



## END USER LICENCE AGREEMENT FOR M.H.T TECHNOLOGY LIMITED SOFTWARE APPLICATIONS

**IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE INSTALLING THE SOFTWARE:** This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and M.H.T. Technology Limited of Harelands Courtyard Office, Moor Road, Melsonby, Richmond, North Yorkshire, DL10 5NY, England (**Licensor** or **we**) in relation to this [INSERT NAME] software product (**Software**), which includes computer software; any data supplied with it; any associated media; technical protection measures (**TPM**) including but not limited to dongles, software or hardware keys, etc; and printed materials and online or electronic documentation (**Documentation**), for use on a computer system or computer system component (**Computer**).

BY INSTALLING, COPYING OR OTHERWISE USING THIS SOFTWARE OR CLICKING ON THE "ACCEPT" BUTTON BELOW, YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE ARE UNWILLING TO LICENSE THE SOFTWARE TO YOU AND YOU MUST DISCONTINUE INSTALLATION OF THE SOFTWARE NOW BY CLICKING ON THE "REJECT" BUTTON BELOW. IN THIS CASE YOU MUST CONTACT THE LICENSOR FOR INSTRUCTIONS ON THE RETURN OF THE SOFTWARE.

**PLEASE NOTE THE PARTICULARLY IMPORTANT PROVISIONS AT CONDITIONS 4 AND 6 BELOW.**

### 1. GRANT AND SCOPE OF LICENCE

1.1 In consideration of you agreeing to abide by the terms of this Licence, the Licensor hereby grants to you a non-exclusive, non-transferable licence to use the Software on the Computer and to use the Documentation on the terms of this Licence.

1.2 You may:

- (a) install and use the Software for your internal business purposes only, either (as agreed between the parties) either
  - (i) on only the Computer and no other computer or workstation if the Licence is a single-user licence or the Software is for single use; or
  - (ii) if the Licence is a multi-user or network licence, for the number of concurrent users agreed between you and us – you agree that you must acquire and dedicate a licence for each computer or workstation on or from which the Software is to be used;
- (b) where the Documentation indicates that the Software includes functionality that enables the Computer to share resources over a internal network with other computers or workstations, allow any number of such computers and workstations on that network to access or otherwise utilise only the basic network services of the Software on the Computer, as more fully described in the Documentation including file and print services and peer web services;
- (c) make one copy only of the Software for back-up purposes only to be used for archival purposes, provided that this is necessary and that the Licensor has not provided a back-up copy of the Software to you directly;
- (d) receive and where so supplied shall use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by the Licensor from time to time;
- (e) request to receive updated or upgraded versions or new releases of the Software from the Licensor in return for the delivery of which you agree to pay any applicable update, upgrade or new release licence fee upon such terms applied by the Licensor to such version or release.

1.3 We may have elected to supply you with multiple versions of the Software and Documentation in respect of:

- (a) language of use; and
- (b) operating system on which the Software is run (i.e. Windows XP Professional or Windows 2003 Server) (**Microsoft OS**),

in respect of which you will be given a one-time set-up option on installation to choose the appropriate language of use and Microsoft OS for the Software, which will then be installed on the Computer. You agree that you are licensed to only use the version of the Software with the language of use and Microsoft OS that you have chosen, and that the other versions not selected by you may be automatically and permanently deleted from the Computer.

1.4 We may have elected to supply you with the Software in more than one medium. You agree that you shall use only one medium which is appropriate for the Computer, and shall not use the Software on any other medium on the Computer or any other computer, and shall not sell, lease, rent or otherwise transfer the Software on the other medium or media to any third party.

1.5 Where the Software licensed to you under this Licence is marked as an "upgrade", you may only install and use the Software where you already have a license to use the original version of the Software, which this upgraded version shall replace and is for use only on the relevant Computer on which the original version of the Software was installed.

### 2. LICENSEE'S UNDERTAKINGS

2.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- (a) not to copy the Software or Documentation except as permitted under this Licence;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation;
- (c) not to directly or indirectly make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs, or otherwise make derivative works of the Software;
- (d) not to decompile, disassemble or reverse engineer the Software except that in the European Community, you may reverse engineer only for interoperability purposes and then only if all conditions of Article 6 of Council Directive 91/250/EEC are met, and provided that the information obtained by you during such activities:
  - (i) is used only for the purpose of achieving inter-operability of the Software with another software program;
  - (ii) is not disclosed or communicated without the Licensor's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
  - (iii) is not used to create any software which is substantially similar to the Software;

- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
  - (f) to supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this Licence;
  - (g) to install any supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by the Licensor from time to time immediately on receipt of such version or release;
  - (h) to include the copyright notice of the Licensor on all entire and partial copies of the Software in any form;
  - (i) not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from the Licensor;
  - (j) not operate the Software on any computer or workstation in conjunction with third party software programmes other than Microsoft OS, as this may interfere with the correct functioning of the Software;
  - (k) not to separate any components of the Software for use on more than one computer or workstation;
  - (l) where the Software is sold by the Licensor with or pre-installed on the Computer, not to use the Software separate from the Computer or install third party software programmes on the Computer, as this may interfere with the correct functioning of the Software;
  - (m) to take responsibility for all security aspects relating to the Computer or any other computer, workstation or network upon which the Software is used including implementing your own technical security access restrictions to the Software, and to implement your own anti-virus protection, firewalls and other technical protection required to keep the Computer or other computer, workstation or network upon which the Software is being used secure from all computer viruses, worms, logic-bombs, Trojan horses, malware or other form of technical attack which could interfere with the correct functioning of the Software or of the Computer, or any other computer, workstation or network on which it is operating;
- 2.2 You must permit the Licensor and his representatives, at all reasonable times and on reasonable advance notice, to inspect and have access to any premises, to the Computer, and to any other computer equipment located there, at which the Software or the Documentation is being kept or used, and any records kept pursuant to this Licence, for the purpose of ensuring that you are complying with the terms of this Licence.

### **3. INTELLECTUAL PROPERTY RIGHTS**

- 3.1 You acknowledge that all intellectual property rights in the Software and in the Documentation throughout the world (including but not limited to the copyright in and title to any images, photographs, animation, audio, video, music, text, computer coding, "applets", and any other constituent elements of the Software and the Documentation, belong to the Licensor or to its suppliers, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this Licence.
- 3.2 You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.
- 3.3 The integrity of this Software is protected by TPM so that the intellectual property rights, including copyright, in the Software of the Licensor are not misappropriated. You must not attempt in any way to remove or circumvent any such TPM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in your possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of such TPM.

### **4. SAFETY ISSUES: IMPORTANT, PLEASE NOTE:**

- 4.1 You acknowledge that the Software has not been designed for use in respect of any specific premises, sites, infrastructure or storage and distribution systems, and agree that you have checked that the Software is suitable for use at your premises with their infrastructure for their own intended use or application.***
- 4.2 The Software may contain programs written for Microsoft OS which may not be fault tolerant. You acknowledge that the Software has not been designed for use as a safety system or for use as on-line control equipment in hazardous environments requiring fail-safe performance in which the failure of any program or of the Software could lead directly to death, personal injury, physical or environmental damage, whether in respect of environmental, health and safety or other hazards, and agree to only use the Software in conjunction with separate and appropriate safety measures and systems, which may include (but are not limited to) appropriate third party safety software.***

### **5. WARRANTY**

- 5.1 Subject to your compliance with all obligations on you under this Agreement (including but not limited to those under Clauses 2.1 (g), (j), (l) and (m)) and subject to Clauses 4 and 6, the Licensor warrants that the Software will perform substantially in accordance with the documentation supplied with the Products for the ninety (90) day period following installation of the Software. To make a warranty claim, you must return the Software to MHT together with a copy of the relevant order, and shall make available all information that may be necessary to assist the Licensor in resolving the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault, within one hundred and twenty (120) days following installation of the Products with the End User.
- 5.2 If the Software does not perform substantially in accordance with the documentation supplied with the Software, the Licensor's entire and exclusive liability and your remedy shall be limited to either, at the Licensor's sole option:
- (a) the replacement or repair of the Software; or
  - (b) the refund of the Price of such Software.

### **6. LICENSOR'S LIABILITY – IMPORTANT, PLEASE NOTE:**

- 6.1 Nothing in this Licence shall exclude or in any way limit the Licensor's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent that it cannot be excluded or limited as a matter of law.

6.2 Subject to condition 6.1 the Licensor shall not be liable under or in connection with this Licence or any collateral contract for:

- (a) loss of income;
- (b) loss of business profits or contracts;
- (c) business interruption;
- (d) loss of the use of money or anticipated savings;
- (e) loss of information;
- (f) loss of opportunity, goodwill or reputation;
- (g) loss of, damage to or corruption of data; or
- (h) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise; or
- (i) any loss resulting from your failure to comply with your obligations under Clauses 2.1 (g), or 2.1 (j), or 2.1 (l) or 2.1 (m).

6.3 Subject to condition 6.1 and condition 6.2, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall be limited to a sum equal to 100% of the fee paid for this Licence.

6.4 Subject to condition 6.1, condition 6.2 and condition 6.3, the Licensor's liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in the UK.

6.5 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Software and Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

## **7. TERMINATION**

7.1 The Licensor may terminate this Licence immediately by written notice to you if:

- (a) You commit any material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service on you of written notice requiring you to do so; or
- (b) a petition for a bankruptcy order to be made against you has been presented to the court; or
- (c) the Licensee (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986).

7.2 Upon termination for any reason:

- (a) all rights granted to you under this Licence shall cease;
- (b) you must cease all activities authorised by this Licence;
- (c) you must immediately pay to the Licensor any sums due to the Licensor under this Licence; and
- (d) you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to the Licensor that you have done so.

## **8. TRANSFER OF RIGHTS AND OBLIGATIONS**

8.1 This Licence is binding on you and us and on our respective successors and assigns.

8.2 You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without our prior written consent, save where you permanently sell the Computer with the Software installed on it to a third party whom you ensure enters into a end user licence agreement with us upon transfer, and destroy all other copies of the Software in your possession or control.

8.3 The Licensor may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of his rights or obligations arising under it, at any time during the term of the Licence.

## **9. WAIVER**

9.1 If the Licensor fails, at any time during the term of this Licence, to insist on strict performance of any of your obligations under this Licence, or if the Licensor fails to exercise any of the rights or remedies to which he is entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

9.2 A waiver by the Licensor of any default shall not constitute a waiver of any subsequent default.

9.3 No waiver by the Licensor of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

## **10. SEVERABILITY**

If any wording in any provision of this Licence is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remainder of such provision, and the remaining provisions of this Licence, shall continue in full force and effect.

## **11. ENTIRE AGREEMENT**

11.1 This Licence and any document expressly referred to in it represents the entire agreement between us in relation to the licensing of the Software and Documentation and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing.

11.2 We each acknowledge that, in entering into this Licence, neither of us has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between us before entering into this Licence except as expressly stated in this Licence.

11.3 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Licence (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in this Licence.

## **12. DISPUTE RESOLUTION AND LAW**

12.1 In the event of a dispute between the parties, we shall decide whether to have the matter finally resolved under conditions 12.2 and 12.3. In all other circumstances the parties submit to the exclusive jurisdiction of the English courts.

12.2 All disputes arising out of or in connection with this Licence which are referred to arbitration under condition 12.1, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

12.3 It is agreed that:

(a) the tribunal shall include at least one arbitrator who is an expert in the production and distribution of software and at least one arbitrator who is an expert in the use of the Software, who may or may not be one and the same person; and

(b) the place of arbitration shall be Newcastle-Upon-Tyne, England; and

(c) the language of arbitration shall be English; and

(d) each party shall bear the costs of arbitration as directed by the arbitrators.

12.4 This Licence shall be governed in all respects by English Law.