

PART 1 OF THE TERMS AND CONDITIONS RELATING TO YOUR SOFTWARE LICENCE WITH TACHODISC LIMITED ("Part 1")

PLEASE NOTE THIS DOCUMENT CONTAINS A SUMMARY OF THE MAIN TERMS AND CONDITIONS RELATING TO YOUR SOFTWARE LICENCE. BEFORE SIGNING THIS AGREEMENT PLEASE READ THE ADDITIONAL TERMS AND CONDITIONS ("Part 2"). AVAILABLE AT WWW.TACHODISC.CO.UK

IF YOU HAVE ANY QUESTIONS CONCERNING ANY OF THE TERMS OF THIS AGREEMENT (INCLUDING THE ADDITIONAL TERMS ON OUR WEBSITE, THEN PLEASE DO NOT HESITATE TO CONTACT US.

THIS AGREEMENT is made on date as shown on front.

BETWEEN:

(1) TACHODISC LIMITED incorporated and registered in England and Wales with Company Number 02676818 and whose registered office is at 19, Kingsland Grange, Woolston, Warrington, Cheshire, WA1 4FW (the 'Licensor'); and

(2)

BACKGROUND

- (1) The Licensor has agreed to grant to the Licensee a non-exclusive licence to use the computer programs set out in Schedule 1 of this Part 1 pursuant to the terms of the Agreement.
- (2) This document sets out the part 1 of the terms and conditions of the agreement between the parties hereto AND MUST be read in conjunction with the additional terms and conditions which are set out in Part 2 (as defined below) a copy of which is available at www.tachodisc.co.uk.

NOW IT IS AGREED as follows:

- 1 Definitions**
- 'Acceptance Date' In this Agreement, unless the context otherwise requires, the following expressions have the following meanings: the date on which the Licensed Programs are accepted by the Licensee being the date of the Agreement.
- 'Additional Fee' Is the part of the Licence Fee as more particularly referred to in clause 4 and as set out in Schedule 3 of Part 1.
- 'Agreement' The terms and conditions set out in Part 1 (as defined below) and Part 2 (as defined below) which when read together form the whole of the agreement between the parties.
- 'Delivery date' the date of the Agreement
- 'Equipment' the equipment as notified by the Licensor to the Licensee from time to time with which the Licensed Program Materials (as defined below) are compatible. The equipment applicable as at the Acceptance Date are as set out in Schedule 2 of Part 1.
- 'Initial Period' the period referred to in clause 3 of Part 1.
- 'Intellectual Property Rights' all vested, contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration or these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.
- 'Licence' the licence granted by the Licensor pursuant to clause 2 of this Part 1.
- 'Licence Fee' the fee for the Licence provided under the Agreement as specified in Schedule 3 of this Part 1.
- 'Licensed Program materials' All the Licensed Programs and the Program Documentation.
- 'Licensed Programs' the systems, applications and computer programs of the Licensor specified in Schedule 1 of Part 1.
- 'Media' as defined in clause 5 of part 1.
- 'Minimum fee' is the part of the Licence Fee as more particularly referred to in clause 4 and as set out in Schedule 3 of part 1.
- 'Part 1' Are the terms and conditions set out in this part 1 of the agreement which must be read in conjunction with Part 2 (as defined below). For the avoidance of doubt Part 1 and Part 2 when read together contain the totality of the terms and conditions of the Agreement that govern the Licensor's contractual relationship with the Licensee.
- 'Part 2' are the terms and conditions set out in Part 2 of the Agreement which must be read in conjunction with Part 1. For the avoidance of doubt Part 1 and Part 2 when read together contain the totality of the terms and conditions of the Agreement that governs the Licensor's contractual relationship with the Licensee, the operating manuals, user instructions, technical literature and all other related materials in eye-readable form supplied to the Licensee by the Licensor for aiding the use and application of the Licensed Program.
- 'Program Documentation' The third party software as notified by the Licensor to the Licensee from time to time with which the Licensed Program Materials are compatible. The third party software applicable as at the Acceptance Date are as set out in Schedule 4 of Part 1.
- 'Third Party Software' to read all or any part of the Licensed programs from magnetic or other storage media, to load the Licensed Programs on the Equipment for the storage and running of the Licensed Programs, to read and possess the Program Documentation in conjunction with the use of the Licensed Programs and to possess the Media.
- 'Warranties' Those warranties set out in clause 8 of part 1.
- 'Website' The Licensor's website which has the following web address: www.tachodisc.co.uk/ which contains a copy of part 2.

2 Grant of Licence

- 2.1 The Licensor grants to the Licensee a non-exclusive and non-transferable licence to Use the Licensed Program Materials on and in conjunction with the Equipment subject to the terms and conditions contained in the Agreement.
- 2.2 The Licensee shall Use the Licensed Program Materials for processing its own data for its own normal and internal business purposes only and shall in particular not Use the Licensed Program Materials to provide outsourcing or bureau services for any third party.
- 2.3 The Use of the Licensed Program Materials is restricted to use on and in conjunction with the Equipment.
- 2.4 The Licence shall not be deemed to extend to any programs or materials of the Licensor other than the Licensed Program Materials unless the prior written approval is granted by the Licensor.
- 2.5 The Licensee acknowledges that it is licensed to Use the Licensed Program Materials only in accordance with the express terms of the Agreement and not further or otherwise.

3 Term

The Licence shall commence on the Acceptance Date and shall continue for a period of one (1) year from the Acceptance Date (the Initial Period) and from year to year after the Initial Period until or unless terminated in accordance with any of the provisions of clause 12 of this Part 1 or any other clause of the Agreement.

4 Payment

- 4.1 The Licence Fee and other charges payable under the Agreement are exclusive of any applicable VAT and any other sales tax, duty or levy due and shall be payable by the Licensee at the rate and in the manner prescribed by law against submission by the Licensor of a valid tax invoice.
- 4.2 Throughout the term of the Agreement the Licensee hereby undertakes to pay the Minimum Fee together with the Additional Fee in accordance with the provisions of this clause 4 and Schedule 3 of this Part 1.
- 4.3 The license must pay the annual cost of the Licence Fee quarterly in advance in four instalments. The first instalment is due on or before the Acceptance Date.
- 4.4 All charges including the Licence Fee which are payable by the Licensee under the Agreement subject to the provisions of clause 4.3 above of this Part 1 must be paid within 21 days of receipt by the Licensee of the Licensor's invoice. All charges due under the Agreement are payable by the Licensee in sterling and by direct debit (or by such alternative payment method communicated by the Licensor to the Licensee).
- 4.5 The Licensor shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of Nat West PLC, calculated from the date when payment of the invoice becomes due up to and including the date of actual payment whether before or after judgment.

5 Risk

Risk in the media on which the Licensed Program Materials are recorded or printed as provided by the Licensor to the Licensee ("Media") shall pass to the Licensee on delivery. If any part of the Media shall thereafter be lost, destroyed or damaged the Licensor shall promptly replace the same (embodying the relevant part of the Licensed Programs or Program Documentation) subject always to the Licensee paying the full cost of such replacement.

6 Acceptance

Installation of the Licensed Programs shall be deemed to be completed on the Delivery Date and the Licensed Programs shall be deemed to be accepted by the Licensee on the Delivery Date.

7 Copying

The Licensee may make only so many copies of the Licensed Programs as are reasonably necessary for operational security and use. Such copies and the media on which they are stored shall be the property of the Licensor and the Licensee shall ensure that all such copies bear the Licensor's proprietary notice. The Licence shall apply to all such copies as it applies to the Licensed Programs.

8 Restrictions on alterations

The parties acknowledge that the Licensed Programs are to be modified by the Licensor in order to integrate and operate with any Third Party Software.

9 Security and control

The Licensee, shall, during the continuance of the Licence, effect and maintain adequate security measures to Safeguard the Licensed Program materials from access or use by any unauthorized person.

10 Proprietary rights

The Licensed Program Materials and the Intellectual Property Rights of whatever nature in the Licensed Program Materials are and shall remain as between the parties hereto the property of the Licensor.

11 Liability

- 11.1 The following provisions in this clause 11 set out the entire financial liability of the Licensor (including any liability for the acts or omissions of its employees, agents and sub-contractors (or any other third parties acting on behalf of the Licensor) to the Licensee in respect of:
 - 11.1.1 any breach of the Agreement; or
 - 11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 11.2 Nothing in the Agreement excludes or limits the liability of the Licensor:
 - 11.2.1 for death or personal injury caused by the Licensor's negligence; or
 - 11.2.2 for any matter which it would be illegal for the Licensor to exclude or attempt to exclude its liability; or
 - 11.2.3 for fraud or fraudulent misrepresentation.
- 11.3 Subject to clause 11.2 of this Part 1 the Licensor's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement, including under any indemnity given by the Licensor shall be limited to sum of [£25,000 (twenty five thousand pounds)].
- 11.4 The Licensor shall not be liable for any losses, liabilities, claims, expenses or damages whatsoever, including under any indemnity given in the Agreement, which arise as a result of the acts or omissions set out at clause 9.5 of Part 2.
- 11.5 All liability that is not expressly assumed in the Agreement is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, the 'Licensor' includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in the Agreement shall exclude or limit liability for fraudulent misrepresentation.

12 Termination

- 12.1 The Licensee may terminate the Licence at any time after the Initial Period by giving at least 90 days' prior written notice to the Licensor.
- 12.2 The Licensor may terminate the Licence immediately on giving notice in writing to the Licensee if:
 - 12.2.1 the Licensee commits any serious breach of any term of the Agreement and fails (in the case of a breach capable of being remedied), within 15 days after the receipt of a request in writing from the Licensor to do so, to remedy the breach (such request to contain a warning of the Licensor's intention to terminate); or
 - 12.2.2 the Licensee permanently discontinues the use of the Licensed Program Materials or any part thereof.
- 12.3 Save as expressly provided in clause 12.2 of this Part 1 or elsewhere in the Agreement the Licence may not be terminated.
- 12.4 Immediately upon the termination of the Licence, the Licensee shall return to the Licensor the Licensed Program Materials and all copies of the whole or any part thereof or, if requested by the Licensor, shall destroy the same (in the case of the Licensed Programs by erasing them from the magnetic media on which they are stored) and certify in writing to the Licensor that they have been destroyed, provided that the Licensee may extract and store any Licensee data upon a separate media for continuity purposes.
- 12.5 Any termination of the Licence or the Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in the Agreement which is expressly or by implication intended to come into or to continue in force on or after such termination.

13 Assignment

- 13.1 The Agreement is personal to the Licensee and, subject to clause 13.2 of this Part 1 or as otherwise expressly provided, neither the Agreement nor any rights, licences or obligations under it, may be assigned or transferred by either party by the Licensee without the prior written approval of the Licensor.
- 13.2 Notwithstanding the foregoing, either party may assign its rights and licences and transfer its obligations under the Agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of the Agreement or to any entity controlled by, that controls, or is under common control with a party to the Agreement. Any attempted assignment or transfer in violation of this clause 13 will be void and without effect.

14 Entire Agreement

- 14.1 The Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire Agreement between the parties relating to its subject matter.
- 14.2 The parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 14.3 The Licensee hereby confirms that it has read this Part 1 and that it has read Part 2 (which is set out on the Licensor's Website) and has had the opportunity to raise any questions with the Licensor regarding the Agreement prior to signing the Agreement and/or obtain legal advice in relation thereto.

15 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 6 months, the non-affected party may terminate the Agreement by written notice to the other party.

16 Schedules

The provisions of Schedules 1-4 of this Part 1 shall form part of the Agreement as if set out here.

17 Successors and Assignees

The Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in the Agreement shall include its successors and permitted assignees.

18 Time of the essence

Time shall be of the essence of the Agreement as regards any time, date or period mentioned in the Agreement or subsequently substituted as a time, date or period by agreement in writing between the parties.

19 Legally Binding

- 19.1 The Licensor agrees to be bound by the terms and conditions of the Agreement.
- 19.2 For the avoidance of doubt, the Licensee acknowledges that this Part 1 sets out the certain terms and conditions of the Agreement and that it has had the opportunity and has read and agrees to be bound by the additional terms and conditions set out in Part 2.
- 19.3 Further, for the avoidance of doubt, the parties hereto agree that Part 1 and Part 2 together form the terms and conditions of the Agreement.

20 Proper law and jurisdiction

The parties agree that the place of performance of this Agreement is England. This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

SCHEDULE 1

Licensed Programs
"Clockwatcher" the software package for the analysis of both Road Transport Directive and Drivers' Hours

SCHEDULE 2

Equipment

Windows 2000 1GB Memory 1.8ghz Processor 500mb free hard drive space 1024 x 768 screen resolution 1 free USB socket for each download device	Windows XP 1GB memory 1.8ghz Processor 500mb free hard drive space 1024 x 768 screen resolution 1 free USB socket for each download device
Windows Vista 2GB Memory 2.6ghz Processor 500mb free hard drive space 1024 x 768 screen resolution 1 free USB socket for each download device	Windows 7 2GB Memory 2.6ghz Processor 500mb free hard drive space 1024 x 768 screen resolution 1 free USB socket for each download device

Windows 7 or any other such equipment that the Licensor from time to time notifies to the Licensee.

SCHEDULE 3

Licence Fee

The Licence Fee shall be calculated as detailed on front of Agreement.

SCHEDULE 4

Details of Third Party Software

Windows 2000, Windows XP, Windows Vista, Windows 7 (client to confirm whether or not the program is compatible with any other Third Party Software, if so, please provide details).
