

# Computer Software Products

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### 1. DEFINITIONS

- (i) 'Documentation' shall mean the manual or manuals and other documents associated with the Program supplied by the Licensor to the Licensee.
- (ii) 'Equipment' shall mean the computer or computers described in Appendix 1 and situated at the location or locations identified in Appendix 1.
- (iii) 'Euro Compliant' means in relation to the Program that it will be able to:-
  - (a) process currency data inputs in the Euro currency; and
  - (b) convert currencies of participating Member States (which adopt the new Euro) from and into Euros at the conversion rates set by the European Council and in accordance with any relevant mandatory requirements which are passed by the European Council from time to time.
- (iv) 'Expert Determination' is defined in Clause 27
- (v) 'Licence' shall mean this document with its appendices.
- (vi) 'Licensee' shall be as defined in Appendix 1.
- (vii) 'Licensor' shall be as defined in Appendix 1 and shall include the Licensor's legal personal representatives, successors and assigns.

- (viii) 'Program' shall mean the computer program or programs specified in Appendix 1 in object code form only and shall include any replacements, modifications or additions supplied under this Licence.
- (ix) 'Virus' means any code which is designed to harm, disrupt or otherwise impede the operation of the Program, or any other associated hardware, software, firmware, computer system or network, or would disable the Program or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral, or that would permit the Licensor or any other person to access the Program to cause such impairment, or which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations, including without limitation, computer programs known as worms or Trojan horses.

## **2. LICENCE**

The Licensor hereby grants to the Licensee a non-exclusive licence to use the Program on the Equipment on the terms and conditions contained herein and for the period specified in Appendix 1.

## **3. CHARGES**

The Licensee shall pay the licence and maintenance charges to the Licensor which are set out in the Appendices. The Licensor shall have the right to vary periodic licence charges or maintenance charges if any, by giving to the Licensee not less than 3 months' written notice in advance of such variation effective at the end of the initial period specified in the Appendices or at any time thereafter. Such variation shall not result in the charges exceeding the Licensor's then current standard scale of charges, or in the absence of a standard scale, such charges as are reasonable in the circumstances.

## **4. TERMS OF PAYMENT**

- 4.1 Following acceptance under Clause 6, the Licensor shall be entitled to claim payment of those charges specified in the Appendices as due on acceptance. Subsequent charges shall become due for payment at the intervals specified in the Appendices.
- 4.2 All charges due under the Licence shall be paid by the Licensee either within the period specified in the Appendices from receipt of a correct invoice from the Licensor or by the due date whichever is the later.
- 4.3 The Licensee reserves the right to withhold payment against any invoice which is not submitted in accordance with the Licence and shall forthwith notify to the Licensor in writing the reasons for withholding payment.
- 4.4 All sums payable under the Licence shall be exclusive of value added tax, if any, which shall be paid by the Licensee to the Licensor in addition, with the charges as provided above.

## **5. DELIVERY**

The Licensor shall deliver a copy of the Program, in machine readable form, on the media to the location and, if applicable, install the Program by the date, all as specified in Appendix 1. The Documentation, if any, shall also be delivered to the location or transmitted by email where so specified in Appendix 1 and by the date specified in Appendix 1.

## **6. ACCEPTANCE**

- 6.1 Where no acceptance tests are specified in Appendix 1, acceptance of the Program shall be deemed to take place on delivery or delivery and installation of the Program and Documentation in accordance with Clause 5.
- 6.2 Where acceptance tests are specified in Appendix 1, acceptance of the Program shall be deemed to take place when the Program has passed such tests on the Equipment or other equipment as provided under Sub-Clauses 7.2 and 7.3.
- 6.3 In the event that acceptance tests are delayed due to the acts or omissions of the Licensee, then the Licensor shall give 14 days' notice of its requirement that the tests shall be carried out. If such tests are not then carried out within a further period of 14 days due to the continuing acts or omissions of the Licensee, the Program shall then be deemed to have been accepted on the expiry of such further period.
- 6.4 If the Licensee uses the Program before acceptance under this Clause, except for testing purposes, then the Program shall be deemed to have been accepted on the date of first use.

- 6.5 Where the Program fails the acceptance tests, it shall be retested within 30 days and where it fails again the Licensee shall be entitled to reject the Program, whereupon the Licensor shall refund all charges paid under this Agreement at such date, without prejudice to the Licensee's other rights and remedies under this Agreement.

## **7. USE**

- 7.1 The Program may only be used as specified in this Agreement and in Appendix 1.
- 7.2 The Licensee may use the Program only on the Equipment. If the Program cannot be used because the Equipment or any part thereof is temporarily inoperable, then the Licence will be deemed to apply, without any additional payment to the Licensor but at the Licensee's risk and expense, to the use of the Program on any other compatible equipment until the Equipment becomes operable.
- 7.3 The Licensee may not transfer the Program permanently to another location or to other equipment without the consent in writing of the Licensor which shall not be unreasonably withheld.
- 7.4 The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of the Program. The Licensee shall permit the Licensor, at all reasonable times, and at the Licensor's expense, to verify that the use of the Program is within the terms of the Licence.

## **8. DOCUMENTATION**

- 8.1 The Licensor shall supply to the Licensee those items of the Documentation specified in Appendix 1.
- 8.2 The Licensee may not make copies of the Documentation without the Licensor's prior written agreement. At the request of the Licensee the Licensor shall provide such additional copies of the Documentation as the Licensee may reasonably require for the normal operation of its business, at the Licensor's then current standard scale of charges.

## **9. PROGRAM COPYING**

The Licensee shall not make any copies of the Program except insofar as copying is transient and automatic in normal use, except that one copy can be made where necessary for security reasons. This Licence applies to such copies as it applies to the Program.

## **10. PERFORMANCE**

- 10.1 The Licensor warrants that:-
- (a) provided it is operated in accordance with the Licensor's instructions, the Program will perform in accordance with the Licensor's published specification and the Documentation existing at the date of delivery
  - (b) it has the right to enter into this Licence and to grant the licensee the licence to use the Program and Documentation as provided in this Licence
  - (c) the Program is Euro Compliant
  - (d) the Program does not contain any Viruses
  - (e) the media on which the Program is provided will be free from defects in workmanship and materials during normal use
  - (f) the Documentation will describe in detail and in a completely self-contained manner how the Licensee may access and use the Program such that any reader of the Documentation can access, use and maintain all of the functionality of the Program without the need for further instruction
  - (g) be warranted as provided in Appendix 1.
- 10.2 In the event of dispute as to the matters in Clause 10.1 above the matter shall be referred to Expert Determination.
- 10.3 The Licensor does not guarantee that the Program is free of minor errors not materially affecting such performance. The warranties in clause 10.1 are in lieu of any condition or warranty express or implied by law as to the quality or fitness for any particular purpose of the Program.

## **11. MAINTENANCE AND SUPPORT**

- 11.1 A maintenance service, if required, shall be provided as specified in Appendix 2 from the date of acceptance.
- 11.2 Where the provision of error correction is included in the maintenance service and charge specified in Appendix 2, it shall be conditional upon the Licensee having
- (i) provided adequate information in respect of any malfunction in the Program
  - (ii) incorporated all amendments issued by the Licensor, and

- (iii) not otherwise changed the Program.
- 11.3 Where a new issue or update of the Program and/or Documentation or part thereof is released by the Licensor it shall be installed (if applicable) by the Licensor under the maintenance service and accepted and used by the Licensee except where the Licensee elects to retain and use the superseded issue of the Program, in which case the Licensor shall use its best endeavours to provide a maintenance service on terms to be agreed.

## **12. MODIFYING**

The Licensee may not, without the prior written consent of the Licensor, modify the Program or incorporate the Program in programs not provided by the Licensor.

## **13. OWNERSHIP**

- 13.1 Title, copyright and all other proprietary rights in the Program and the Documentation and all parts and copies thereof shall remain vested in the Licensor. The Licensee shall have copyright and other intellectual property rights in any modifications or additions made to the Program, if any of the foregoing are produced by the Licensee or written on a bespoke basis for the Licensee hereunder by the Licensor, which shall vest in the Licensee on their creation. The Licensor shall execute all documents necessary to effect such ownership.
- 13.2 The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of trade marks owned by the Licensor and other indications of the property and rights of the Licensor.

## **14. ASSIGNMENT**

Neither party shall assign any of its obligations under the Licence without the prior written consent of the other party, save that the Licensee may assign this Agreement as part of a corporate reconstruction or amalgamation or disposal of the whole or a substantial part of its business or assets to a third party

## **15. COPYRIGHT INDEMNITY**

- 15.1 The Licensor shall fully indemnify the Licensee against all damages (excluding consequential damages), costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, design or registered design or other intellectual property right or right of confidence, in consequence of the authorised use or possession of the Program or Documentation supplied by the Licensor under the Licence, subject to the following:-
- (i) the Licensee shall promptly notify the Licensor in writing of any alleged infringement of which it has notice
  - (ii) the Licensee must make no admissions without the Licensor's prior written consent
  - (iii) the Licensee, at the Licensor's request and expense shall allow the Licensor to conduct any negotiations or litigation and/or settle any claim. The Licensee shall give the Licensor all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for the Licensor's account.
- 15.2 If at any time an allegation of infringement of rights is made in respect of the Program, or if in the Licensor's reasonable opinion such an allegation is likely to be made, the Licensor may at its own expense modify or replace the Program so as to avoid the infringement, without detracting from overall performance, the Licensor making good to the Licensee any loss of use during modification or replacement.

## **16. INDEMNITY AND INSURANCE**

- 16.1 The Licensor shall indemnify and keep indemnified the Licensee, against injury (including death) to any persons or loss of or damage to any property (including the Program) which may arise out of the act, default or negligence of the Licensor, its employees or agents in consequence of the Licensor's obligations under the Licence and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensor shall not be liable for nor be required to indemnify the Licensee against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensee its employees or contractors (not being the Licensor or employed by the Licensor).

- 16.2 The Licensee shall indemnify and keep indemnified the Licensor against injury (including death) to any persons or loss of or damage to any property (including the Program) which may arise out of the act, default or negligence of the Licensee, its employees or agents in consequence of the Licensee's obligations under the Licence and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensee shall not be liable for nor be required to indemnify the Licensor against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensor its employees or contractors.
- 16.3 Without thereby limiting their responsibilities under Sub-Clauses 16.1 and 16.2, each party shall insure with a reputable insurance company against all loss of or damage to property and injury to persons (including death) arising out of or in consequence of its obligations under the Licence and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exceptions in Sub-Clause 16.4 and Clause 17.
- 16.4 The liability of the parties under Sub-Clause 16.1 or 16.2, as appropriate, shall exclude damage or injury (other than injury including death resulting from negligence) consequent upon design, formula, specification or advice.
- 16.5 Except in respect of liability for death or personal injury due to negligence for which no limit applies, the liability of the parties under Sub-Clause 16.1 or 16.2 as appropriate shall not exceed the sums specified in Appendix 1 in respect of any event or series of connected events.

## **17. CONSEQUENTIAL LOSS**

Save as expressly stated elsewhere in the Licence and except as regards liability for death or personal injury caused by its negligence, neither party shall be liable to the other for consequential loss or damage, loss of revenue, opportunity or contract or goodwill.

## **18. TERMINATION**

- 18.1 The Licensee may terminate the Licence by giving three months' prior written notice to the Licensor to take effect at the end of the initial period specified in Appendix 1 or such extension of this period as may be agreed or, if no initial period is stated, by three months' prior written notice to the Licensor.
- 18.2 The Licensor may not terminate the Licence except in the circumstances described in Sub-Clauses 18.3 and 18.4.
- 18.3 The Licence may be terminated forthwith by either party on written notice if the other party is in material breach of the terms of the Licence and, in the event of a breach capable of being remedied, fails to remedy the breach within 14 days of receipt of notice thereof in writing.
- 18.4 Either party may terminate the Licence forthwith on written notice if the other party shall become insolvent or bankrupt or make an arrangement with its creditors or go into liquidation.
- 18.5 Termination of the Licence shall not prejudice any rights of either party which have arisen on or before the date of termination.
- 18.6 Within seven days following the date of termination the Licensee shall at the option of the Licensor return or destroy all copies, forms and parts of the Program and Documentation and shall certify to the Licensor in writing that this has been done.
- 18.7 The maintenance service specified in Appendix 2 may be terminated by the Licensee if the Licensor is in significant breach of its obligations under Clause 11 and fails to remedy the breach within 14 days of receipt of notice in writing thereof or such longer period as may be reasonable in the circumstances. The Licence will continue. In the event that the Licensee can demonstrate that such breach has involved it in additional costs then it shall have the right to recover such costs from the Licensor.

## **19. SOURCE CODING AND ESCROW**

- 19.1 The Licensor may, at the request of the Licensee and on terms to be agreed, provide to the Licensee a copy of the source coding of the Program and updates and fixes thereof as soon as they are released together with all necessary associated documentation.
- 19.2 Notwithstanding the provisions of Sub-Clause 19.1, if the Licensee terminates the maintenance service under the provisions of Sub-Clause 18.7, then the Licensor shall provide to the Licensee at no additional charge a copy of the source coding of the Program together with all necessary associated documentation.
- 19.3 In the event only that the source coding is provided under the provisions of Sub-Clause 19.2, the Licensee's use of the source coding shall be restricted to the purpose of maintaining the Program by the Licensee or its nominee.

19.4 Where so specified on Appendix 1 the Licensor shall deposit a copy of the source code with a third party escrow agent named on Appendix 1 and the Licensor and Licensee shall execute on the date hereof an escrow agreement with such agent providing for release of the source code in the release events specified in such agreement.

**20. CONFIDENTIALITY**

- 20.1 The Licensee shall keep confidential the Program and the Documentation or any part thereof and shall not disclose the same to any third party without the prior written consent of the Licensor.
- 20.2 The Licensor's consent referred to in Sub-Clause 20.1 shall be given to enable the Licensee to disclose (under conditions of confidentiality satisfactory to the Licensor) the Program and/or the Documentation or any part thereof to a third party for the performance of services for the Licensee.
- 20.3 The Licensor and Licensee shall keep confidential the Licence and all other information of the other party designated as 'confidential' obtained under or in connection with the Licence and shall not divulge the same to any third party without the prior written consent of the other party.
- 20.4 The provisions of this Clause shall not apply to:-
- (i) any information in the public domain otherwise than by breach of this Licence.
  - (ii) information in the possession of the receiving party thereof before divulgence as aforesaid.
  - (iii) information obtained from a third party who is free to divulge the same.
- 20.5 The Licensor and the Licensee shall divulge confidential information only to those employees who are directly involved in the Licence or use of the Program and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.
- 20.6 The obligations of both parties as to disclosure and confidentiality shall come into effect on the signing of the Licence and shall continue in force notwithstanding the termination of the Licence.

**21. FORCE MAJEURE**

Neither party shall be liable for failure to perform its obligations under the Licence if such failure results from circumstances beyond the party's reasonable control.

**22. WAIVER**

Any failure by the Licensee to insist at any time upon the performance of any of the terms, provisions or undertakings of the Licensor contained in the Licence or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the Licensee's rights to require the future performance of any such term, provision or undertaking but the obligation of the Licensor with regard to the same shall continue in full force and effect

**23. TRAINING**

The Licensor shall provide instruction in the use of the Program for the Licensee's personnel as specified in Appendix 1. Unless otherwise specified no charge shall be made for such instruction but the Licensee shall be responsible for paying any travel or living expenses.

**24. PUBLICITY**

The Licensor shall not, without the prior written consent of the Licensee, advertise or publicly announce that it is providing services to the Licensee or disclose the existence of or terms of this Agreement. Neither party shall use any trade mark of the other party without the express prior written permission of the other party.

**25. NOTICES**

- 25.1 Any notice or other communication which either party is required by the Licence to serve on the other party shall be sufficiently served if sent to the other party at its address as specified in the Licence either (a) by hand; (b) by registered or first class post or recorded delivery or (c) by facsimile or electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.
- 25.2 Notices are deemed to have been served as follows: delivered by hand; on the day when they are actually received, sent by post or recorded delivery; two working days after posting, sent by facsimile or electronic mail; on the day of transmission if transmitted before 16.00 hours on the working day, but otherwise 09.00 hours on the following working day, provided in each case that the required confirmation is sent.

**26. NO THIRD PARTY RIGHTS**

Nothing in this Licence shall confer, nor is it intended to confer, any enforceable right on any third party under the Contracts (Rights of Third Parties) Act 1999 except as otherwise expressly so stated.

**27. EXPERT DETERMINATION**

Where under the Licence any issue is to be determined by an Expert then:

- (a) either party may give 7 days' notice in writing to the other requiring expert determination by an Expert to be agreed between the parties or nominated as referred to below
- (b) within 14 days of the receipt of such notice the parties shall have agreed on the choice of an Expert or in default of agreement the Expert shall be nominated by the President for the time being of the British Computer Society on the application of either party
- (c) the Expert shall act in accordance with such procedure as the Expert may in its sole discretion decide provided that it shall act impartially as between the parties
- (d) the Expert shall reach a decision within 56 days of its appointment, which decision shall except in the case of fraud be final and binding on the parties
- (e) the Expert shall sit as an expert and not as an arbitrator.

The Expert shall not be liable for anything done or omitted to be done in the discharge or purported discharge of its duties as an Expert unless the act or omission was done in bad faith.

**28. DISPUTE RESOLUTION**

28.1 If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Licence, except any matter which under the Licence is to be referred to Expert Determination, either party may give the other 7 days notice to resolve the dispute or difference through Alternative Dispute Resolution (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be litigated, without prejudice to either party's right at any time to obtain immediate interim court relief.

28.2 The parties submit to the exclusive jurisdiction of the English courts in connection with any dispute hereunder.

**29. LAW**

Unless otherwise agreed in writing between the parties, the Contract shall be subject to and construed and interpreted in accordance with English Law.

FOR THE LICENSEE FOR THE LICENSOR

Signature ..... Signature.....

Name ..... Name .....

Title ..... Title .....

Date ..... Date .....

**APPENDIX 1**

**Licence Information  
(excluding Maintenance Service)**

1. Licensee (Clause 1. vi)
2. Licensor (Clause 1.vii)
3. Title or Description of Program(s) (Clause 1.viii)
4. Make, Type and Serial Number of Equipment (Clause 1.ii)
5. Address of Locations(s) (Clauses 1.ii, 5 and 7.3)
6. (a) Date of Delivery (Clause 5)  
(b) Date of Installation (if applicable) (Clause 5)
7. Type of Media (Clause 5)
8. Documentation (Clause 8.1)  

Title	Number of Copies
-------	------------------
9. Period of Licence (Clause 2)  
\*a) In perpetuity  
\*b) A fixed period of .....  
\*c) An initial period of ..... and thereafter for successive periods of ..... unless terminated by either party in accordance with Clause 18.
10. Licence Charges (Clauses 3 & 4)  
\*a) Once only payment £ ..... (FIXED) due on acceptance in accordance with Clause 6.  
\*b) Periodic payments £ ..... per ..... (subject to variation in accordance with Clause 3) the first payment due on acceptance in accordance with Clause 6 and thereafter at intervals of .....  
\*c) Other charges (if applicable) £ .....

11. Terms of Payment Clause 4)  
Period for payment from receipt of a correct invoice .....
12. Training (Clause 23)  
The Licence charges shall include the provision of ..... days training at  
(location) ..... Additional training will be charged at the  
Licensor's charges current at the time.
13. Indemnity and Insurance (Clause 16)  
The liability of either party to the other under Sub-Clauses 16.1 and 16.2 in respect of any one event  
or series of connected events shall not exceed .....
14. Details of, Procedures for and Commencement Date of Acceptance Tests (Clause 6)
15. Special Use - if applicable (Clause 7.1)
16. Special Warranties - if applicable (Clause 10)
17. Escrow - (Clause 19.4)  
\* Delete which does not apply

NB All blanks in this Appendix must be filled in and any appropriate deletions made before the Licence is signed.

## APPENDIX 2

### Maintenance Service

1. Description of Maintenance Services to be Provided (Clause 11)  
(Delete any items not applicable)
  - a) Error Correction
  - b) Updates and New Releases
  - c) Documentation Amendments
  - d) Enhancements
  - e) Other Services (if applicable)
  
2. Maintenance Period (Clause 11)

An initial period of ..... commencing from the date of acceptance of the Program and thereafter for successive periods of ..... unless terminated by either party in accordance with Clause 18.
  
3. Maintenance Charges (Clauses 3 & 4)
  - a) Initial period: £ ..... (FIXED) due on acceptance in accordance with Clause 6.
  - b) subsequent periods: £ ..... (subject to variation in accordance with Clause 3) due on .....

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who asserts her right to be identified as author pursuant to the Copyright, Designs and Patents Act 1988.

Since we are unable to know the circumstances in which these conditions are used, CIPS will not accept any liability for their usage. It is the responsibility of you, the user to decide whether they are suitable for your purpose

and what modifications, if any, are required to make them suitable and for which purpose you might need to take

professional advice.

*CIPS Model L  
Revised 2002*

# Notes for Guidance

## 1. INTRODUCTION

*The object of the publication by the Chartered Institute of Purchasing & Supply of the Model Form of Licence Agreement for the use of Computer Software Products is to provide firms with a contractual basis upon which they can license the use of their software by others, or obtain the use of other parties' software for their own purposes. The associated Model Form of Agreement for the Trial of Computer Software Products allows testing of the software to take place over an agreed period before a decision is made as to whether to enter into a longer term licence. It is an evaluation licence. It is at the back of this document/contract pack after these notes.*

*These documents are generally intended to be used in connection with standard off-the-shelf software packages and are not suitable for use in present form where extensive customisation of a standard package is envisaged or where software is to be developed for a customer's specific requirements. In such cases the model form for Software Development (SD) may be used instead.*

*Model Conditions have been published for the following. This list includes this set:-  
Supply and Installation (Purchase) of Computer Equipment - CIPS Model P  
Servicing (Maintenance) of Computer Equipment - CIPS Model M  
Licence Agreement for the Use of Computer Software Products - CIPS Model L  
Software Development - CIPS Model SD  
Support and Maintenance of Bespoke Software - CIPS Model S(M)  
Hire of Computer Staff - CIPS Model CS  
Facilities Management of Computer Operations - CIPS Model FM  
Procurement of IT Systems - CIPS Model IT*

*Schedule 5 of Model Form IT contains an alternative software licence agreement to be read in conjunction with general conditions at Schedule 12 of Model Form IT, to which reference could also be made.*

*As with any contractual document, it is necessary both to understand the intent of the clauses and apply them in their proper context. For this reason these Notes for Guidance are issued as an aid when using the Model Agreements, but it must be understood that they do not form part of nor legally interpret the Agreement in any way.*

**NB**      *(1) It is essential that the Appendices, where applicable, in the Licence and the blanks at the beginning of the Trial Agreement are completed before the documents are signed.  
(2) Where the Licence is to be used on a computer acquired using the Chartered Institute of Purchasing & Supply Model Conditions, care must be taken that the software clauses therein do not conflict with the contents of the Licence.*

*It is stressed that these are Model Agreements and can be added to or amended to suit particular requirements by agreement between the parties concerned. They aim to achieve a balanced position between licensor and licensee. Licensors and licensees may wish to produce their own standard set drafted more to their own advantage.*

*The Model Form of Licence Agreement for the use of Computer Software Products is designed primarily for the procurement of application packages. Licensors may well require amendments to the Licence where operating system software is involved.*

## 2. COMMENTS ON CLAUSES IN MODEL LICENCE

### Clause 2

*Date of acceptance is defined in Clause 6. Some licensors will want the licence to be non-transferable, but buyers may wish to transfer to companies within their group or when they sell of*

*the assets of their business. The licence is for a duration specified in the appendix. That may often be effectively perpetual where a fully paid up lump sum is paid.*

**Clause 3**

*Licence charges should be either a once-only lump sum or periodic payments (See Appendix 1 - Item 10).*

**Clause 4.2**

*Item 11(a) in Appendix 1 should be completed to reflect the Licensee's normal payment procedures, provided these are acceptable to the Licensor. This sub-clause also avoids payment before the due date in the event of the Licensor issuing invoices prematurely. No right to charge interest is given here as few buyers would want such a provision. However a right to charge statutory interest and collection charges will apply in any event under the Commercial Debts (Interest) Act 1998 and subsequent legislation.*

**Clause 5**

*If responsibility for installation does not rest with the Licensor Item 6(b) of Appendix 1 should be deleted.*

**Clause 6**

*As payment(s) are due on acceptance, it is important that both parties understand when this will take place.*

**Clause 6.5**

*Some licensors' conditions allow re-testing further re-testing without any limit on the number of such re-tests. Licensees however need a right to reject as their ultimate sanction.*

**Clause 7.1**

*This sub-clause prohibits the use of the Program by the Licensee otherwise than in accordance with the Agreement. However many Licensees will want to gain additional user rights such as to use within a group of companies or with joint venture partners or to enable them to pass the software to a facilities management or outsourcing company or consultant using the Program on their behalf. No such uses are implied. If the Licensee wishes to use the Program to provide services to any third party, this must be included in Item 15 of Appendix 1 with the agreement of the Licensor.*

**Clause 7.2**

*The description of the Equipment in Item 4 of Appendix 1 determines the extent to which the Licence is applied. Care should be taken to ensure that this description does not unreasonably restrict hardware development and replacement.*

**Clause 7.3**

*Item 5 in Appendix 1 should clarify whether the location is the complete site or only a part thereof. The Licensee may well want rights for the Program to be used by other group companies or where it sells off part of its business or where it hires a facilities management or outsourcing company to operate and run the Program on its behalf. It will have no such rights unless Appendix 1 is modified to say so.*

**Clause 10**

*this clause provides the minimum acceptable undertaking and should be strengthened if the Licensee requires and the Licensor agrees to give further protection. The warranty as to euro compliance may not be appropriate in all cases. It provides that any specific warranties can be added in Appendix 1 such as that the Program will comply with a Licensee user requirements document or perform certain stated functions. Clause 10 excludes warranties implied by the Sale of Goods Act 1979 or otherwise implied into the agreement. Many Licensees however would not wish to have such exclusion and would remove it from their standard terms ensuring protection by both express and implied warranties.*

**Clause 11**

*If a maintenance service is not to be provided, this clause and Appendix 2 should be deleted. In many cases a separate maintenance contract may be required rather than one incorporated into the licence agreement. Under clause 11.1 the maintenance service begins from the date of acceptance. Where a fixed warranty period is provided for a period such as three months the Licensee may require free support during such period and the maintenance service and thus payments under it start thereafter.*

**Clause 11.3**

*Some Licensees want a stronger commitment from Licensors to maintain superseded versions of the Program at least for a minimum period because of the cost of constant updates. Licensors conversely may wish to modify clause 11.3 so the onerous obligation to use best endeavours to maintain superseded versions of the Program is either modified to reasonable endeavours or removed entirely.*

**Clause 13**

*If the Licensor is to make major modifications to the Program then the Model Form for Software Development should be used. This clause simply provides that if bespoke modifications for the Licensee are made the Licensee will own the resulting rights, but the Licensor in all events retains ownership of the Program. Licensors will want instead to own all rights in the modifications/bespoke work they undertake.*

**Clause 15**

*If the Program has been developed specifically for designing a product, eg a bridge, it may be necessary to extend this clause to give patent indemnity against infringement of existing patents covering design criteria in the Program.*

**Clause 16**

*Both parties should check with their professional advisors that their current insurance policies meet their respective obligations under these conditions. The contract limits both parties' liability to each other under this clause to the sum on Appendix 1. Many Licensors will want similarly to limit all their liability to the Licensee to such a sum, not just liability under clause 16.*

**Clause 19**

*It would be rare for the Licensor to license the Licensee with the source code of the Program as referred to in clause 19. Most software licensees who do not receive the source code version of the Program will wish to protect themselves against the Licensor failing to support the Program or where the Licensor goes into liquidation by enter into a contemporaneous source code deposit agreement such as those offered by companies such as the National Computer Centre ([www.nccglobal.com](http://www.nccglobal.com)). A clause providing that source code is handed over on liquidation by the Licensor is not included as it would be set aside/disclaimed by any liquidator as an onerous contract under insolvency legislation, hence the worldwide source code deposit escrow industry.*

**Clause 21**

*Where the Licensor has substantial on going obligations a more detailed Force Majeure clause may be chosen .*

**Clause 27**

*This Clause is a suggestion to overcome the problem that there are Clauses under the CIPS Contract forms where the parties are required to agree on some issue e.g. Force Majeure, Training, Maintenance. Unless there is provision for a third party to decide should the parties not agree, then such a Clause is not enforceable under English law. The name of a suitable nominating body should be included e.g. the British Academy of Experts or the British Computer Society in the case of an IT Contract (as here). The question of whether the Program performs to the provisions under the Performance clause are left to Expert Determination in the Licence.*

*The period of 56 days is a maximum and the parties may want to see a shorter period included..*

### **Clause 28**

*The Agreement provides for preliminary non-binding mediation, failing which disputes go to court. Most UK companies and their advisers agree that court litigation is cheaper than formal arbitration under the Arbitration Act. However arbitration is confidential so a considered judgment must be made in each case.*

*If the contract does not specify arbitration then disputes go to court and it is best in any event to specify which country's courts have jurisdiction (here English courts are chosen) and in clause 40 which country's laws apply to the contract (whether arbitration or litigation are chosen).*

*If arbitration is preferred then the following should be substituted:-*

#### **DISPUTE RESOLUTION ALTERNATIVE**

1. If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Contract, except any matter which under the Contract is to be referred to Expert Determination, either party may give the other 7 days notice to resolve the dispute or difference through Alternative Dispute Resolution (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be referred to Arbitration in accordance with sub-Clause 2.
2. Subject to sub-Clause 3 below if any dispute or difference which may arise between the parties in connection with or arising out of the Contract is referred to ADR mediation, but is not so settled as specified in sub-Clause 1, then either party shall give notice to the other and such dispute or difference shall be referred to Arbitration. The parties shall agree on the appointment of a single arbitrator within 14 days after the date of such notice or in default of agreement the arbitrator shall be nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators. The Arbitration shall be conducted in accordance with the then current Arbitration Rules as published by the Chartered Institute of Arbitrators and in accordance with the Arbitration Act 1986.
3. There are excluded from Arbitration any proceedings brought by one party against the other which arise out of the failure by that other party to comply with the provisions of any binding agreement setting out the terms upon which the dispute or difference was settled as a result of or following from the ADR mediation procedure referred to in sub- Clause 1 above."

*This alternative Clause provides for a two-stage process of dispute resolution. The first stage is ADR mediation under the auspices of the CEDR. If in a defined time this is not successful then the dispute is referred to arbitration under the rules of the Institute of Arbitrators.*

*The only exception to the initial stage of ADR is if the Licence specifically provides for Expert Determination to resolve a specific issue. This is also the case with the started litigation clause in the Model Form. Sub-paragraph 3 is included to deal with the problem that if the Licence contains an arbitration Clause then all disputes must go to arbitration which would prevent one party from going to court, unless the other party agreed or did not object. Immediate reference to either the courts or arbitration is contrary to modern purchasing practice and indeed the Civil Procedure Rules 1998, so the first step should be to ADR.*

*One view is that arbitration under the 1996 Act is more flexible and retains the advantage of privacy as opposed to the courts. It is to be preferred generally therefore to the courts.*

### **Clause 29**

*If other than English law is to apply (eg Scottish), this clause should be amended accordingly.*

*ENTIRE AGREEMENT: No Clause has been included because usually an entire agreement Clause is to the benefit only of the Licensor. The purpose of such a Clause is to prevent either party from relying on statements made or documents issued pre-Contract which are not included in the Licence but which in some circumstances would be regarded in law as misrepresentations and to ensure no documents such as pre-contract letters, assurances, tenders, specifications etc*

*are part of the Licence. It is more likely in practice that such statements will be made or documents issued by the Licensee in the course of trying to conclude the sale. It therefore has the effect of preventing the Licensee from relying on these in any action for misrepresentation. If the Licensee however wants important documents such as its statements of requirements to be part of the contract rather than relying on the absence of the entire agreement the Licensee must incorporate such documents by express reference in the contract. In addition pre-contract warranties should ideally also be expressly stated in the Licence.*

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**MODEL FORM OF AGREEMENT FOR  
THE TRIAL OF COMPUTER SOFTWARE PRODUCTS**

**Customer**

Name .....

Address .....

.....

.....

Telephone Number .....

Contact Name(s) .....

**Supplier**

Name .....

Address .....

.....

Telephone Number .....

Contact Name(s) .....

**Program**

(Title and Description) .....

**Specified Computer**

(Make, Type and Serial Number) .....

**Specified Location Address** .....

.....

.....

**Trial Period** .....

**Charge** .....

*In consideration of the Customer's interest in the Program and upon payment of the charge specified above, the Supplier hereby grants to the Customer a non-exclusive non-transferable temporary licence to use the Program on the Specified Computer at the Specified Location, subject to the following:-*

1. *The Program may be used by the Customer only for the purposes of testing and evaluating the suitability of the Program for its use.*
2. *Title, copyright and all other proprietary rights in the Program and associated documentation and all parts and copies thereof shall remain vested in the Supplier.*
3. *The Customer shall not copy or duplicate the Program or any associated documentation without the Supplier's prior written consent except that the Customer may make one security copy of the Program only.*
4. *The Customer shall not disclose the Program or associated documentation or any part thereof to any third party without the prior written consent of the Supplier and both parties shall keep confidential all other information so designated obtained under or in connection with this Agreement.*
5. *The Trial Period may be extended by agreement in writing between the parties. At the end of the Trial Period or an extended Trial Period the temporary licence shall terminate and the Customer shall either enter into a Licence Agreement with the Supplier for the use of the Program or return the Program and all copies thereof to the Supplier together with all associated documentation. Alternatively, at the option of the Supplier, the Customer shall destroy the Program, and all copies thereof and all associated documentation and certify to the Supplier that this has been carried out.*

6. *The Program is supplied to the Customer under this Agreement without any express or implied warranties relating thereto and all such liability shall be excluded the fullest extent permissible by law except as expressly stated herein. The Customer shall indemnify the Supplier against any loss claim or damage (including personal injury) arising out of the Customer's use or possession of the Program provided that such loss claim or damage is not caused by the negligence of the Supplier, its employees or agents. Under no circumstances shall the Supplier be liable to the Customer for consequential loss or damage including loss of business or of profit or of contracts arising out of the Customer's use or possession of the Program.*

\*

FOR THE CUSTOMER

FOR THE SUPPLIER

Signature .....

Signature.....

Name .....

Name .....

Title .....

Title .....

Date .....

Date .....

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*CIPS Model L  
Revised 2002*