

1. Introduction

This License and Maintenance Agreement is based on the following premise:

Software supplied by Comtec is not sold but the right to use it is licensed to the Customer in accordance with these terms and conditions. TITLE TO SOFTWARE DOES NOT PASS TO THE CUSTOMER IN ANY CIRCUMSTANCES.

2. Definitions

- 2.1 "Customer" means the party named as the Customer on the front page of this Agreement.
- 2.2 "Comtec" means Comtec (Europe), registered in England and Wales, No 3090173.
- 2.3 "Software" means the Software Product or Products listed on the front page of this Agreement and their related documentation. Any modifications to the Software whether carried out by the Customer or by Comtec or by any third party will form part of the Software and will be subject to these terms and conditions.
- 2.4 "Licensed Computer System" means the computer system referenced on the front of this Agreement.

3. Contract

- 3.1 Comtec's acceptance of this Agreement denoted by the signature of an authorised signatory of Comtec on the front page will create a contract between Comtec and the Customer on these terms and conditions.
- 3.2 This Agreement represents the entire agreement between the parties. Each party warrants to the other that it has not relied upon any representation not recorded here which has induced it to enter into this contract.
- 3.3 No amendment will be valid unless confirmed in writing and signed by an authorised signatory of Comtec and by an authorised signatory of the Customer, on or after the date of this Agreement.
- 3.4 In the event that any of these terms and conditions or any part of any term or condition is judged illegal or unenforceable for any reason the continuation in force of the remainder of these terms and conditions will not be prejudiced.
- 3.5 No delay or failure 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 other right or of any later breach.
- 3.6 Neither party will assign or transfer all or any part of this Agreement without the prior written consent of the other party except that Comtec may assign the benefit of all or any part of this Agreement to any company which is or becomes the legal owner of all or the applicable part of the Software.
- 3.7 Any notice given under this Agreement by either party to the other must be in writing and delivered to the address shown on the front page of this Agreement, or to any other address notified in writing by one party to the other for the purpose of receiving notices, by:
 - a) personal delivery; or
 - b) courier; or
 - c) registered mail; or
 - d) fax;and will be deemed to have been given in the case of:
 - a) mailing three (3) working days after the date of mailing; or
 - b) fax, where a written acknowledgement is received by the sender.

4. Terms of Supply

- 4.1 The programs comprising the Software will be supplied in object code.
- 4.2 Comtec will supply one copy of any documentation forming part of the Software.
- 4.3 Comtec warrants that it has good title and/or valid legal agreements to License the Software to the Customer.
- 4.4 The operation of and facilities provided in the Software will be in accordance with the documentation supplied with the Software under this Agreement. Together with 4.3, this constitutes the only warranty, provided by Comtec in respect of the Software and the obligations and liabilities are in lieu of, and the Customer waives, all implied guarantees and warranties, including, without limitation, any warranty of merchantable quality or fitness for a particular purpose.

5. Substitution and Modification

Comtec reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software provided that such improvements, substitutions, modifications or enhancements will not materially affect the performance of the Software to the detriment of the Customer.

6. License to Use the Software

- 6.1 Under this Agreement the Customer is granted a License to use the Software;
 - a) following payment of the initial License fee and following the due date for payment of each and every annual License fee; and
 - b) for its own internal purposes; and
 - c) on the Licenses Computer System; and
- 6.2 The License is additionally limited by the License restriction shown on the front of this Agreement.
- 6.3 The License does not permit the Customer to de-compile the object code or make any use of any source (human readable format) code or to make any modifications to the Software whatsoever. If the Customer intends to make any use of any source code claiming a statutory right, the Customer must give Comtec three (3) months' notice of such intention.
- 6.4 The Customer will not copy or permit the Software to be copied in whole or in part except for the taking of reasonable precautions for data security. All copies made will include all copyright or proprietary notices.
- 6.5 If the Customer relocates the Licensed Computer System within the country of supply, the Software may also be relocated provided that written notice has been given to Comtec.
- 6.6 The Customer warrants that the Software and all its copies will remain under its control and that the Customer will take all reasonable precautions to safeguard the Software against unauthorised use.
- 6.7 If the Customer sells or loses control of the Licensed Computer System it will ensure that all copies of the Software have previously been deleted.
- 6.8 Should the Customer wish to upgrade or change the Licensed Computer System then the Customer must inform Comtec in writing. Comtec will then issue a License for the upgraded or changed Licensed Computer System after receiving payment of any applicable License or administrative fee from the Customer.

- 6.9 The Customer will not sub-License, rent, lease, transfer, sell, charge or assign the Software for money or other considerations or free of charge.

- 6.10 The Customer will, on termination of this License, satisfy Comtec that all the Software has been erased or destroyed and that the Customer has no ability to reproduce or use the Software.

7. Software Maintenance

- 7.1 The Software maintenance service commences from the date of delivery of the Software and will continue for the period of the License.
- 7.2 The Software maintenance service comprises:
 - a) Program fault reporting over the telephone to Comtec's office between the hours for that office of 08:00 to 20:00 Monday to Friday, 08:00 to 18:00 Saturday and 09:30 to 17:00 Sunday and Bank Holidays, excluding Christmas day. Extended support hours can be provided at an additional charge.
 - b) Fault diagnosis and where possible correction, subject to the limitations imposed by contractual restrictions of any third party. Serious faults preventing computer processing will be given priority.
 - c) Where possible, recommendations relevant to the course of action necessary to recover from any faults or failures emanating from the Software.
 - d) Provision of a copy of the latest version of the Software when Comtec releases a new version of the Software. If requested the Customer will provide the appropriate media to enable the copying to be carried out at Comtec's Software Distribution Department. Any shipping charges and Comtec's then current Software distribution charges will be borne by the Customer.
 - e) Provision of a replacement copy of the Software at the Customer's request, at no charge other than the then current Software distribution charges and any shipping charges. Comtec reserves the right to supply replacement Software of a later version than that originally supplied.
- 7.3 Comtec reserves the right to refuse to provide the Software maintenance service at any time without refunding any monies paid to the Customer.
 - a) if any attempt is made, other than by Comtec, to remove any defects or deal with any errors in the Software; or
 - b) if any development, enhancement or variation of the Software is carried out other than by Comtec; or
 - c) where, in the reasonable opinion of Comtec, the Licensed Computer System, has ceased to be capable of running the Software successfully for any reason; or
 - d) if the Customer is not using the latest release of the Software six (6) months after its release to the Customer.

- 7.4 New versions of the Software may require new versions of other related software and may require additional or different computer equipment in order to function. Provisions of such new versions of related software or such computer equipment is not covered by this Agreement.

8. COMTEC Undertakes:

- 8.1 To provide an installation service for the Software. Such activity will be chargeable at Comtec's standard rates.
- 8.2 To provide remedial work, to reconstruct databases or to re-release Software modified as a result of the Software maintenance service. Such activities will incur additional charges at Comtec's standard rates. Any remedial work does not guarantee successful reconstruction of the Customer's data. Comtec does not accept any liability in connection with this service.
- 8.3 To provide in the event that it becomes necessary, the Software maintenance service on the Customer's site. Such work will be chargeable at Comtec's standard rates.
- 8.4 To provide a service to create, archive and restore databases. Such activities will be chargeable at Comtec's standard rates.
- 8.5 To provide a service to train the Customer in the use of the Software. Such training will be chargeable at Comtec's standard rates.
- 8.6 To provide an advice service. Such an advice service will be chargeable at Comtec's standard rates.

9. Customer Undertakes:

- 9.1 To ensure that Customer's staff employed to operate or use the Software have first been trained to the reasonable satisfaction of Comtec having regarded to their respective duties and further to take reasonable account of any opinion of Comtec that an identified member of the customer's staff is incapable or unsuitable for training on or operating or using the Software.
- 9.2 To create an appropriate test environment in order to satisfy itself that the Software meets the needs of its business. It is the sole responsibility of the Customer to determine that the Software is ready for operational use in the Customer's business before it is so used.
- 9.3 To provide data communications, if indicated on the front page of this Agreement, and to maintain a suitable data line and modem to Comtec's specification readily available to be connected to the Customer's computer system on which the Software is operating in order that Comtec may provide the Customer with a rapid response to questions regarding functionality and performance of the Software.
- 9.4 To allow Comtec to study its information and data for the purpose of rectifying problems with any data used with the Software.

- 9.5 To ensure that the Software operating system and compiler and any other software with which the Software will be used is either the property of the Customer or is legally licensed to the Customer and the Customer will indemnify Comtec in respect of any claims by third parties and all related costs, expenses or damages in the event of any actual or alleged violations of third party proprietary rights or software Licenses which result in any claims against Comtec.
- 9.6 That during the period of this Agreement and for six (6) months after its conclusion, the Customer will not directly or indirectly solicit for employment any of the staff of Comtec who have at any time been engaged in the pursuance of this Agreement without the prior written consent of Comtec. Furthermore should the Customer breach this condition, the Customer expressly agrees to pay Comtec as a recruitment fee a sum equal to twelve (12) months' gross salary offered by the Customer to the relevant member of staff.
- 10. Prices**
- 10.1 Prices for the Software shown on the attached contract constitute the annual License fee.
- a) This contract is for a minimum twelve (12) month period.
- b) No cancellation of service can be given for the first twelve (12) month period.
- c) Cancellation of the service must be issued in writing, not prior to the first twelve (12) month period and with a minimum three (3) months notice.
- d) All products and services are invoiced in advance.
- 10.2 Prices for the annual License fee of the Software are as shown on the customers signed contract. Comtec will:
- a) Give at least a period of three (3) months' written notice of an increase.
- b) Restrict any increase so that it does not exceed Comtec's salary inflation.
- c) Reserve the right to apply inflationary increases inline with UK retail price index (RPI).
- 10.3 Prices for Software installation, remedial work, on-site maintenance work, the creation and archiving of databases, upgrade software Licenses, training and advice will be at Comtec's standard rates.
- 10.4 Prices for expenses will be at Comtec's standard rates for each expense.
- 10.5 All prices are exclusive of VAT and all other taxes and duties. All such taxes and duties which Comtec will have to pay or collect in connection with this Agreement will be paid by the Customer.
- 11. Expenses**
- 11.1 All prices are exclusive of expenses reasonably incurred in the performance of this Agreement.
- 11.2 Expenses will include travel to Customer's sites when applicable, magnetic media, data connection charges and transmission charges, computer paper, couriers, freight and any other expense reasonably incurred by Comtec under this Agreement.
- 12. Payments**
- 12.1 The initial License fees are due on the terms shown on the front page of this Agreement.
- 12.2 Expenses and all other charges will be invoiced monthly in arrears. Such invoices will be payable net fourteen (14) days from date of invoice.
- 12.3 All payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment at the rate of two per cent (2%) above Barclays Bank base rate from the date payable until payment is received. Such interest is due for payment immediately on invoice.
- 12.4 Notwithstanding the above provisions for late payment, in such event Comtec may, at its option and without prejudice to any other remedy at any time after payment has become due, terminate or temporarily suspend this Agreement.
- 12.5 If Comtec becomes entitled to terminate this Agreement for any reason, any sums then due to Comtec will immediately be payable in full.
- 13. Title**
- 13.1 No title or rights of ownership, copyright or other intellectual property in the Software have been, are, or will be transferred to the Customer.
- 13.2 Copyright subsist in the Software (whether printed or stored magnetically) and the Customer will not delete any proprietary marks on the Software.
- 14. Patents, Copyright and Registered Design**
- 14.1 If notified promptly of any claim or action brought against the Customer on the issue of infringement by the Software of any patent, copyright or registered design in the country of supply, Comtec will defend or cause to be defended such action at its expense and will pay any costs or damages awarded against the Customer in such action, provided that Comtec has sole control of the defence and all negotiations for settlement.
- 14.2 In the event that a final injunction is obtained against the Customer's use of the Software by reason of such infringement, Comtec will, at its option and its expense, either procure for the Customer the right to continue using the Software or the affected parts of it, or replace or modify the Software or any part of it so that it becomes non-infringing, or if the above is not reasonably feasible, accept return of the Software, and refund an amount equal to the sum paid by the Customer for the Software, subject to straight-line depreciation over a four (4) year period.
- 14.3 Comtec will have no liability for:
- a) any infringement arising from the combination of the Software with any other software products not supplied by Comtec; or
- b) the modification of the Software or any part of it unless the modification was made or approved by Comtec.
- 14.4 COMTEC WILL NOT BE LIABLE IN ANY CIRCUMSTANCES FOR ANY COSTS OR EXPENSES INCURRED BY THE CUSTOMER WITHOUT COMTEC'S WRITTEN AUTHORISATION AND THIS CLAUSE 14 STATES THE ENTIRE REMEDY OF THE CUSTOMER FOR ANY PATENT, COPYRIGHT OR REGISTERED DESIGN INFRINGEMENT BY THE SOFTWARE.
- 15. Integrity of Data**
- 15.1 The parties agree that the Customer is the best judge of the value and importance of the data held on the computer system and will be solely responsible for:
- a) instituting and operating all necessary backup procedures to ensure that data integrity can be maintained in the event of loss of data for any reason.
- b) taking out any insurance policy or other financial cover for loss or damage which may arise from loss of data for any reason.
- 15.2 The Customer will indemnify Comtec in respect of any third party claims made against Comtec as a result of loss of data from the computer system for any reason.
- 16. Confidential Information**
- 16.1 All information and data relating to the Software licensed hereunder and the provision of the maintenance service, which is made available to the Customer in the performance of this Agreement, will be treated as confidential and the Customer undertakes to treat such confidential information with the same care as it would reasonably treat its own confidential information.
- 16.2 The Customer agrees to use all reasonable endeavours to ensure that Comtec's confidential information is not copied or disclosed to any third party in any manner whatsoever except upon the prior written authority of Comtec provided that such confidential information is not already in the public domain and does not subsequently become publicly available by default of the Customer.
- 16.3 Upon expiration or termination of this Agreement the Customer will return to Comtec all confidential information not previously returned.
- 16.4 The requirement for confidentiality will survive termination of this Agreement by three (3) years.
- 17. Independent Contractor**
- It is understood that each party is acting as an independent contractor and not in any way as an agent or representative of the other. Neither party has authority to bind or speak for the other party except as may be specified in writing from time to time.
- 18. Indemnities and Limitations of Liability**
- 18.1 Comtec will indemnify the Customer for direct physical injury or death to the extent that it is shown to have been caused by material defects in any of the Software or by the negligence of Comtec or its employees in connection with the performance of this Agreement.
- 18.2 Comtec will indemnify the Customer for direct damage to property to the extent that it is shown to have been caused by material defects in any of the Software or by the negligence of Comtec or its employees in connection with the performance of this Agreement. Comtec's total liability under this sub-clause will be limited to £500,000 (five hundred thousand pounds sterling) for any one event or series of connected events.
- 18.3 Any contractual liabilities of Comtec to the Customer under this Agreement, including all related costs, fees and expenses, will not under any circumstances cumulatively exceed the total prices paid and payable by the Customer under this Agreement.
- 18.4 Except as stated in this Agreement Comtec disclaims all liability to the Customer in connection with Comtec's performance under this Agreement and in no event will COMTEC be liable to the Customer for special, indirect or consequential damages including but not limited to loss of profits or arising from loss of data, loss of use or loss of opportunity.
- 18.5 The Customer will indemnify and defend Comtec and its employees in respect of any claims by third parties, which are occasioned by or arise from any Comtec performance pursuant to the instruction of the Customer or its authorised representative.
- 19. Termination**
- 19.1 Either party will immediately become entitled (without prejudice to its other rights in law or equity or under this Agreement) to terminate this Agreement forthwith by notice in writing to the other party if the other party;
- a) makes default or commits any material breach of its obligations under this Agreement and, upon receiving written notification from the other of such default or breach, fails to remedy the default or breach within thirty (30) days (if capable of remedy); or
- b) is involved in any legal proceedings concerning its solvency, or commences liquidation (except for purposes of reconstruction) or ceases or threatens to cease trading, or if serious doubt arises as to its solvency.
- 19.2 Comtec will be entitled to give thirty (30) days' notice of termination if any License fee payable under this Agreement becomes overdue for payment and the License will terminate upon expiry of the thirty (30) days unless the License fee has been paid before such expiry.
- 20. Force Majeure**
- Neither party will be liable for total or partial failure to perform its obligations in this Agreement during any period in which its performance is prevented or hindered by circumstances beyond its reasonable control.
- 21. Jurisdiction**
- This Agreement will be governed and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.