

## Gearset EULA

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

You confirm that you accept and agree to be legally bound by all terms and conditions of this Agreement, which take effect:

- (i) when you download, install, or use the Software; or
- (ii) on signature of a paper version of this Agreement (which will incorporate any documents attached to it at the time of signature e.g. quotes).

### **IMPORTANT NOTICE:**

(i) This Agreement shall prevail over your 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**

In this Agreement, the following terms shall have the following meanings:

**"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 right, 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;

**"Agreement"** means this agreement;

**"Install", "install", "installing", "installation" or "installed"** in connection with the Licensed Software includes the downloading of the Licensed Software from our or any third party's remote server;

**"Licence"** means the licence to use the Licensed Software, set out in clause 3, 5 as appropriate;

**"Licence Fee(s)"** means the fees payable by you to us excluding VAT and all other relevant taxes, including Withholding Tax where applicable, as detailed by us from time to time through our website, as part of a written quotation or renewal;

**"Licensed Software"** means such of the Software, as is selected by you and as licensed to you under the terms of this Agreement, including any related manuals, help files or other documentation;

**"OSE"** means an Operating System Environment which is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights;

**"Software"** means any or all of the software products in executable form listed in Schedule 1;

**"We", "Our", "Us"** and the non-capitalised versions means Gearset Limited, a company registered in England with company number 10345423 and having its registered office at The Bradfield Centre, Cambridge Science Park Rd, Cambridge, CB4 0GA, UK;

**"You", "Your"** and the non-capitalised versions means either (a) where an individual downloads and/or installs the Licensed Software on a OSE for his own personal use, that individual; or (b) where an individual downloads and/or installs the Licensed Software on a OSE for business use, that individual's employer (and we will assume that such individual has the authority to purchase on behalf of their employer); or (c) where an entity or organisation downloads and/or installs the Licensed Software on a OSE for use by its employees, that entity or organisation (and such entity shall be responsible for all use by its employees of the Licensed Software).

## **2 HEADINGS**

The headings to the clauses and Schedules of the Agreement are for convenience only and will not affect its construction or interpretation.

## **3 EVALUATION LICENCE**

3.1 In return for the mutual rights and obligations set out in the Agreement we grant you the right to use the Licensed Software for a period of 30 days from when it is installed by or on behalf of you ("**Evaluation Period**"). During the Evaluation Period you can decide whether or not the Licensed Software meets your requirements. The Evaluation Period may be extended by written agreement with us ("written" shall include an exchange of emails between you and us).

3.2 During the Evaluation Period, you hereby agree that the Licensed 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.

3.3 We shall not be liable for any claim, damages or other liability arising from or in connection with your use of the Licensed Software during the Evaluation Period.

3.4 For the avoidance of doubt, during the Evaluation Period: (a) clauses 5.1, 9.1, 10.3 and 13.2 of this Agreement shall not apply; and (b) clause 13.1 shall apply except that the reference to clause 13.2 is deleted.

3.5 Before or upon expiry of the Evaluation Period:

3.5.1 If, in your sole opinion, the Licensed Software meets your requirements, and you wish to continue to use the Licensed Software beyond the end of the Evaluation Period, you shall pay us the Licence Fees and this Agreement shall then remain in full force and effect.

3.5.2 If you decide that the Licensed Software does not meet your requirements, or otherwise do not wish to enter into a paid up Licence of the Licensed Software, then you shall destroy the Licensed Software and all copies, in any form including partial

copies or modifications of the Licensed Software received from us or made in connection with this Agreement and all documentation relating thereto. Any rights of yours to use the Licensed Software shall cease.

#### **4 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

4.1 You acknowledge that:

4.1.1 all Intellectual Property Rights in or relating to the Licensed Software are owned by us or (in relation to open source software included in the Licensed Software) their relevant owners;

4.1.2 except as expressly granted under this Agreement, you have no rights in the Licensed Software.

4.2 You hereby agree to refrain from any action which would diminish our Intellectual Property Rights in or relating to the Licensed Software or which would call them into question.

4.3 You agree not to remove or alter any trademarks, copyright notices or similar proprietary devices, including without limitation any electronic watermarks or other identifiers, that may be incorporated in the Licensed Software.

4.4 If you become aware of any infringement or suspected infringement of our Intellectual Property Rights in or relating to the Licensed Software by any third party, you shall use reasonable efforts to notify us of such infringement or suspected infringement without delay. We and you shall consult together on an appropriate course of action but neither party shall be obliged to take any action in respect of any such infringement or suspected infringement.

#### **5 LICENCE**

5.1 The Software is licensed on a Per User basis. In return for the mutual rights and obligations under the Agreement, and subject to the payment of the Licence Fees by you to us, we grant to you a limited, personal, non-exclusive, non-sub-licensable and non-transferable license for each subscription you acquire:

5.1.1 subject to clauses 5.3 and 5.4, to use and copy the Licensed Software for your internal use.

5.1.2 Some Software incorporated in the Licensed Software may be offered under a separate open-source license that we will make available to you. There may be provisions in the open-source license that expressly override some of the terms in this Agreement and in such instance the open-source license terms shall prevail in relation solely to that open-source content.

5.2 Except as stated in this Agreement, you have no right to use, incorporate into other products, copy, publish, display, modify, translate the Licensed Software or any modification, adaptation or copy of the Licensed Software or any part thereof. You may only decompile, reverse engineer, or disassemble the source code of the Licensed Software either in whole or in part, as expressly permitted under the License or under Sections 50(A), (B) and (BA) of the Copyright, Designs and Patents Act 1988 (as amended or updated from time to time) or other applicable law.

5.3 The Licensed Software is licensed for use by a specific user only. Sharing or

pooling a licensed user's license between multiple individuals to allow for temporary use by multiple users in a department or organization is strictly prohibited.

5.4 The licence set out in this clause 5 is personal to you. Except as allowed in clause 21, you may not rent, lease, sub-licence, sell, assign, or pledge the Licensed Software, on a temporary or permanent basis, without our prior written consent.

5.5 You shall not use the Licensed Software to manufacture or distribute a product that is substantially similar to or competitive with our Software.

5.6 If you breach this clause 5, the Agreement or rights granted will automatically terminate in accordance with the provisions of clause 11.

## **6. USE OF THE SOFTWARE**

6.1 Your ability to use the Software may be limited in accordance with the category of Licence you have selected and purchased. These limitations will be detailed on our website.

6.2 Subject to clause 6.1 and to payment of any Licence Fees, you will have access, free of charge, to all updates, upgrades and patches for the Software that we release. However, we are under no obligation to release any update, upgrade or patch at any time.

## **7 PAYMENT**

7.1 At the end of the Evaluation Period, your use of the Licensed Software will be dependent on you paying the Licence Fees for continued use.

7.2 We use a third party provider, Bright Market LLC (FastSpring) to handle payment of Licence Fees. While we have taken care in our choice of such third party, you should check their policies, including those for security and privacy, and ensure you are happy with them before proceeding. Relevant information for accessing their details is given in our privacy policy, available at: <https://gearset.com/privacy>.

7.3 Licence Fees shall be invoiced by us to include VAT and/or other relevant taxes, including withholding tax.

7.4 We reserve the right to suspend your access to the Software in the event that you fail to make payment for any outstanding Licence Fees.

## **8 CONFIDENTIALITY**

8.1 The structure, organisation, and source code of the Licensed Software are valuable trade secrets and proprietary confidential information of ours and our licensors. You agree not to provide or disclose any confidential information in the Licensed Software or derived from it to any third party, including where such confidential information is derived under any applicable law as set out in clause 5.2.

8.2 The provisions of clause 8.1 will not apply to the extent that:

8.2.1 such information is in the receiving party's possession free from any restriction as to its use or disclosure; or

8.2.2 the receiving party can demonstrate that such information is in the public domain (other than as a result of an unauthorised disclosure); or

8.2.3 such information is required to be disclosed by law.

8.3 No information to which clause 8.2.3 applies shall be disclosed to a third party unless and until the receiving party has (unless prevented from doing so by law):

- 8.3.1 given the disclosing party, where practicable, five (5) U.K. business days written notice of such proposed disclosure;
- 8.3.2 consulted with the disclosing party; and
- 8.3.3 agreed with the disclosing party the content of the disclosure provided that it shall not limit the disclosure in a manner which would prevent the receiving party from complying with a statutory or regulatory obligation or court order.

8.4 For the purpose of this clause 8, "receiving party" means the party receiving the confidential information and "disclosing party" means the party by whom confidential information is disclosed.

## **9 WARRANTY AND SUPPORT**

9.1 We hereby warrant:

9.1.1 that we own the Intellectual Property Rights in the Software and/or have the right to grant a licence to you;

9.1.2 that in creating the Licensed Software, we have not knowingly infringed the intellectual property rights of third parties;

9.1.3 that the Licensed Software shall operate substantially in accordance with its description. However, you acknowledge that the Licensed Software and related materials are of such a complexity that there will be inherent defects and that therefore we can give no warranty that the Licensed Software is free from error or defect or that operation of the Licensed Software shall be uninterrupted.

9.2 Other than as provided for in clause 9.1 above, we do not offer any warranty related to the Licensed Software, either express or implied, including but not limited to implied warranties of fitness for purpose or satisfactory quality. The Licensed Software has been developed as a standard product for use by a wide variety of users and so we are unable to warrant that the Licensed Software will meet any particular user needs. You shall take full responsibility for ensuring that the Licensed Software are suitable for your intended purposes and to facilitate your checks of such suitability, we offer a free Evaluation Period.

9.3 Support. In relation to and without prejudice to the generality of clause 9.2 above, we provide limited support to users. The details of the support provided for the Licensed Software is given on our website. You accept that, although we constantly seek to make the Licensed Software as useful as possible, the nature of software is such that no guarantee can be provided that any particular problem will be solved.

## **10 LIMITATION AND EXCLUSION OF LIABILITY**

10.1 We do not exclude our liability (if any) to you:

10.1.1 for personal injury or death resulting from our negligence;

10.1.2 for fraud; or

10.1.3 for any other matter for which liability cannot be excluded by law.

10.2 Subject to clause 10.1, we shall not be liable to you for any of the following

types of loss or damage arising under or in relation to the Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise):

10.2.1 any loss of profits, business, contracts, anticipated savings, goodwill, or revenue; or

10.2.2 any loss, or corruption, of software or data; or

10.2.3 any loss of use of hardware, software or data; or

10.2.4 any indirect, special or consequential loss or damage whatsoever, even if we have been advised in advance of the possibility of such loss or damage.

10.3 Subject to clauses 10.1 and 10.2, our aggregate liability under the Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) shall be limited in all cases to the Licence Fees paid for the Licensed Software in the twelve (12) months preceding the event first giving rise to the claim.

10.4 You acknowledge that the provisions of clauses 9, 10 and 13.1 are reasonable and reflected in the price which would be higher without those provisions, and you will accept such risk. In the event that any of the limitations or exemptions in the Agreement shall be found to be void, clauses 9, 10 and 13.1 shall be construed in accordance with clause 16.

## **11 TERM AND TERMINATION**

11.1 The Licence shall commence upon your acceptance of its terms and shall continue in perpetuity unless terminated in accordance with clauses 11.2, 11.3, or 11.5, or otherwise in accordance with this Agreement.

11.2 We may terminate the License immediately and without notice if:

11.2.1 we reasonably suspect that you are using the Licensed Software for any purpose which contravenes the laws of England; or

11.2.2 you materially fail to comply with any provision of the Agreement.

11.3 The License will terminate automatically if you uninstall the Licensed Software, or at the end of the Evaluation Period.

11.4 Where the License is terminated in accordance with clause 11.2 or 11.3, then the Agreement shall terminate in its entirety.

11.5 Either party (we or you) may terminate this Agreement by providing thirty (30) days prior written notice to the other party.

11.6 Upon termination of this Agreement, you must uninstall the Licensed Software and destroy all copies of the Licensed Software including all components of it in your power, possession or control.

11.7 The termination of the Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination. Following termination, no obligations or liabilities remain with us.

11.8 On termination of the Agreement, and except as under clause 11.4 above, the provisions of clause 1 (Definitions), clause 2 (Headings), clause 4 (Ownership of Intellectual Property Rights), clause 8 (Confidentiality), clause 9 (Warranty and Support), clause 10 (Limitation and Exclusion of Liability), clause 11 (Term and

Termination), clause 12 (Data Collection and Privacy Policy), clause 13 (Third Party Claims) and clauses 14 to 21 will remain in effect.

## **12 DATA COLLECTION AND PRIVACY POLICY**

12.1 Gearset is committed to protecting your privacy. All information you give us is held with the utmost care and security. Our use of personal data is in accordance with the General Data Protection Regulations 2016 (GDPR).

12.2 Our privacy policy sets out what data we collect, and how we use it. It also describes your rights regarding our use of your data. You can view our privacy policy at <https://gearset.com/privacy>.

## **13 THIRD PARTY CLAIMS**

13.1 Except as in clause 13.2 below, if a third party claims that the Licensed Software, as a result of your use of the Licensed Software, causes loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, then, without prejudice to our overall liability to such third party, you shall indemnify us from any such loss or damage.

13.2 If any claim is brought against you alleging that your use of the intellectual property associated with the Licensed Software infringes the rights of any third party, you shall promptly notify us and supply full details of the claim. The two of us shall consult together on an appropriate course of action and shall seek to minimise the effect of any claim on the respective businesses. We shall have the right, but not the obligation, to take control of all negotiations and litigation arising out of the claim. We will pay any damages and costs awarded against you in connection with any claim subject to a maximum of the aggregate sum of Licence Fees paid to us by you under this Agreement. We shall have the right, at our sole choice, either: (i) use reasonable endeavours to negotiate terms for continued use by you of the claimed infringing Licensed Software; or (ii) use reasonable endeavours to amend the Licensed Software to make it non-infringing; or (iii) terminate this Agreement with immediate effect and in such event, we shall refund to you all Licence Fees paid.

## **14 GOVERNING LAW AND SETTLEMENT OF DISPUTES**

14.1 This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of England.

14.2 The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

14.3 Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of clauses 4, 5 and/or 8 by you. Accordingly, we shall be entitled to seek an injunction or other equitable relief for any threatened or actual breach of those clauses.

## **15 COMPLIANCE WITH APPLICABLE LAW**

You acknowledge and agree that notwithstanding the fact that the Agreement is governed by the laws of England you may be subject to additional laws in other jurisdictions with respect to your use of the Licensed Software in such jurisdictions. You agree to comply with the laws of any such jurisdiction that apply to the Licensed Software including without limitation any applicable export laws or regulations.

## **16 SEVERABILITY**

If any provision or part of any provision in this Agreement shall be found by any court, body or authority of competent jurisdiction to be illegal, invalid or unenforceable for any reason then the parties shall meet promptly to discuss in good faith and agree an alternative provision or part provision that provides as closely as possible the same commercial effect as the original. If this happens then the remaining provisions or part provisions are unaffected.

## **17 NO WAIVER**

No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

## **18 NO THIRD PARTY RIGHTS**

We and you do not intend that any of the Agreement terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and all rights by virtue of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

## **19 ENTIRE AGREEMENT**

The Agreement contains all the terms which the parties have agreed in relation to the subject matter of the Agreement and supersedes any prior written or oral agreements, representations (save for any fraudulent misrepresentation, fraud or concealment) or understandings between the parties in relation to such subject matter.

## **20 REVISIONS TO TERMS**

We reserve the right to revise the terms of this Agreement by updating this Agreement on our website, or by notifying you by email. You are advised to check the website periodically for notices concerning such revisions. Your continued use of the Licensed Software shall be deemed to constitute acceptance of any revised terms.

## **21 NO ASSIGNMENT**

This Agreement is personal to you. You may not assign the benefit or delegate the burden of the Agreement or hold the Agreement on trust for any other person without our prior written consent.



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**Schedule 1**

**SOFTWARE**

Gearset