.6, Cadcorp will indemnify Customer against any loss or damage suffered or incurred by Customer as a result of any claim that the use of or possession by Customer in accordance with this Agreement of the Software or any Deliverable supplied by Cadcorp infringes the Intellectual Property Rights of any third party. This indemnity will not apply to the extent that the relevant infringement results from: (a) Customer modifying the Software or Deliverable without the consent of Cadcorp; or (b) that arises in relation to any changes to the Software or Deliverable which have not been made by Cadcorp, or any combination or use of the Software or Deliverable with anything else where that combination or use has not been approved by Cadcorp.
 - 2.5 Subject to clause 2.6, Customer will indemnify Cadcorp against any loss or damage suffered or incurred by Cadcorp as a result of any claim that the use or possession by Cadcorp in accordance with this Agreement of any Content infringes the Intellectual Property Rights of any third party.
 - 2.6 In relation to any third party claim to which any of the indemnities in this clause 2 relate, the party claiming the benefit of the indemnity shall: (a) allow the other party on request to conduct the defence of the claim (including settlement); (b) make no admission to the claim without the prior consent of the other party; (c) notify the other party as soon as is reasonably practicable of the claim; and (d) at the expense of the other party, co-operate and assist to a reasonable extent with the other party's defence of the claim.
3. Charges
 - 3.1 Customer shall pay the Charges set out in the Quote. If no Charges are specified, Customer shall pay Cadcorp's standard rates for the Software and Services (on a time and materials basis in relation to any Services).
 - 3.2 The Charges shall be due on the delivery of the Software or Services. Cadcorp will invoice Customer for the Charges as soon as they become due. Customer must pay all invoices within 30 days of the date of the invoice.
 - 3.3 If Customer is late in paying any invoices then Cadcorp may (a) suspend the provision of the Services and/or the licence set out in clause 1 until such invoices have been settled in full by Customer; and/or (b) charge interest on all unpaid amounts. Interest will be payable from the date of the invoice until the date of payment. The rate of interest will be 1% per month.
 - 3.4 The amounts specified in the Quote do not include VAT or any other taxes on supplies unless expressly stated otherwise, and Customer must pay these to Cadcorp as well as the amounts concerned.
4. Warranties
 - 4.1 Cadcorp warrants that any Services will be provided: (a) with reasonable care and skill; and (b) by means of appropriately qualified and skilled personnel.
 - 4.2 Cadcorp warrants that any Deliverables (except software Deliverables) will be free from any material inaccuracy of which Cadcorp should have reasonably have been aware at the time the relevant Deliverable was supplied.
 - 4.3 Cadcorp warrants that, in relation to the Software or any software Deliverable: (a) where there is no specification for the Software or Deliverable, the Software or Deliverable will for a period of 90 days from delivery be free from any defect which has a materially adverse effect on its operation; and (b) where there is a specification for the Software or Deliverable, the Software or Deliverable will perform in substantial conformance with the specification.
 - 4.4 If any of the warranties in this clause 4 are breached, Customer must tell Cadcorp as soon as is reasonably possible. Customer must give Cadcorp a reasonable time to fix the problem and (if necessary) to re-perform any relevant Services and provide a new version of the Software or Deliverable. This will be done without any additional charge to Customer and will be Customer's sole and exclusive remedy in respect of the breach in question. If Cadcorp is unable or unwilling to do this within a reasonable time then Customer may by notice to Cadcorp terminate immediately this Agreement. In the event of such termination, Cadcorp will refund to Customer the charges actually paid by Customer in relation to the Software or Services to which the breach of warranty relates and this will be Customer's sole and exclusive remedy in relation to the breach in question.
 - 4.5 Apart from the terms set out above, no conditions, warranties or other terms apply to the Software, Services, Deliverables or to anything else supplied under this Agreement. In particular, no implied conditions, warranties or other terms relating to satisfactory quality or fitness for any particular purpose will apply to anything supplied under this Agreement.
5. Exclusions and limitations of liability
 - 5.1 Neither party's liability: (a) for death or personal injury caused by its negligence or the negligence of its employees or agents; (b) under Part I of the Consumer Protection Act 1987; (c) to pay any sums properly due under this Agreement; or (d) for fraudulent misrepresentation, is excluded or limited by this Agreement, even if any other term of this Agreement would otherwise suggest that this might be the case.
 - 5.2 Other than as set out in clause 5.1, Cadcorp shall not be liable (whether for breach of contract, negligence or for any other reason) for any indirect, consequential or special loss or loss of: (a) profits; (b) sales; (c) revenue; (d) any software or data; (e) use of hardware, software or data; (f) or loss of or damage to property; (g) or waste of management or staff time.
 - 5.3 Subject to clauses 5.1 and 5.2, Cadcorp's total aggregate liability under this Agreement and in relation to anything which it may have done or not done in connection with this Agreement (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to an amount equal to 125% of the total amounts paid and payable by Customer under this Agreement.
6. Term and termination
 - 6.1 This Agreement will commence on: (a) the date Customer accepts the Quote; or (b) the date when Cadcorp first performs the Services for Customer or delivers the Software, whichever is the earlier. This Agreement will expire on the completion of the parties' obligations, unless otherwise terminated in accordance with its terms.
 - 6.2 Cadcorp or Customer may terminate this Agreement if: (a) the other materially breaches any term of this Agreement and it is not possible to remedy that breach; or (b) the other materially breaches any term of this Agreement and it is possible to remedy that breach, but the other fails to do so within 30 days of being asked to do so.
 - 6.3 Upon the termination or expiry of this Agreement, the licence set out in clause 1 will automatically terminate. Termination of this Agreement will not affect any accrued rights or liabilities which either Cadcorp or Customer may have by the time termination takes effect.
7. Confidentiality
 - 7.1 Cadcorp will keep confidential any confidential information which Customer supplies to Cadcorp in connection with this Agreement and Customer must do the same in relation to any confidential information which Cadcorp supplies to Customer. Confidential information will include all information marked as being confidential and any other information which might reasonably be assumed to be confidential. The obligations as to confidentiality in these Terms will not apply to any information which: (a) is available to the public other than because of any breach of this Agreement; (b) is, when it is supplied, already known to whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; or (c) is independently obtained by whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others.
8. General
 - 8.1 Customer may not assign any of its rights or obligations under this Agreement without Cadcorp's consent. Cadcorp may: (a) sub-contract the performance of any of its obligations under this Agreement; and (b) assign any of its rights or obligations under this Agreement; Cadcorp will remain liable to Customer for any breach of this Agreement if it sub-contracts or assigns. Neither party will be liable to the other for any breach of this Agreement which arises because of any circumstances which that party cannot reasonably be expected to control. All variations to this Agreement must be agreed, set out in writing and signed on behalf of both Cadcorp and Customer before they take effect. This Agreement (including the Quote) sets out all of the terms that have been agreed between Cadcorp and Customer in relation to the subjects covered by it. Subject to clause 5.1, no other representations or terms shall apply or form part of this Agreement. No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement. This Agreement is governed by English law. Both parties submit to the exclusive jurisdiction of the English courts in relation to any dispute concerning this Agreement.
9. Definitions and interpretation
 - 9.1 In these Terms, unless the context otherwise requires:
 - "Agreement" means the Terms and the Quote and any other documents attached to the Quote or incorporated by reference into it (all as amended or added to from time to time);
 - "Cadcorp" means Computer Aided Development Corporation Limited, CRN 01955756;
 - "Charges" means the charges for the Services and/or Software;
 - "Content" has the meaning given to it in clause 2.1;
 - "Customer" means the person or entity identified on the Quote;
 - "Deliverables" means any reports, specifications, designs, software and any other items or materials provided by Cadcorp as part of the Services;
 - "Intellectual Property Rights" means all copyright, patent rights, trade or service marks, design rights, rights in or relating to databases, rights in or relating to confidential information, and any other intellectual property rights (registered or unregistered) throughout the world, including all rights of reversion and rights to any applications and pending registrations and the right to sue for and recover damages for past infringements, which are existing anywhere in the world now or in future;
 - "Services" means any and all Services set out in the Quote;
 - "Software" means any software set out in the Quote;
 - "Terms" means these standard terms and conditions;
 - "Quote" means any quotation, statement of work or invoice that Cadcorp provide in relation to the Software and/or Services.
 - 9.2 In these Terms, unless it says otherwise: (a) reference to a person includes a legal person (such as a limited company) as well as a natural person; (b) reference to "including" shall be treated as being by way of example and shall not limit the general applicability of any preceding words; (c) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation; and (d) references to clause numbers shall be to those in these Terms.