

## GEARSET LIMITED

### END USER LICENSE AGREEMENT

Any use of the Software (as defined below) is subject to the terms of this licence agreement (“**Agreement**”). Please read the full Agreement carefully.

The Customer confirms that it accepts and agrees to be legally bound by all terms and conditions of this Agreement by downloading and/or installing and/or using the Software. If these terms are not accepted, the Customer must not download, install or use the Software.

#### **IMPORTANT NOTICES:**

(i) Where the Customer signs a paper version or a bespoke version of this Agreement, that paper/bespoke version will take precedence over any subsequent click to agree versions of this Agreement presented on download and/or installation; and

(ii) This Agreement shall prevail over the Customer’s standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order or confirmation of order.

#### **TERMS AND CONDITIONS:**

##### **1 Definitions and interpretation**

1.1 In this Agreement (except where the context otherwise requires) the following words and phrases shall have the following meanings:

“**Authorised User**” means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Subscription;

“**Confidential Information**” means the Software, the source code of the Software and any information which is designated by the party disclosing it to be confidential;

“**Customer**” means, whether the Subscription is obtained directly from the Supplier or through a Reseller, (a) where an individual purchases a Subscription for their own personal use, that individual (a “**Consumer**”); or (b) where an individual purchases a Subscription for business use, that individual’s employer (and the Supplier will assume that such individual has the authority to purchase on behalf of their employer); or (c) where an entity or organisation purchases a Subscription for use by its employees, that entity or organisation (and such entity shall be responsible for all use by its employees of the Subscription);

“**Customer Data**” means the data inputted by the Customer, Authorised Users, or the Supplier on the Customer’s behalf for the purposes of using the Subscription or facilitating the Customer’s use of the Subscription;

“**Evaluation Period**” has the meaning given to it in clause 2.1;

“**Free Version**” means any version of the Subscription for which no Subscription Fee is payable by the Customer;

**“Intellectual Property Rights”** means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database rights, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted under the laws of any country;

**“Licence Limitations”** means the specified limitations applicable to the category of Subscription the Customer selects on purchase, as specified on the Supplier’s website;

**“Reseller”** means any third party authorised by the Supplier to sell Subscriptions;

**“Software”** means the software applications provided by the Supplier as part of the Subscription, and any updates, upgrades and patches released for the Software;

**“Subscription”** means the subscription for the Software granted under clause 3.1 and access to the Support Services;

**“Subscription Fee”** means the fee payable by the Customer under this Agreement (excluding VAT and all other relevant taxes), as detailed by the Supplier or Reseller (as the case may be) from time to time including through their respective websites, calculated in accordance with the duration of the Subscription Period and number of User Subscriptions;

**“Subscription Period”** means the period of time that the Subscription is valid, determined by the number of months/years selected by the Customer when purchasing the Subscription;

**“Subscription Start Date”** means the date the Customer purchases the Subscription;

**“Supplier”** means Gearset Limited, a company registered in England with company number 10345423 and whose registered office is at The Bradfield Centre, Cambridge Science Park Rd, Cambridge, CB4 0GA, UK;

**“Support Services”** means the support services provided by the Supplier as set out on its website;

**“Third-Party Components”** means components owned by third parties which are used in the Software;

**“User Subscriptions”** means the number of users licensed to use the Software, determined by the number of users selected by the Customer when purchasing the Subscription;

**“Viruses”** means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise

adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and

“**Working Hours**” means 9am to 5pm UK time each Monday to Friday excluding bank and public holidays in the UK.

## **2 Evaluation Period**

- 2.1 The Customer is entitled to a 30 day free trial of the Subscription for the purposes of deciding whether or not the Software meets its requirements (“**Evaluation Period**”). During the Evaluation Period the terms in Schedule 1 will apply.

## **3 Subscription**

- 3.1 In consideration of payment of the Subscription Fee the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Subscription during the Subscription Period only in accordance with this Agreement and any applicable Licence Limitations.
- 3.2 The Customer shall:
- 3.2.1 only use the Software for its internal business purposes;
  - 3.2.2 not reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the Software or create derivative works based on the whole of or any part of the Software or incorporate the Software into any other program not provided by the Supplier. The information necessary to achieve interoperability of the Software with other programs is available from the Supplier on request;
  - 3.2.3 not access all or any part of the Subscription in order to build a product or service which competes with the Subscription;
  - 3.2.4 not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription available to any third party except the Authorised Users; or
  - 3.2.5 not attempt to obtain, or assist third parties in obtaining, access to the Subscription, other than as provided under this clause 3.
- 3.3 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 3.4 The Supplier will provide the Support Services to the Customer with reasonable skill and care.

## **4 Authorised Users**

4.1 In relation to the Authorised Users, the Customer undertakes that:

4.1.1 the maximum number of Authorised Users that it authorises to access and use the Subscription shall not exceed the number of User Subscriptions it has purchased; and

4.1.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Subscription.

4.2 The Customer shall not, and shall ensure that Authorised Users do not:

4.2.1 distribute or transmit any Viruses into or via the Software;

4.2.2 interfere or attempt to interfere with the Supplier's network or the provision of services to any of the Supplier's other customers including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;

4.2.3 attempt to probe, scan, penetrate or test the vulnerability of the Supplier's systems or network;

4.2.4 access the Software in an unauthorised manner, including any attempt to breach the Supplier's security or authentication measures;

4.2.5 publish, store, distribute or transmit any material during the course of its use of the Subscription that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or in a manner that is otherwise illegal or causes damage or injury to any person or property.

4.3 The Supplier reserves the right, without liability to the Customer or prejudice to its other rights, to disable the Customer's access to any material that breaches the provisions of clause 4.2 and/or to suspend the access of any Authorised User who causes the Customer to breach the provisions of clauses 4.1 and/or 4.2.

## **5 Customer's obligations**

5.1 The Customer shall:

5.1.1 provide the Supplier with:

(i) all necessary co-operation in relation to this Agreement; and

- (ii) all necessary access to such information as may be required by the Supplier in order to provide the Subscription;
- 5.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- 5.1.3 ensure that the Authorised Users use the Subscription in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement.

## **6 Customer Data, data collection and privacy policy**

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 The Supplier will collect data about the Customer in accordance with the General Data Protection Regulation. The Supplier's privacy policy at <https://gearset.com/privacy> sets out what data the Supplier collects and how it uses that data. It also describes the Customer's rights regarding the Supplier's use of the Customer's data.
- 6.3 If the Customer has entered into a separate data processing agreement with the Supplier, and there are inconsistencies between the terms of the data processing agreement and this clause 6, the terms of the data processing agreement shall prevail over this clause 6.

## **7 Payment and payment terms**

- 7.1 The Subscription Fee (together with any levies, duties and/or taxes imposed on the Customer in its jurisdiction including, but not limited to, value added tax, sales tax, use tax and withholding tax) shall be due and payable by the Customer as specified during the purchase process.
- 7.2 If the Customer does not pay the Subscription Fee or any other sums payable under this Agreement when due, the Supplier reserves the right to terminate the Subscription and prevent the Customer from accessing and/or using the Software immediately.
- 7.3 Where the Customer has obtained the Subscription through a Reseller, the terms the Customer has agreed with such Reseller in relation to payment and invoicing will apply instead of clause 7.1.

## **8 Intellectual Property Rights**

- 8.1 The Customer acknowledges that the Supplier owns, or is licensed to use, all copyright and other Intellectual Property Rights of whatever nature in and relating to the Subscription together with any customisation and/or configuration work carried out by the Supplier under the provisions of this Agreement.

8.2 The Supplier warrants that the use of the Software in the provision of the Subscription in accordance with this Agreement will not knowingly infringe copyright belonging to any third party.

## **9 Third party claims**

9.1 Subject to clauses 11.2, 9.2, 9.3 and 9.4, in the event of any claim being brought against the Customer: (i) that the normal use or possession of the Subscription in accordance with this Agreement infringes the copyright of a third party; or (ii) as a result of the Supplier's use of Third-Party Components by a rights-holder of such Third-Party Components (a "**Claim**"), the Supplier shall indemnify the Customer against any damages that are awarded to be paid to any such third party in respect of such Claim provided that the Customer:

9.1.1 as soon as reasonably practicable notifies the Supplier in writing of any such Claim of which it becomes aware;

9.1.2 does not make any admission as to liability or compromise or agree any settlement of the Claim without the prior written consent of the Supplier (not to be unreasonably withheld or delayed), or otherwise prejudice the Supplier or any other third party's defence of such Claim;

9.1.3 gives the Supplier, or such person as the Supplier shall direct, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from the Claim; and

9.1.4 upon payment of its reasonable costs, gives the Supplier, and other third parties as the Supplier shall direct, all reasonable assistance with the conduct or settlement of any such negotiations or litigation.

9.2 If a Claim is brought, the Supplier shall have the right in its absolute discretion and at its own expense:

9.2.1 to procure the right for the Customer to continue using the Subscription in accordance with the terms of this Agreement;

9.2.2 to make such alterations, modifications or adjustments to the Subscription so that they become non-infringing; or

9.2.3 to replace the Subscription with non-infringing services.

9.3 If the Supplier is unable to resolve a Claim by taking one of the actions under clause 9.2 the Supplier shall have the right to terminate this Agreement upon repayment to the Customer of the Subscription Fee on a pro rata basis and such right shall be the Customer's sole and exclusive remedy under this Agreement in respect of any such Claim.

9.4 The indemnity provided under clause 9.1 shall not apply in respect of any Claim arising as a result of or in connection with or attributable to:

9.4.1 any configurations or modifications made to the Subscription by the Customer or on the Customer's behalf (other than by the Supplier); or

9.4.2 the combination of the Software with any third party software, components, environment or platform (except for any intended combination as expressly identified on the Supplier's website).

9.5 In the event of any claim attributable to the use or possession by the Customer of the Software, other than in accordance with this Agreement, the provisions of clauses 8.2 to 9.3 shall not apply and the Customer shall indemnify the Supplier against all liabilities, costs and expenses which the Supplier may incur as a result of such claim.

## **10 Warranties**

10.1 The Supplier:

10.1.1 does not warrant that the Customer's use of the Subscription will be uninterrupted or error-free; or that the Subscription and/or the information obtained by the Customer through the Support Services will meet the Customer's requirements; the Supplier instead offers a free Evaluation Period (as set out in clause 2) for the Customer to assess the suitability of the Subscription for its needs; and

10.1.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Subscription may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10.2 EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES, TERMS AND UNDERTAKINGS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, TRADE PRACTICE, CUSTOM, COURSE OF DEALING OR OTHERWISE (INCLUDING WITHOUT LIMITATION AS TO QUALITY, PERFORMANCE OR FITNESS OR SUITABILITY FOR PURPOSE) IN RESPECT OF THE SUBSCRIPTION ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

## **11 Limitation of liability**

11.1 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from the negligent act of one party or for liability for any fraudulent misrepresentation by a party to this Agreement.

11.2 SUBJECT TO THE PROVISIONS OF CLAUSES 11.1, 11.3 AND 11.4, THE LIABILITY OF THE SUPPLIER TO THE CUSTOMER FOR DIRECT LOSS IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE CUSTOMER'S USE OF THE SUBSCRIPTION SHALL BE LIMITED IN RESPECT OF ALL CLAIMS ARISING TO THE SUBSCRIPTION FEE PAID BY THE CUSTOMER TO THE SUPPLIER UNDER THIS AGREEMENT IN RESPECT OF THE SUBSCRIPTION PROVIDED IN THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

11.3 SUBJECT TO THE PROVISIONS OF CLAUSE 11.1, IN NO CIRCUMSTANCES SHALL THE SUPPLIER BE LIABLE TO THE CUSTOMER WHETHER IN

CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE IN RESPECT OF:

- 11.3.1 LOSS OF PROFITS, ANTICIPATED SAVINGS, REVENUE, GOODWILL OR BUSINESS OPPORTUNITY;
- 11.3.2 LOSS OR CORRUPTION OF OR COST OF RESTORATION OF DATA (SAVE TO THE EXTENT SET OUT IN CLAUSE 6.2) OR FOR USE OF ANY RESULTS OBTAINED BY USE OF THE SOFTWARE; OR
- 11.3.3 ANY INDIRECT, CONSEQUENTIAL, FINANCIAL OR ECONOMIC LOSS OR DAMAGE, COSTS OR EXPENSES,

WHATEVER OR HOWEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE CUSTOMER'S USE OF THE SUBSCRIPTION.

- 11.4 SUBJECT TO THE PROVISIONS OF CLAUSE 11.1, THE SOLE LIABILITY OF THE SUPPLIER TO THE CUSTOMER FOR DIRECT LOSS IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THE CUSTOMER'S USE OF THE FREE VERSION SHALL BE LIMITED TO £5.00 AND FOR THE AVOIDANCE OF DOUBT CLAUSES 11.2 AND 9 OF THIS AGREEMENT SHALL NOT APPLY IN RESPECT OF THE FREE VERSION.

## **12 Subscription Period, suspension and termination**

- 12.1 The Subscription shall commence on the Subscription Start Date and, unless terminated earlier in accordance with this clause 12, shall continue for the Subscription Period. The Customer's access to the Software and Support Services shall automatically deactivate upon the expiry of the Subscription Period.
- 12.2 The Supplier may suspend the Subscription without liability if:
  - 12.2.1 it identifies an attack on the Customer's account, or any attempt to access or manipulate the Customer's account by a third party without the Customer's consent;
  - 12.2.2 the Supplier reasonably believes suspension of the Subscription (or any part of it) is necessary to protect the Supplier's network or its other customers use of the Subscription; or
  - 12.2.3 the Supplier is required by law or by a regulatory or government body to suspend the Customer's access to the Subscription (or any part of it).
- 12.3 This Agreement may be terminated immediately by either party if the other commits a material or persistent breach of any term of this Agreement and that breach (if capable of remedy) is not remedied within 30 days of written notice being given requiring it to be remedied (and where such breach is not capable of remedy, the terminating party shall be entitled to terminate the Agreement with immediate effect).
- 12.4 Where the Subscription is terminated by either party in accordance with clause 12.1 or clause 7.2 then subject to clause 12.5 this Agreement shall terminate in its entirety.



12.5 Upon termination or expiry of this Agreement all licences granted under this Agreement shall immediately terminate but the following provisions of this Agreement shall remain in full force and effect: 1, 8.1, 9, 11, 12.6, 13 and 14.

12.6 Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law.

### **13 Confidentiality**

13.1 Subject to clause 13.2, neither party shall at any time after the date of this Agreement:

13.1.1 divulge or communicate to any person, company, business entity or other organisation;

13.1.2 use for any purposes other than the purposes of this Agreement; or

13.1.3 through any failure to exercise due care and diligence, cause any unauthorised disclosure of

any trade secrets or Confidential Information relating to the other party.

13.2 The restrictions in clause 13.1 shall cease to apply to any information which becomes available to the public generally otherwise than through a breach of a duty of confidentiality owed to the other party, and neither party shall be restricted from disclosing the Confidential Information or any part of it pursuant to a judicial or other lawful government order, but only:

13.2.1 to the extent required by such order; and

13.2.2 subject to the party obliged to comply with such order giving the other party as much notice of the terms of the order as may be reasonably practicable.

13.3 Nothing in this clause 13 shall prevent:

13.3.1 the Supplier from disclosing the Software to any third party; or

13.3.2 the Customer from disclosing the Software to such of its employees, sub-contractors and advisors as is necessary for the Customer to be able to exercise its rights and comply with its obligations under this Agreement, provided the Customer informs such parties of the confidential nature of the Confidential Information before disclosure and at all times, the Customer remains responsible for such parties' compliance with the obligations of confidentiality set out in this Agreement.

13.4 If the Customer has entered into a separate confidentiality agreement with the Supplier, and there are inconsistencies between the terms of the confidentiality agreement and this clause 13, the terms of the confidentiality agreement shall prevail over this clause.

## **14**    **General**

- 14.1 The failure or delay of the Supplier to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.
- 14.2 Neither party shall be liable for any delay in or for failure to perform its obligations under this Agreement, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the control of that party including, without limitation, fires, strikes, insurrection, riots, embargoes, or regulations of any civil or military authority.
- 14.3 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes, cancels and replaces all prior agreements, licences, negotiations and discussions between the parties relating to it. The Customer confirms and acknowledges that it has not been induced to enter into this Agreement by, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) not expressly incorporated into it. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.
- 14.4 For click to agree versions of this Agreement, the Supplier reserves the right to revise the terms of this Agreement by updating this Agreement on its website. The Customer is advised to check the website periodically for notices concerning such revisions. The Customer's continued use of the Subscription shall be deemed to constitute acceptance of any revised terms. Any bespoke versions of this Agreement shall continue to apply to all future use of the Subscription and shall take precedence over any click to agree versions presented at download or access to the Software or on the Supplier's website.
- 14.5 The Customer shall not be entitled to assign this Agreement nor any of its rights or obligations hereunder nor sub-license the use of the Software.
- 14.6 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and nothing in this Agreement shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Agreement or operate to give any third party the right to enforce any term of this Agreement.
- 14.7 Each party shall: (i) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including, but not limited to, the UK Bribery Act 2010; (ii) have and maintain in place throughout the Subscription Period its own policies and procedures designed to ensure compliance with anti-bribery and anti-corruption laws, as appropriate; and (iii) promptly report to the other party any request or demand for any undue financial or other advantage of any kind made or received by it in connection with the performance of this Agreement.
- 14.8 If any provision of this Agreement shall be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability

of the remaining provisions of this Agreement which will remain in full force and effect.

- 14.9 This clause applies to Consumers only. The Consumer shall have the right to cancel this Agreement 14 days from the date the Consumer agrees to be obliged to pay for the Software and/or Support Services under this Agreement. Should the Consumer wish to cancel this Agreement under clause 12, the Consumer must notify the Supplier of its decision to cancel by sending the Supplier an email clearly confirming the decision to the relevant email address on the privacy page (<https://gearset.com/privacy>) of the Supplier's website. Any complaints about this Agreement, including complaints about the Software and/or Support Services, should be raised with the Supplier using the relevant contact details on the privacy page (<https://gearset.com/privacy>) of its website.
- 14.10 Any notice to be given under this Agreement shall be in writing. Notices for the Supplier shall be sent by email to [security@gearset.com](mailto:security@gearset.com). Notices for the Customer shall be sent either by email or by post to any address that may have been provided by the Customer to the Supplier. Any such notice or other document shall be deemed to have been served: if delivered by email - 24 hours after delivery; and if sent by post - upon the expiration of 48 hours after posting.
- 14.11 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 14.12 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## Schedule 1

### Evaluation Period

- 1 The Supplier grants the Customer the right to use the Software for the Evaluation Period.
- 2 During the Evaluation Period, the Customer hereby agrees that the Software is provided AS IS with no representation, guarantee or warranty of any kind as to its functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.
- 3 The Supplier shall not be liable for any claim, damages or other liability arising from or in connection with the Customer's use of the Software during the Evaluation Period.
- 4 For the avoidance of doubt, during the Evaluation Period clauses 11.2 and 9 of this Agreement shall not apply.
- 5 Before or upon expiry of the Evaluation Period:
  - 5.1 if in the Customer's sole opinion, the Software has met its requirements, and the Customer wishes to continue to use the Software beyond the end of the Evaluation Period, the Customer can decide whether to:
    - 5.1.1 obtain the equivalent paid up Subscription; or
    - 5.1.2 default to a limited functionality, Free Version of the Subscription.

Once the appropriate Subscription has been obtained, this Agreement shall continue in force (except that this Schedule 1 shall no longer apply).

- 5.2 If the Customer decides that the Software does not meet its requirements, or otherwise does not wish to enter into a paid up Subscription or continue using the Software, then the Customer shall immediately cease use of the Software and Services. Any rights granted to the Customer to use the Software shall cease.