



**WAVEACCESS LIMITED**  
**END-USER SOFTWARE LICENCE AGREEMENT**

**WaveAccess LLC**, whose registered office is at 2245 North Green Valley Parkway, Suite 298, Henderson NV 89014, USA, ("**WaveAccess**") is the sole and exclusive owner of the software accompanying this Agreement (the "**Software**"). The Software has been purchased by the person or entity to whom this Agreement applies ("**Licensee**") pursuant to an order or agreement agreed or accepted by WaveAccess or its designated reseller ("**Order Form**").

**1. Grant of Licence**

1.1 WaveAccess (which expression shall include its subsidiaries, agents, and assigns) hereby grants and the Licensee hereby accepts a perpetual, non-exclusive, nontransferable licence:

- (i) to Use (as hereinafter defined) the Software;
- (ii) for the number of authorised users, as specified in the Order Form; and
- (iii) for the period of time specified in the Order Form; and upon the terms and subject to the conditions contained herein. For the purposes of this Agreement upgraded versions of the Software shall mean enhancements, improvements or modifications to the Software.

**2. Use of Software**

2.1 For the purposes of this Agreement, "**Use**" shall mean and include:

- (a) utilization of the Software by copying, transmitting or loading the same into the temporary memory (RAM) or installing into the permanent memory (e.g. hard disk, CD ROM or other storage device) of the designated system for the processing of the system instructions or statements contained in such Software;
- (b) copying the Software which is in machine-readable form for Use by the Licensee on the designated system for the purposes only of understanding the contents of such machine-readable material and for back-up provided that no more than two (2) copies will be in existence under any licence granted by this Agreement at any one time without prior written consent from WaveAccess or as otherwise permitted by the applicable law;
- (c) merging the whole or any part of the Software in machine-readable form into another software program;
- (d) storing the whole or any part of the Software on the designated system or other storage unit or disk;
- (e) utilizing (but not copying) the instructional and/or operational manuals relating to the Software.

2.2 For the purposes of this Agreement "authorised users" shall mean the number of users of the Licensee specified in the Order Form. Additional authorised users may be added by signing a separate agreement, and use of the Software by any such additional authorised users shall be subject to the terms of this Agreement as amended by such separate agreement.

**3. Licence Fee**

3.1 The Licence Fee specified in the Order Form is payable within thirty (30) days of issue of the appropriate invoice, unless otherwise stated in the Order Form or agreed in writing by WaveAccess and may be subject to annual review (other than a onetime Licence Fee) upon fourteen (14) days' prior written notice from WaveAccess. Such reviewed fee shall take effect on expiry of the period of notice unless the Licensee has notified WaveAccess within such period that it wishes to exercise its right to terminate this Agreement.

3.2 Licensees who are up-to-date with their maintenance & support fees in respect of the Software will be covered for all bug fixes within existing releases, in-version enhancements and



version upgrades. Licensees who are not up-to-date with their maintenance & support fees will be subject to an additional charge by WaveAccess upon issue to the Licensee of upgraded versions of the Software. Such additional charge for upgrades shall become payable within thirty (30) days of issue unless the Licensee has returned the upgrade unused to WaveAccess within such period.

#### **4. Other services**

WaveAccess shall charge for other software services requested by the Licensee which are not specifically covered by this Agreement.

#### **5. Licensee's undertakings**

5.1 The Licensee undertakes not to perform any of the acts referred to in this clause 5 except to the extent and only to the extent permitted by the applicable law to the Licensee as a lawful user (*i.e.* a party with an express right to use) of the Software and only then for the specific limited purposes stated in such applicable law or hereunder.

5.2 The Licensee undertakes:

(a) not to copy the Software (other than for normal system operation and as specified in clause 2 above) nor otherwise reproduce the same provided that the Licensee may copy the Software for back-up purposes or incidentally, in the course of converting the Software in accordance with clause 5.2(c) below;

(b) not to translate, adapt, vary, or modify the Software;

(c) not to sell, licence, sub-licence or use the Software for commercial licensing, sub-licensing, dealing, time-sharing, rental, outsourcing, or service bureau use; and

(d) not to disassemble, decompile or reverse engineer the Software provided however that in the case of decompilation, the Licensee may incidentally decompile the Software only if it is essential so to do in order to achieve interoperability of the Software with another software program ("**Permitted Purpose**") and provided the information obtained by the Licensee during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party to whom it is not necessary to disclose or communicate such information without WaveAccess's prior written consent and is not used to create any software which is substantially similar to the expression of the Software nor used in any manner which would be restricted by copyright.

5.3 In addition, the Licensee undertakes:

(a) to maintain accurate and up-to-date records of the number and location of all copies of the Software;

(b) to supervise and control Use of the Software in accordance with the terms of this Agreement;

(c) to reproduce and include the copyright notice of WaveAccess on all and any copies, whether in whole or in part, in any form, including partial copies or modifications of the Software made herein;

(d) not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than the Licensee's employees without prior written consent from WaveAccess; and

(e) within fourteen (14) days after the date of termination of this Agreement pursuant to clause 11.1 below, to return or destroy (as WaveAccess shall instruct) the Software and all updates, upgrades or copies, in whole and in part, in any form including partial copies or modifications of the Software received from WaveAccess or made in connection with this Agreement and all documentation relating thereto and to furnish WaveAccess with a certificate, certifying that the same has been done, unless the Licensee has obtained WaveAccess's prior written authorization to retain one copy for archive purposes only or for such other purpose which WaveAccess may authorize together with any conditions WaveAccess may impose in respect of such continued retention.



## **6. WaveAccess's liability**

6.1 IN NO EVENT SHALL WAVEACCESS, ITS SUPPLIERS, OR THE LICENSEE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT THAT IN THE EVENT THE LICENSEE MAKES UNAUTHORIZED COPIES OF THE PROGRAMS, WAVEACCESS SHALL BE ENTITLED TO RECOVER THE FULL AMOUNT OF ANY LICENCE FEES THAT WOULD RELATE TO SUCH COPIES. EXCEPT FOR WAVEACCESS'S LIABILITY UNDER CLAUSE 9, THE AGGREGATE AND CUMULATIVE LIABILITY OF WAVEACCESS AND ITS SUPPLIERS FOR DIRECT AND PROVEN DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY THE LICENSEE UNDER OR PURSUANT TO THIS AGREEMENT OR THE ORDER FORM, AND IF SUCH DAMAGES RELATE TO PARTICULAR SOFTWARE OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE RELEVANT SOFTWARE OR SERVICES GIVING RISE TO THE LIABILITY. EXCEPT FOR ANY BREACH OF ITS OBLIGATIONS UNDER CLAUSES 2.1, 3, 5 AND 10, THE LICENSEE'S AGGREGATE AND CUMULATIVE LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY THE LICENSEE UNDER THIS AGREEMENT OR THE ORDER FORM.

6.2 Notwithstanding the generality of clause 6.1 above, WaveAccess expressly excludes liability for any indirect, special, incidental or consequential loss or damage which may arise in respect of the Software, its Use or in respect of equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.

6.3 In the event that any exclusion contained in this Agreement shall be held to be invalid for any reason and WaveAccess becomes liable for loss or damage that may lawfully be limited, such liability shall be limited to the annual or one-time Licence fee as the case may be.

6.4 WaveAccess does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of WaveAccess, its employees, agents or authorized representatives.

## **7. Copyright, Patents, Trade Marks and Other Intellectual Property Rights**

7.1 The Licensee acknowledges that any and all of the copyright, trade marks, trade names, patents and other intellectual property rights subsisting in or used in connection with the Software including all documentation and manuals relating thereto, are and shall remain the sole property of WaveAccess. The Licensee shall not during or at any time after the expiry or termination of this Agreement in any way question or dispute the ownership by WaveAccess thereof.

7.2 In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Licensee acknowledges that the same shall be the property of WaveAccess unless otherwise agreed in writing by WaveAccess.

7.3 The Licensee shall indemnify WaveAccess fully against all liabilities, costs and expenses which WaveAccess may incur as a result of work done in accordance with the Licensee's specifications involving infringement of any patent or other proprietary right.

## **8. Warranty**

8.1 The Licensee acknowledges that software in general is not error-free and agrees that the existence of such errors shall not constitute a breach of this Agreement.

8.2 In the event that the Licensee discovers a material error which substantially affects the Licensee's use of the same and notifies WaveAccess of the error within 90 days from the date of this Agreement (the "**warranty period**") WaveAccess shall at its sole option either refund the licence fee or use all reasonable endeavours to correct by patch or new release (at its option) that part of the Software which does not so comply PROVIDED THAT such non-compliance has not been caused by any modification, variation or addition to the Software not performed by WaveAccess or caused by its incorrect use, abuse or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible.



8.3 To the extent permitted by the applicable law, WaveAccess disclaims all other warranties with respect to the Software, either express or implied, including but not limited to any implied warranties of merchantability or fitness for any particular purpose.

8.4 Although WaveAccess does not warrant that the Software supplied hereunder shall be free from all known viruses it has used commercially reasonable efforts to check for the most commonly known viruses prior to issue of the Software.

## **9. Indemnity**

9.1 WaveAccess warrants to the Licensee that it owns the intellectual property rights to the Software and agrees to indemnify and save harmless and defend at its own expense the Licensee from and against any and all claims of infringement of copyright, patents, trade marks, industrial designs, or other intellectual property rights affecting the Software PROVIDED THAT (i) the Licensee shall not have done, permitted or suffered to be done anything which may have been or become an infringement of any rights in any copyright, patent, trade mark or other rights as hereinbefore provided, and (ii) the Licensee shall have exercised a reasonable standard of care in protecting the same; failing which, the Licensee shall indemnify WaveAccess against all actions, proceedings, costs, claims and expenses incurred in respect thereof.

9.2 The Licensee undertakes that WaveAccess shall be given prompt notice of any claim specified in 9.1 above that is made against the Licensee and WaveAccess shall have the right to defend any such claims and make settlements thereof at its own discretion and the Licensee shall give such assistance as WaveAccess may reasonably require to settle or oppose any such claims.

9.3 In the event that any such infringement occurs or may occur, WaveAccess may at its sole option and expense:

- (a) procure for the Licensee the right to continue using the Software or infringing part thereof; or
- (b) modify or amend the Software or infringing part thereof so that the same becomes non-infringing; or
- (c) replace the Software or infringing part thereof by other software of similar capability; or
- (d) repay to the Licensee the licence fee relating to the whole or the infringing part of the Software.

## **10. Confidential Information**

10.1 All information, data, drawings, specifications, documentation, software listings, source or object code which WaveAccess may have imparted and may from time to time impart to the Licensee relating to the Software (other than the ideas and principles which underlie the Software) is proprietary and confidential. The Licensee hereby agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement, disclose the same, whether directly or indirectly, to any third party without WaveAccess's prior written consent.

10.2 Subject only to the specific, limited provisions of clause 10.1 above, the Licensee further agrees that it shall not itself or through any subsidiary, agent or third party use such confidential information to copy, reproduce, translate, adapt, vary, modify, decompile, disassemble or reverse engineer the Software nor shall the Licensee sell, lease, license, sub-license or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements thereof or have any software or other program written or developed for itself based on any confidential information supplied to it by WaveAccess.

10.3 The foregoing provisions shall not prevent the disclosure or use by the Licensee of any information which is or hereafter, through no fault of the Licensee, becomes public knowledge or to the extent permitted by law.

## **11. Termination**

11.1 In addition to provisions for termination as herein provided, WaveAccess may by notice in



writing to the Licensee terminate this Agreement if any of the following events shall occur, viz.:

(a) if the Licensee is in breach of any term, condition or provision of this Agreement or required by the applicable law and fails to remedy such breach (if capable of remedy) within 30 days of having received written notice of such breach from WaveAccess;

(b) if the Licensee, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation); shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts.

11.2 Upon termination, the Licensee shall comply with the undertaking specified in clause 5.3(e) above and shall pay to WaveAccess all costs and expenses, including legal and other fees incurred and all arrears of fees, charges, interest or other payments arising in respect of the Software, this Agreement or otherwise.

11.3 Termination, howsoever or whenever occasioned shall be subject to any rights and remedies WaveAccess may have under this Agreement or in law.

## **12. General**

12.1 WaveAccess shall be under no liability to the Licensee in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of WaveAccess which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Software, materials, breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

12.2 The Licensee shall not assign or otherwise transfer all or part of the Software or this Agreement without the prior written consent of WaveAccess.

12.3 Failure or neglect by WaveAccess to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of WaveAccess's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice WaveAccess's rights to take subsequent action.

12.4 The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

12.5 In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

12.6 Any notice to be given by either party to the other may be sent by recorded delivery to the address of the other party as appearing herein or such other address as such party may from time to time have communicated to the other in writing and if so sent shall be deemed to be served 5 days following the date of posting.

12.7 This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties hereto prior to or simultaneously with this Agreement and constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both parties.



12.8 The parties hereby agree that this Agreement shall be construed in accordance with US law and the parties submit to the non-exclusive jurisdiction of the US courts. For end-users with UK business addresses then UK Law and UK courts will prevail.