



LICENCE AGREEMENT

INDEX OF CLAUSES

1. DEFINITIONS
2. GRANT OF LICENCE
3. DELIVERY/INSTALLATION
4. ACCEPTANCE
5. PERMITTED USE
6. EXTENT OF PERMITTED REPRODUCTION
7. MAINTENANCE SERVICE
8. PAYMENT TERMS
9. PROPRIETARY RIGHTS
10. CONFIDENTIALITY
11. TRAINING
12. WARRANTY
13. LIMITATION OF LIABILITY
14. COPYRIGHT INDEMNITY
15. TERMINATION
16. POST TERMINATION
17. FORCE MAJEURE
18. ASSIGNMENT
19. NOTICES
20. SEVERABILITY
21. WAIVER
22. ENTIRE AGREEMENT
23. GOVERNING LAW

NOW AGREED as follows:

1. Definitions

In this Agreement unless inconsistent with the context or otherwise specified the following definitions will apply.

- 1.1 'Acceptance Date' means the date on which the Product is accepted or deemed to be accepted by the Licensee pursuant to clause 4.
- 1.2 'Agreement' means these terms and the Schedules to them.
- 1.3 'Charges' means the charges if any described in Schedule 1 for the provision of installation training and other ancillary services and items, or where they are not described in Schedule 1 then charges additional to Licence Fee and Maintenance Charge that may be invoiced by the Licensor to the Licensee in connection with this Agreement whether by virtue of a specific provision or otherwise which will be calculated on a time and materials basis in accordance with the Licensor's then current standard rates.
- 1.4 'Documentation' means the operating manuals, user instructions and other related materials supplied to the Licensee by the Licensor whether physically or by electronic means for aiding use of the Product, including any part or copy of them.
- 1.5 'Equipment' means the computer configuration specified in Schedule 1
- 1.6 'Initial Maintenance Period' means the initial period for the provision of the Maintenance Service specified in Schedule 2.
- 1.7 'Licence Fee' means the fee specified in Schedule 1.
- 1.8 'Licence Period' means the period specified in Schedule 1.
- 1.9 'Licence Materials' means the Product, the Documentation and the Media.
- 1.10 'Location' means the location of the Equipment at the address give in Schedule 1.
- 1.11 'Maintenance Charge' means the charge specified in Schedule 2 for the provision of the Maintenance Service.
- 1.12 'Maintenance Service' means the various maintenance and support services described in Schedule 2.
- 1.13 'Media' means the carrier media specified in Schedule 1 on which the produce and the Documentation are recorded or printed and delivered to the Licensee.
- 1.14 'Product' means the computer program[s] in object code form only as briefly described in Schedule 1 including any copies of [it or them] but excluding source code material and all preparatory design material.
- 1.15 'Release' means any improved version of the Product made available to the Licensee.
- 1.16 'Use of the Product' means to load the Product into the store, run and display the Product on the Equipment in accordance with the terms of this Agreement.

2 Grant of licence

Subject to the terms of this Agreement and in consideration of the payment to the Licensor by the Licensee of the Licence Fee the

Licensor grants to the Licensee a non-exclusive and non-transferable licence ('the Licence') to use the Licensed Materials in the United Kingdom during the Licence Period. If use of the Licensed Materials outside the United Kingdom is authorised by the Licensor, the Licensee will be responsible at its own expense for complying with all applicable export and import laws and regulations.

3 Delivery and installation

- 3.1 The Licensee is responsible for ensuring that the Equipment is installed and fully operational at the Location prior to the scheduled date for delivery of the Product.
- 3.2 The Licensee is responsible for installation of the Product on the Equipment in accordance with the installation guide issued by the Licensor or at the Licensee's request the Licensor will carry out such installation [by the installation date specified in Schedule 1] at the Licensor's then current installation charge.
- 3.3 The Licensor will use all reasonable endeavours to achieve delivery by any specified or requested date but each such date is to be treated as an estimate only and time shall not be of the essence. Where payment of any part of the Licence Fee or other Charges is to be made before delivery or installation of the Product the Licensor may withhold delivery or installation until such payments have been made.

4 Acceptance

Acceptance of the product will be deemed to take place on the date of the written order by the licensee.

5 Permitted use

- 5.1 The Licensee may use the Product only on the Equipment at the Location running THE MICROSOFT NT4 SERVICE PACK 6A OPERATING SYSTEM. The use of the Product on different equipment or at a different location requires the prior written consent of the Licensor. Upon such consent being given the different equipment or location will become the Equipment or Location for the purposes of the Licence.
- 5.2 If any of the Equipment becomes temporarily inoperable then the Licence is deemed to apply to the use of the Product on other equipment of the same type which is under the Licensee's risk and expense, until the Equipment becomes operable. The Licensee shall promptly notify the Licensor of any such temporary use and the commencement and cessation of it.
- 5.3 The Licensee may use the Licensed Materials for processing its own data for its own internal business purposes only. The Licensee shall not use or attempt to use the Licensed Materials or any of the Product's output or permit any third party to do so:

- 5.3.1 to provide a data processing service to any third party by way of trade or otherwise; or 5.3.2 contrary to any other restrictions stated in this Agreement.
- 5.4 The Licensee is permitted to observe, study or test the functioning of the Product in order to determine the ideas and principles which underlie any element of the Product while using the Product in accordance with this Licence .
- 5.5 The Licensee shall not translate or adapt the Licensed Materials for any purpose [nor arrange or create derivative works based on the Product] without the Licensor's express written consent in each case.
- 5.6 The Licensee shall not transfer or distribute whether by licence, loan, rental, sale or otherwise all or any part of the Licensed Materials to any other person.
- 5.7 The Licensee shall not make for any purpose including without limitation for error correction, any alterations, modifications, additions or enhancements to the Product except as specifically described in the Documentation nor permit the whole or any part of the Product to be combined with or become incorporated in any other program except to the extent permitted by clause 5.8 without the Licensor's prior written consent.
- 5.8 The Licensee shall not, nor permit other to, decompile, reverse-engineer or disassemble the Product or any part except that the licensee may decompile the Product only to the extent permitted by law where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created program with the Product or with another program and such information is not readily available from the Licensor or elsewhere .
- 5.9 A separate licence is required for the use of copies of the Product on equipment other than the Equipment, including use on any disaster recovery equipment.
- 6 Extent of permitted reproduction**
- 6.1 The Licensee is permitted to make a back-up copy of the Product in so far as the making of that copy is necessary for the use of the product permitted by the Licence. Such copy will be the property of the Licensor.
- 6.2 The Licensee shall not make or permit others to make any copies of any supplied Documentation without the Licensor's prior written consent.
- 6.3 The Licensee shall effect and maintain adequate security measures to safeguard the Licensed Materials from unauthorised access use or copying.
- 6.4 The Licensee shall keep accurate up-to-date written records on the Licensee's use, copying and disclosure of the Product as the Licensor may from time to time reasonably require or, in default of any specific requirement by the Licensor, then in accordance with good data processing practice and shall allow the licensor on request to inspect and take copies of such records from time to time.
- 7 Maintenance service**
- 7.1 Any corrected or modified versions of the Product or Documentation or new Releases of the Product supplied to the Licensee pursuant to the Maintenance Service will be deemed to form part of the Licensed Materials and be subject to this Agreement.
- 8 Payment terms**
- 8.1 The Licensee will pay to the Licensor the Licence Fee, the Maintenance Charge and all other Charges which fall due under the Agreement of the amounts and at the times specified in the applicable schedule or otherwise invoiced by the Licensor from time to time. Where application VAT and any other taxes, duties or levies will be paid additionally by the Licensee at the then prevailing rate.
- 8.2 All sums due under this Agreement will be paid by the Licensee on the date of receipt of invoice or on the due date for payment specified in the first or second schedule, if earlier.
- 8.3 If any sum payable to the Licensor under this Agreement is in arrears for more than 14 days after the due date, the Licensor reserves the right without prejudice to any other right or remedy to:
- 8.3.1 charge interest on such overdue sum o a day to day basis from the original due date until paid in full at a rate of 3% above National Westminster bank plc base lending rate in force from time to time; and/or
- 8.3.2 suspend the provision of the Maintenance Service 3 days' prior written notice.
- 8.4 The Licensee will notify the Licensor in writing within 5 days of receipt of an invoice inf the Licensee consider such invoice incorrect or invalid for any reason and the reasons for withholding payment failing which the Licensee will raise not objection to any such invoice and will make full payment in accordance with it.
- 8.5 The Licensor will have the right to vary any periodic Licence Fee or the Maintenance Charge for periods of the maintenance period subsequent to the Initial Maintenance Period by giving prior written notice of such variation.
- 9 Proprietary rights**
- 9.1 The Licensee will not acquire any title copyright or other proprietary rights in the Licensed Materials, including any materials provided under the Maintenance Service or in any copies of it.
- 9.2 The Licensee agrees not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Product or which is visible during its operation or which is on Media or on any Documentation. The Licensee shall incorporate such proprietary markings in any back-up copies.
- 9.3 The Licensee shall notify the Licensor immediately if the Licensee becomes aware of any unauthorised access to, use or copying of any part of the Licensed Materials by any person.
- 9.4 The Licensee shall permit the Licensor to check the use of the Licensed Materials by the Licensee at all reasonable times. The Licensor may upon reasonable notice sent its representatives to any of the Licensee's premises to verify compliance with the Agreement and the Licensee irrevocably consents to the Licensor's representatives entering the Location and any other of its premises for this purpose.
- 10 Confidentiality**
- 10.1 The Licensee acknowledges that the Licensed Materials contain confidential information of the Licensor and/or of third parties. The Licensee undertakes to treat as confidential and keep secret all information contained in or otherwise received from the Licensor in connection with the Licensed Materials collectively referred to as 'the

- Confidential Information' and shall not use the same for purposes other than in relation to use of the Product in accordance with the Licence.
- 10.2 The Licensee shall not without the Licensee's prior written consent communicate or disclose any part of the Confidential Information to any person except:
- 10.2.1 only to those employees [agents and sub-contractors] on a need to know basis who are directly involved in the use of the Product;
- 10.2.2 the Licensee's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Licensee.
- 10.3 The Licensee undertakes to ensure, prior to disclosure of any Confidential Information, that all persons and bodies mentioned in clause 10.2 are aware that the Confidential Information is confidential and that they owe a duty of confidence to the Licensor. The Licensee will indemnify the Licensor against any loss or damage which the Licensor sustains or incurs as a result of the Licensee failing to comply with such undertaking.
- 10.4 The provisions of this clause 10 will not apply to any Confidential Information which:
- 10.4.1 is or becomes public knowledge other than as a result of the Licensee's conduct; or
- 10.4.2 is independently developed without access to or use of the Licensed Materials.
- 10.5 This clause 10 will continue in force notwithstanding the termination of this Agreement for any reason.
- 11 Training**
- The Licensor undertakes to provide training in the use of the Product for the Licensee's personnel as set out in the training terms and conditions document.
- 12 Warranty**
- 12.1 The Licensor warrants that:
- 12.1.1 the Product when properly used on the Equipment will provide the facilities and functions as described in the Documentation. The Licensor does not warrant that the operation of the Product will be uninterrupted or error-free.
- 12.2 The Licensor's obligation and the Licensee's exclusive remedy under the warranty given in clause 12.1 is limited to the Licensor at its own expense using all reasonable endeavours to rectify any non-conformance with the warranty by repair by way of a patch, work around, correction or otherwise within a reasonable period of time
- 12.3 The Licensor will have no liability or obligation under the warranty given in this clause 12 unless it has received written notice from the Licensee of any non-conformance with the warranty within 30 days from the Acceptance Date.
- 12.4 The Licensee acknowledges that the Licensed Materials have not been prepared to meet the Licensee's individual requirements and that it is the Licensee's responsibility to ensure that the facilities and functions of the Product meet the Licensee's requirements.
- 12.5 The Licensor will not be liable for any failure of the Product to provide any facility or function not described in the Documentation marking information or for any failure of the Product attributable to any modification whether by alteration, deletion, addition or otherwise to the Product or the Equipment by persons other than the Licensor or combination of the Product with other software or equipment without the Licensor's express prior written consent.
- 12.6 If a problem is found upon investigation not to be the Licensor's responsibility under the provisions of this clause 12 the Licensor may charge the Licensee immediately for all reasonable costs and expenses incurred by the Licensor in the course of or in consequence of such investigation.
- 13 Limitation of liability**
- 13.1 The Licensee acknowledges that the Licensor's obligations and liabilities in respect of the Licensed Materials and the Maintenance Service are exhaustively defined in this Agreement. The Licensee agrees that the express obligations and warranties made by the Licensor in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise, relating to anything supplied or services provided under or in connection with this Agreement including within limitation any warranty as to the condition, quality, performance, merchantability or fitness for purpose of the Licensed Materials and the Maintenance Service or any part of them.
- 13.2 The Licensee is responsible for the consequences of any use of the Licensed Materials. The Licensor will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused whether arising under contract, tort including negligence or otherwise, including without limitation loss production, loss of or corruption to data, loss of profits or of contract, loss of operation time and loss of goodwill or anticipated savings, even if the Licensor has been advised of their possibility.
- 13.3 The Licensor accepts liability to the extent that it results from the negligence of the Licensor and its employees for:
- 13.3.1 death or injury without limit; and
- 13.3.2 physical damage to or loss of Licensee's tangible property up to the amount of [£250,000] in respect of each incident or series of connected incidents [and for damage caused by a defect in the Product within the meaning of the Consumer Protection Act 1987 Part 1 without limit].
- 13.4 In all other cases not falling within clause 13.3 the Licensor's total liability whether in contract, tort, including negligence, or otherwise under or in connection with the Agreement and any other agreement with the Licensee relating to the Product or based on any claim for indemnity or contribution will not exceed the Licence Fee paid by the Licensee.
- 13.5 The Licensee agrees that except as expressly provided in clause 12 and 14 and this clause 13 the Licensor will not be under any liability of any kind whatever and however caused arising directly or indirectly in connection with this Agreement. The Licensee will indemnify the Licensor in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or indirectly from the Licensee's possession, operation or use of the

- Licensed Materials or use of the Maintenance Service except and in so far as the Licensor is liable as expressly provided in this Agreement.
- 13.6 The Licensee acknowledges and agrees that the allocation of risk contained in this clause 13 is reflected in the Licence Fee and Maintenance Charge and is also a recognition of the fact that, inter alia, the Product cannot be tested in every possible combination and it is not within the Licensor's control how and for what purpose the Licensed Materials are used by the Licensee.
- 14 Copyright indemnity**
- 14.1 Subject to clause 13 the Licensor will indemnify the Licensee for its reasonable costs and all damages awarded under any final judgement by a court of competent jurisdiction or agreed by the Licensor in final settlement to the extent that the Product as used in accordance with the Licence infringes the copyright [trade marks or trade secrets of any third party or and the intellectual property rights other than patents of any third party Provided that:
- 14.1.1 the Licensee makes no statement prejudicial to the Licensor;
- 14.1.2 such infringement is not caused by or contributed to by acts of the Licensee other than the use of the Product in accordance with the Licence;
- 14.1.3 the Licensor is promptly notified in writing of the details of the claim;
- 14.1.4 the Licensor has sole control of the defence of such claim and all related settlement negotiations; and
- 14.1.5 the Licensee gives the Licensor all reasonable assistance at the Licensor's expense in connection therewith.
- 14.2 If at any time an allegation of infringement of any third party rights is made, or in the Licensor's opinion is likely to be made, in respect of the Licensed Materials the Licensor may at its own expense:
- 14.2.1 obtain for the Licensee the right to continue using the Licensed Materials; or
- 14.2.2 modify or replace the Licensed Materials so as to avoid infringement; or
- [14.2.3] if conditions 14.2.1 or 14.2.2 cannot be accomplished on reasonable terms, refund the Licence Fee whereupon the Licence shall terminate]22.
- 14.3 The Licensor will have no liability for any infringement claim based on:
- 14.3.1 use of other than the latest unaltered current release of the Product; or
- 14.3.2 use or combination of the Product with equipment other than the Equipment, programs or data not supplied by the Licensor; or
- 14.3.3 the Licensee's refusal to use modified or replacement Licensed Materials supplied or offered to be supplied pursuant to clause 14.2.
- 14.4 This clause 14 states the entire liability of the Licensor with respect to the infringement or alleged infringement of any third party rights of any kind whatever by the Licensed Materials or the Maintenance Service.
- 15 Termination**
- 15.1 The Licensee may terminate the Licence Period at any time by written notice to the Licensor.
- 15.2 If the Licensee:
- 15.2.1 convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up; or
- 15.2.2 has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator; or
- 15.2.3 being an individual commits any act of bankruptcy or compounds with his creditors or comes to any arrangements with any creditors;
- then and in any such case the Licensor may, without prejudice to any other of its rights or remedies and without being liable to the Licensee for any loss or damage which may be occasioned, give written notice to the Licensee terminating this Agreement and accordingly the Licence and the Maintenance Service with immediate effect.
- 16 Post termination**
- 16.1 On termination of the Licence however caused the Licensee's authorisation to use the Licensed Materials will automatically cease and the Licensee undertakes immediately to cease to use the Licensed Materials and either return to the Licensor the Product and all copies of it or, if requested by the Licensor, delete, destroy or other make permanently unusable the Product and all whole or partial copies of the Product within the Licensee's control or possession.
- 16.2 Within 7 days of the date of termination the Licensee shall return to the Licensor all copies of the Documentation unless notified in writing to the contrary by the Licensor.
- 16.3 Within 30 days of the date of termination the Licensee shall through a director or other officer certify to the Licensor in writing that it has fully complied with its obligations under clauses 16.1 and 16.2.
- 16.4 Termination of the Licence, however cause, shall not affect the rights of either party under this Agreement which may have accrued up to the date of termination.
- 17 Force majeure**
- Neither party will be liable for any delay in performing or failure perform any of its obligations other than a payment obligation under this Agreement due to any cause outside its reasonable control. Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable.
- 18 Assignment**
- The Licence is personal to the Licensee and the Licensee may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the Licensor.

19 Notices

All notices which are required to be given under this Agreement will be in writing and will be sent to the address of the recipient set out on the front page of this Agreement or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received:

19.1 by hand delivery-at the time of delivery;

19.2 by first class post-48 hours after the date of mailing;

19.3 by facsimile transmission-immediately upon transmission provided a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next business day.

20 Severability

If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.

21 Waiver

No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

22 Entire agreement

22.1 This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and arrangements, written or oral. The Licensee acknowledges that no reliance is placed on any representation made but not embodied in this Agreement. The printed terms and conditions of any purchase order or other correspondence and documents of the Licensee issued in connection with this Agreement will not apply unless expressly accepted in writing by the Licensor.

22.2 Except as otherwise permitted by this Agreement no change to its terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties.

23 Governing law

This Agreement shall be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales. Headings have been included for convenience only and shall not be used in constructing any provision in this Agreement.