

## SOFTWARE LICENCE AGREEMENT

This Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_ Between AXEL SYSTEMS LTD (the 'Licensor'), a company incorporated in the United Kingdom and the party whose name and address is as stated below (the 'Licensee').

### 1. Definitions

'*Licensed System*' means the hardware products including the measuring equipment on which the Software is licensed to run.

'*Software*' means the software products, interfaces, activation codes, any physical media in which data or processes of the software is captured or any part of them listed or referred to in the invoice or correspondence of the Licensor and their related documentation licensed by the Licensor. Any modifications to the Software whether carried out by the Licensee or by the Licensor will be the copyright of the Licensor and will form part of the Software and be subject to these terms and conditions.

### 2. Grant

This Licence Agreement is founded upon the agreement of the parties that:

- (a) The Software supplied by the Licensor is not sold, but the Licensor grants the Licensee a non-exclusive, non-transferable licence to use the Software unless with the consent of the Licensor, in accordance with these terms and conditions herein. **TITLE TO THE SOFTWARE DOES NOT PASS TO THE LICENSEE IN ANY CIRCUMSTANCES;**
- (b) The Software or any part of it (and at the sole discretion of the Licensor) will be activated by the Licensor only upon the receipt of the applicable payment(s) by the Licensee and may also be deactivated, withdrawn or revoked by the Licensor (using any means of the Licensor including the withholding of activation codes) for non payment or for breach of the terms of the use of the Software or any of the terms of this Agreement and the Licensee or any of the users of the Software would have no recourse against the Licensor.
- (c) The Licensee acknowledges that it is licensed to use the Software only in accordance with the express terms of this Agreement or any other written terms issued by the Licensor from time to time.
- (d) The programs comprising the Software will be supplied in object code, together with one copy of any related documentation, where applicable.

### 3. Duration

(a) This licence commences on the date of delivery of the Software. It will then continue in effect until terminated in accordance with the other termination provisions in this Agreement or for breach of this Agreement including without limitation, for non payment in which case the termination may be effected by the Licensor without the need for any notice and it is hereby agreed that the Licensor shall not be liable for any costs, damage, liabilities, penalties or any other losses sustained by the Licensee or any of the Licensee's users and the Licensee hereby agrees that it shall have no recourse to the Licensor and hereby waives any rights it has in such circumstances.

(b) The Software licence provisions are independent of the Software support provisions, to the extent that the Licensee's licence to use the Software will survive any termination of the Licensor's obligations to support the Software.

(c) Termination of these licence provisions will automatically terminate any support obligations by the Licensor for the Software.

### 4. Delivery and Acceptance

(a) Delivery of the Software will be made to the address of the Licensee shown in this Agreement and proof of postage shall be deemed proof of delivery;

(b) After delivery, the Licensor or its agents may run such commissioning tests as it considers necessary to ensure that the Software is installed correctly. Upon successful completion of these tests, the Software will be accepted by the Licensee and the Software will be deemed in good working condition and be deemed accepted by the Licensee if the Licensee does not notify the Licensor in writing (specifying the defect) of any defects in the Software within 7 days of delivery. Inability to use the Software due to lack of trained personnel or defective hardware or incompatible third party software of the Licensee shall not be deemed a cause of defect in the Software.

### 5. Licence to use the Software

(a) The Licensee is licensed to use the Software only on the Licensed System specified in this Agreement;

(b) The Licensee will not copy or permit the Software to be copied except for reasonable security and backup purposes;

- (c) The Licensee may use the Software temporarily on an alternative system for the purposes of disaster recovery;
- (d) The Licensee may transfer the Software to an alternative system or may relocate the Licensed System provided the written notice is given to the Licensor. Any transfer of software to the processor outside the Licensed System requires the prior written consent of the Licensor and may be subject to an additional licence fee;
- (e) Should the Licensee wish to upgrade or change the Licensed System, notice must be given to the Licensor. The Licensor will, if he decides to supply the Software then issue an upgraded Software for the upgraded or changed Licensed System after receiving payment of an upgrade licence fee from the Licensee;
- (f) Except where otherwise stated in this Agreement, the Licensee warrants that the Software and all copies will remain under its control and that it will take all reasonable precautions to safeguard the Software against unauthorised use. The Licensee agrees to indemnify the Licensor as a result of any breach by the Licensee of such conditions.
- (g) If the Licensee sells, hires or otherwise disposes or part possession of the Licensed System, it will ensure that all copies of the Software have been previously deleted unless it obtains the written consent of the Licensor not to delete the Software. In all cases the Licensor reserves the right to deal directly with the third party in receipt of the Licensed System without the consent of, or payment to, the Licensee including the collection of licence fees from the third party.

## 6. Title and Copyright

- (a) No title or rights of ownership, copyright or any other intellectual property in the Software is or will be transferred to the Licensee.
- (b) The Licensee understands that the Software contains proprietary information and agrees that except in accordance with an expressed written authority signed by an authorised signatory of the Licensor, it will not provide or otherwise make any of the Software and/or related documentation available for any reason to any other person, firm, company or organisation.
- (c) Copyright subsists in the Software and the Licensee will not delete or obscure any proprietary marks on the Software.
- (d) The Licensee will ensure that all of its relevant employees are advised that the Software constitutes confidential information and that all intellectual property rights in it are the property of the Licensor, and the Licensee will ensure that its employees, agents and any

third parties in contact with the Software comply with all of the terms and conditions of this clause and this Agreement.

(e) The Licensee agrees to indemnify the Licensor in respect of any losses or expenses incurred by the Licensor as a result of the unauthorised use of the Software by any third party, whether through misuse of the Software object code by the Licensee or through any other breach by the Licensee of the Agreement or through the negligence of the Licensee or through any other cause.

## 7. Licensee's Undertakings

The Licensee undertakes:

(a) To satisfy itself that the Software meets the needs of its business. It is the sole responsibility of the Licensee to determine that the Software is ready for operational use in the Licensee's business or the Licensed System before it is so used;

(b) To allow the Licensor to study its data used with the Software for the purpose of rectifying any problems with the Software;

(c) To ensure that the operating system and compiler and any other software with which the Software will be used is either the property of the Licensee or is legally licensed to the Licensee for use with the Software. The Licensee will indemnify the Licensor in respect of any claims by third parties and all related costs, expenses or damages in the event of any violation of third party proprietary rights which results in any claims against the Licensor.

## 8. Licence Fee

The Licence fee shall be the sum as stated in the invoice and all invoices and correspondence accompanying such invoices shall form part of and be terms and conditions of this Agreement and shall be incorporated into this Agreement by reference.

## 9 Payment Terms

(a) The total price for the Software will be paid within the time stated in the invoice. A deposit may be required by the Licensor in which case the balance will be payable within the time stated in the invoice.

(b) Payments which are not received when payable will be considered overdue and remain payable by the Licensee together with interest for late payment from the date payable at the rate of 4% per annum above the base rate for the time being of Lloyds Bank plc applicable

as well as after as before any judgement. This interest will accrue on a daily basis and be payable on demand.

- (c) Notwithstanding the above provision for late payment, in this event the Licensor may at its option, and without prejudice to any other remedy at any time after payment has become due, terminate, de-activate, withhold activation codes or temporarily or permanently at the Licensor's sole discretion suspend performance of this Agreement without any notice to the Licensee and without incurring any liability to the Licensee.
- (d) If the Licensor becomes entitled to terminate this Agreement for any reason, any sums then due to the Licensor will immediately become payable in full.

## 9. Licensor's Warranty

(a) The Software is designed to conform to the Software specification applicable at the time of order and will be the current release at the time when it is delivered to the Licensee. The Licensor's sole obligation will be in case of Software developed or owned by the Licensor to remedy any non-conformity of the software to its specification provided in either case that the Licensor has been notified of any non-conformity within 14 days of the date of delivery to the Licensee.

(b) The above constitutes the only warranty provided by the Licensor in respect of the software. The obligations and liabilities of the Licensor in this Agreement are in place of, and the Licensee accordingly waives, all implied guarantees and warranties, including without limitation, any warranty of merchantability or fitness for a particular purpose whether or not any purpose has been notified to the Licensor.

(c) The Licensee acknowledges that:

- (i) The Software has not been produced to meet individual Licensee specifications;
- (ii) The Software cannot be tested in advance in every possible operating combination and environment;
- (iii) It is not possible to produce Software known to be error free in all circumstances.

(d) The Licensee is expressly prohibited from attempting any error correction or modification of the Software or to get, procure or assist others to do so.

## 11. Modifications

The Licensor reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software.

## 12. Integrity of Data

(a) The parties agree that the Licensee is the best judge of the value and importance of the data held on the Licensee's computer system and the Licensee will be solely responsible for:

- (i) Instituting and operating all necessary back-up procedures, for its own benefit, to ensure that data integrity can be maintained in the event of loss of data for any reason;
- (ii) Taking out any insurance policy or other financial cover for loss or damages which may arise from loss of data for any reason.

(b) The Licensor disclaims any liability arising from loss of data, physical damage or any other losses (direct, consequential or otherwise) through the use of the Software on the Licensee's Licensed System or the Licensee's computer system and the Licensee agrees to indemnify the Licensor against any third party claims which arise from loss of data for any reason.

### 13. Termination for Cause

(a) This Agreement may be terminated immediately by notice in writing:

- (i) By the Licensor if the Licensee fails to pay any sum due under this Agreement by the due date without prejudice to any other provisions relating to late payment in this Agreement;
- (ii) By either party if the other party is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) for a period of 30 days after written notice by the other party;
- (iii) By either party if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or equivalent circumstances occur in any other jurisdiction.

(b) Any termination of this Agreement under this clause will be without prejudice to any other rights or remedies or either party under this Agreement or at law and will not affect any accrued rights or liabilities of either party at the date of termination.

(c) On termination of this Agreement, the Licensee will be obliged to satisfy the Licensor that it has erased the Software and all copies of any part of the Software from the System and from its magnetic media and that it has no ability to reproduce the Software in any way, and it will further be obliged to return to the Licensor immediately all related documentation and all copies, books, records, papers or other tangible things in its possession belonging to the Licensor.

#### 14. Entire Agreement

This Agreement constitutes the entire agreement between the parties. Each party confirms that it has not relied upon any representation not recorded in this document inducing it to enter into this Agreement. No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of this Agreement.

#### 15 Severability

If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

#### 16. Waiver

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be waiver of any right or of any later breach.

#### 17. Notices

Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally or by first class post and in the case of post will be deemed to have been given 3 working days after the date of posting. Notices will be delivered or sent to the addresses of the parties on the first page of this Agreement or to any other address notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement.

#### 18. Force Majeure

Neither party will be liable to the other party for any delay in or failure to perform its obligations (other than the payment of money) as a result of any cause beyond its reasonable control, including but not limited to any industrial dispute, inability to supply the Products, breakdown of equipment. If such delay or failure continues for at least 90 days, either party will be entitled to terminate the Agreement by notice in writing.

#### 19. Contracts (Rights of Third Parties) Act 1999.

The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply and no parties shall have any rights or benefits under this contract unless expressly stated.

#### 20. Governing Law and Jurisdiction

This Agreement is governed by English Law and the parties submit to the jurisdiction of the English Courts.