

1. GENERAL

- (a) In these terms and conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:-

- (i) "Agreement" means this agreement;
- (ii) "Company" means Route Monkey Limited, a company incorporated under the Companies Acts (company number SC353016) and having its principal place of business at, Bilston Glen Business Centre, 6 Dryden Road, Loanhead, Mid Lothian, EH20 9LZ.
- (iii) "Customer" means the person, firm or company receiving and using the Software and signing these terms and conditions;
- (iv) "First Draft" means the first modified version of the software provided after the Customer has requested a Modification of the Software ;
- (v) "Licence Fee" means the licence fee as invoiced to the Customer or as advised to the Customer in the letter of confirmation referred to in Clause 4 of this Agreement or by such other means as the Company may in their discretion choose ;
- (vi) "Purpose" means private, general commercial, administrative or office use for the Customer's internal business purposes only;
- (vii) "Software" means the Company's computer program named Route Monkey;
- (viii) "Support Period" means successive periods of one year from the date on which the Licence is granted in terms of clause 2(b) below until the date the Support Services cease;
- (ix) "Support Services" means the technical support services to be provided by the Company to the Customer in terms of clause 3(a) below;
- (x) "Support Services Fee" means the annual support fee advised by the Company from time to time;
- (xi) "Technical Support Address" means the internet email address support@routemonkey.com or such other internet email address designated by the Company on the Website from time to time as the email address for technical queries;
- (xii) "Unsealing" means decompressing, compiling or expanding, unzipping or running any program or installation program related to the Software;
- (xiii) "Use" means use by a single user on a single computer or computer network for the Purpose, including the making of one back-up copy of the Software; and
- (xiv) "Website" means the Company's website published on the world wide web at the URL <http://www.routemonkey.com> (the "Website").

- (b) The contract between the Customer and the Company shall be concluded by the Customer receiving this document via email with a delivery receipt or registered post from the Company and is subject to the following terms and conditions. No amendments to these terms and conditions shall be competent except with the prior written consent of the Company.
- (c) Where an Update (as defined in Clause 2(h) below) is made available by the Company, the Contract for such updated Software shall be concluded by the Customer clicking on the "I accept" button on the dialog box or when the software is updated by a Route Monkey technician or web page in which the text is displayed or by the Customer initiating a download of the Software from the Website, whichever is the earlier, and is also subject to the following terms and conditions. No amendments to these terms and conditions shall be competent except with the prior written consent of the Company.

2 SOFTWARE LICENCE

- (a) Upon conclusion of this Agreement in terms of clause 1(b) above, the Company grants to the Customer an exclusive licence for the use of the Software by multiple users on a single computer or computer network for the purpose of evaluating the Software only (the "Evaluation Licence"). The Evaluation Licence shall endure until 30 days have elapsed from the date of conclusion of the contract or until payment of the Licence Fee, whichever is the earlier. At termination of the Evaluation Licence the Customer shall have the option to obtain a further licence of the Software in accordance with clause 2(b) of this Agreement.
- (b) Upon the Customer completing the Company's registration process in force from time to time to the Company's sole satisfaction (which process shall require the Customer to make payment of the Licence Fee to the Company) ("Registration") on payment of the Licence Fee,

the Company shall grant to the Customer a perpetual exclusive licence ("the Licence") to Use the Software. The Customer shall make no other use of the Software. The Customer agrees to ensure that no more than one user shall have access to, and operation of, the Software at any one time other than by prior agreement by the company.

- (c) Upon payment of the Licence Fee and completion of Registration, the Company agrees to supply the Customer with a username and password or other registration key required for the operation of the Software.
- (d) In the event of delivery of the Software on tangible media, property and risk in the media recording the Software will pass to the Customer on the date of delivery by the Company of the copy of the Software.
- (e) The Customer, for an additional cost, may request the Company to provide industry-specific modifications or templates for the Software (the "Modifications") and, if the Company is willing to do so, the Company shall provide such Modifications at a price to be agreed between the parties, provided that unless the Company requires otherwise the terms of this Agreement so far as applicable shall apply to such Modifications *mutatis mutandis*.
- (f) The Customer may with the prior written consent of the Company prepare its own industry-specific modifications or templates for the Software or request a third party to provide industry-specific modifications or templates for the Software (both being referred to as "Customer Modifications"). For the avoidance of doubt, the Customer shall not be permitted to sell, licence or otherwise use the Software (or the Software as amended by the Customer Modifications) other than for the Purpose.
- (g) The Company agrees (if it is so able) to make available such information as the Customer may reasonably require to enable the Customer to create a piece of software which is interoperable with the Software. In the event that the Company is unable to supply the Customer with the requested information, then the Customer shall be entitled to decompile the Software in accordance with the provisions of the Copyright Designs & Patents Act 1988 (as amended).
- (h) The Company may in its sole discretion make new release(s) of the Software ("Updates") available to download in an online process by using a download facility provided on the Company's website (the "Facility"). Upon payment of any additional fee payable for Updates ("Additional Fee") the Company shall make the Facility available to the Customer for a period of 30 days following upon payment of the Additional Fee (the "Download Period").

If at the conclusion of the Download Period the Customer has failed to or has been unable to operate the Facility, the Company at its sole option may:

- (i) make the Facility available for an additional period to be determined by the Company or
- (ii) deliver the Updates to the Customer on tangible media upon prior payment by the Customer of the Company's postage, packing and administrative charges for effecting such delivery.

The Customer acknowledges that it may incur internet call charges to a third party during the downloading of the Updates but that no such internet call charges shall be applied by the Company to the Customer.

- (i) It is the Customer's obligation to maintain compatible operating systems and/or hardware necessary for the operation of the Software and any Updates that may be supplied by the Company under Clause 6, in accordance with the directions of the Company as published on the Website from time to time. The Company shall not be responsible for any diagnosis and/or rectification of any fault or error in the Software resulting from failure of the Customer to use the Software in accordance with such directions of the Company.

3. SUPPORT SERVICES

- (a) The Company shall use its reasonable endeavours to supply answers to technical queries

from the Customer in respect of the Software for the duration of the Support Period on the following conditions:-

- (i) The Customer shall send all such technical queries by email addressed to the Technical Support Address;
 - (ii) The Company shall only be obliged to reply to such technical queries as are actually received by the Company from the Customer in email form at the mailserver designated by the Company for reception of messages addressed to the Technical Support Address;
 - (iii) The Company shall reply to email received in accordance with this clause within 48 hours of receipt, to the reply address submitted by the Customer on each relative email. For the avoidance of doubt the timescale detailed in this sub-clause is indicative only and the Company shall not incur any liability to the Customer whatsoever by reason only of failing to respond within the period stated;
 - (iv) The Company shall not be liable for failure to deliver an answer to the Customer in circumstances beyond the Company's control including without limitation where any incomplete or incorrect reply address is submitted by the Customer or any failure of the public internet network or the Customer's mailserver during transmission of email;
 - (v) The Company may, in its sole discretion, decide to publish technical questions submitted to it by the Customer and relative answers produced by the Company on the Website for the benefit of other users of the Software provided that the Company shall in no event publish the identity of the Customer on the Website; and
 - (vi) Unless otherwise agreed with the Customer in writing, the Company shall not provide Support Services and is under no obligation to reply to technical queries which relate to or arise from any Software which has undergone Customer Modifications.
- (b) For the avoidance of doubt the Support Services shall not include any training in the use of the Software, modification or tailoring of the Software or any diagnosis and/or rectification of any fault or error in the Software resulting from:-
- (i) improper use or neglect of the Software or the equipment on which the Software is operated;
 - (ii) use of the Software on any equipment other than equipment specified as compatible with the Software by the Company on the Website or use of the Software for any purpose other than the Purpose;
 - (iii) failure by the Customer to follow the advice of the Company or to implement fixes or to install Updates of the Software. For the avoidance of doubt, where Updates of the Software are issued to the Customer, then the Company will only be obliged to support the Updates;
 - (iv) any repair, adjustment, alteration, decompilation or modification of the Software by the Customer or by any third party on the Customer's behalf; or
 - (v) use of the Software under or in terms of an Evaluation Licence.
- (c) The Company may, in its sole discretion, agree to provide further technical support to the Customer at the Customer's request in addition to the Support Services and in such event the Company shall also be entitled to charge the Customer for that support at the Company's usual charge out rates in force from time to time. For the avoidance of doubt, the Company is under no obligation to provide further technical support for any Software which has undergone Customer Modifications. The Company, may, in its sole discretion, agree to provide the Customer with any computer hardware and in such event, the Company shall be entitled to charge the Customer for that hardware. The Company shall not be under any obligation to provide any support to the Customer in relation to the hardware. The provisions of clause [4] (with appropriate changes) shall apply to any sum payable in terms of this sub-clause.
- (d) Updates of the Software may be issued by the Company to the Customer at the sole option of the Company. The Company is under no obligation to provide Updates of the Software to the Customer where the Software has undergone Customer Modifications.

4. MODIFICATIONS

- (a) Where the Customer has requested Modifications of the Software under Clause 2(e), the Customer shall provide the Company with a written specification ("Specification") of required amendments to the Software.

- (b) Where the Customer requests a Modification of the Software the Company shall provide the Customer with a letter of confirmation, which letter, at the Company's discretion, will provide details of the cost, payment times and an estimated time for completion and delivery of the requested Modification (hereinafter referred to as "Project Time"). Time shall not be of the essence in respect of any estimates of time given for completion of the Modification. On execution of the letter of confirmation by the Customer, the Company shall commence preparation of the Modification. For the avoidance of doubt, should the Customer choose not to proceed with the Modification, at the Company's discretion, the Customer shall remain liable for payment of the charges as set out in the letter of confirmation.
- (c) Should the Company request a response from the Customer during the Project Time in order to assist the Company with the completion of the Modification, the Customer shall respond to the Company with the requested information within three days of receipt of the Company's request.
- (d) Any request for a Modification, a Specification or an amendment to a Specification must be sent as appropriate to either;
 - (i) the Customer's nominated account manager, which manager will be advised by the Company to the Customer from time to time; or
 - (ii) by email to support@routemonkey.com or such other email address as the Company may advise from time to time.
- (e) Should completion of any Modification require the Company to attend at the offices of the Customer, the Company reserves the right to charge the Customer at the Company's usual charge out rate in force from time to time. At the request of the Company, the Customer shall also re-imburse the Company for all reasonably incurred travelling and accommodation costs incurred by the Company in attending the Customer's offices.
- (f) The Company may, at its discretion, add to the duration of the Project Time to accommodate any additional work and in the event the Company chooses to do so, the Customer cannot claim that the Project Time has over run.

5. LICENCE FEE AND SUPPORT SERVICES FEE

- (a) The Licence Fee shall be the consideration for the provision of the Licence for the Software specified in clause 2(b). The Support Services Fee shall be the consideration for the provision of Support Services specified in Clause 3.
- (b) The Customer agrees to pay to the Company the Licence Fee by submission of valid credit, debit or charge card details through the Website in respect of a credit, debit or charge card which the Customer is authorised to use and which is issued by a card service provider named on and accepted by the Website. Where payment is made by the Customer by valid credit, debit or charge card the Company reserves the right to retain the card details. Where future payments are due by the Customer to the Company, the Company shall notify the Customer seven days before such payment is due of the card details retained for the Customer and that the Company will collect payment from that account. The Company may, at its sole option, agree to accept payment from the Customer by another method on application to it by the Customer.
- (c) The Support Services Fee shall be paid by the Customer by standing order and collected by the Company annually, unless otherwise agreed by the Company, the first Support Services Fee being due for payment on the date the Customer is granted the Licence under Clause 2(b) of this Agreement and with such further Support Services Fee being due and payable on dates advised by the Company,
- (d) If for any reason no payment is made at the time of downloading the Software or at the time of delivery of the Software to the Customer in tangible media, the Customer agrees to make payment of the Licence Fee and the Support Services Fee no later than 28 days after delivery of the Software by successful download or receipt of the Software on tangible media.
- (e) Where the Company has agreed with the Customer that payment of any charges under this Agreement for Modifications can be paid in instalments, the final instalment shall be due for payment on the date of completion of the First Draft of the Software by the Company.
- (f) No deductions shall be made by the Customer from any payments due under this Agreement and the Customer shall not be entitled to withhold or set off payments for any reason

whatsoever.

- (g) Any amounts which remain unpaid after the due date for payment thereof in terms of clause 5 shall, if the Company in its sole discretion so decides, accrue interest at the rate of 4% per annum above the base rate of the Royal Bank of Scotland plc from time to time from the due date for payment until the date on which payment of the amount outstanding is made in full.
- (h) The Company reserves the right to withhold performance of any of its obligations under this Agreement should the Customer fail to make payment of any amount due to be paid to the Company under the Agreement. To the extent permitted by law, the Company shall not be liable to the Customer for any loss or damage should the Company withhold performance of their obligations for reasons of non-payment by the Customer.

6. INTELLECTUAL PROPERTY RIGHTS & CONFIDENTIALITY

- (a) Copyright and any other intellectual property rights including without limitation patent rights, trade marks, design right, rights in or relating to databases, semiconductor topography rights, rights in or relating to confidential information or any other intellectual property rights (registered or unregistered) throughout the World, including all rights of reversion and rights to any pending registrations and the right to sue for and recover damages for past infringements in the Software or any Modifications shall vest in the Company and shall not be transferred to the Customer except with the prior written consent of the Company.
- (b) The Customer agrees not to remove, tamper with or obscure any of the Company's copyright or trade mark notices in respect of the Software. In addition the Customer will ensure that a suitable copyright notice is fixed to any back-up copy of the Software made in accordance with clause 1(xi). The Company asserts its moral right to be identified as the author of the Software.
- (c) The Customer acknowledges that the Software is the confidential and proprietary information of the Company. The Customer agrees to maintain the confidentiality of the Software save to the extent required to enable the Customer to Use the Software.
- (d) The Customer shall notify the Company of any unauthorised or suspected unauthorised use of the Software as soon as it becomes aware of or suspects the same.

7. TRANSFER

The Company may transfer any or all of its rights and/or obligations under this Agreement to any third party including any subsidiary, holding, related or affiliated company.

8. WARRANTIES

- (a) Subject to the exclusions contained in clause 8(b) and to the limitations contained in clauses 8(c) and 8(d) below, the Company warrants that:-
 - (i) the Company is entitled to grant the Licence to the Customer upon the terms of this Agreement;
 - (ii) in the event that the Company has supplied the Software on tangible media to the Customer the media upon which the Software is stored will for a period of 30 days from the date of delivery to the Customer be free from defects in materials, design and workmanship;
 - (iii) the Company shall perform the Support Services with reasonable skill and care commensurate with the standard to be expected of the reasonably competent software developer; and
 - (iv) if used correctly and in accordance with the directions of the Company as published on the Website from time to time, including without limitation any instructions relating to compatible operating systems and hardware, the Software will run in a substantially uninterrupted and error free manner for 30 days from the date of delivery of the Software to the Customer;

All other warranties, conditions or terms (express or implied, statutory or otherwise) in respect of the Software or the Support Services are hereby expressly excluded to the extent permitted

by law. In particular, the Company excludes all warranties in respect of any Software which has undergone Customer Modifications to the extent permitted by law. The Customer agrees that this clause is in all respects fair and reasonable having regard to the Licence Fee, the availability of insurance for the Customer, the Company's limited knowledge of the Customer's business and the fact that the Company has no control over the use made by the Customer of its hardware and software.

- (b) The warranties contained in sub-clause 8(a)(ii), 8(a)(iii) and 8(a)(iv) shall not apply and shall be void where the Customer:-
- (i) is not using the Software in terms of a Licence granted in accordance with clause 2(b) including without limitation where the Customer is using the Software under or in terms of an Evaluation Licence;
 - (ii) makes improper use of or neglects the Software or any hardware or operating system software used by the Customer to run the Software;
 - (iii) uses the Software on any equipment other than the equipment designated by the Company on the Website as compatible equipment or uses the Software for any purpose other than the Purpose;
 - (iii) fails to follow the advice of the Company or to implement fixes or to install Updates of the Software;
 - (iv) repairs, adjusts, alters, decompiles or modifies the Software or employs a third party to repair, adjust, alter, decompile or modify the Software on its behalf; or
 - (v) the Customer is in breach of any of its obligations in terms of this Agreement.
- (c) Subject to Clause 8(b) above, the Customer shall immediately notify the Company of any breach of the warranties. Where the breach is of the warranties contained in clauses 8(a)(ii), 8(a)(iii), or 8(a)(v) the Company shall remedy the breach by, at the Company's sole option and cost, either
- (i) correcting the defect (either by effecting repairs or by supplying new conforming Software or media) or
 - (ii) refunding to the Customer the Licence Fee actually paid by the Customer to the Company.

Where the breach is of the warranty contained in clause 8(a)(i), the Company shall indemnify the Customer against all reasonable loss which the Customer may suffer as a direct result of having used the Software for the Purpose. Where the breach is of the warranty contained in clause 8(a)(iv), the Company shall provide the Customer with compliant Support Services. These shall be the only remedies available to the Customer in respect of a breach of the warranties contained in clause 8(a). Where, following receipt of a notification of a defect from the Customer, the Company discovers that the defect has arisen in circumstances where the warranties made in clause 8(a) are void or that the defect is not contained in any of the Software, then the Company may charge the Customer a fee calculated by multiplying the number of hours spent investigating the defect by the Company's usual hourly charge out rate. The provisions of clause 4 (with appropriate changes) shall apply to any sum payable in terms of this clause.

- (d) Notwithstanding any other clause and except in the case of a breach of the warranty contained in clause 8(a)(i) or in so far as cannot be excluded by law in respect of death or personal injury, the Company shall not under any circumstances be liable to the Customer for any special, indirect or consequential loss or damages which arise from a breach of this Agreement or from liability implied or arising at law (including negligence). The term "consequential" includes, but is not limited to, loss of or reduced profit, loss of or reduced production, loss of materials of production, increased costs of production and loss of contract. In addition, the Company shall not be liable to the Customer for any costs, expenses, losses or damages incurred by the Customer through the Customer's use of Software which has undergone any Customer Modifications, to the extent that such costs, expenses, losses or damages result from the Customer Modifications. Save in the case of death or personal injury, the liability of the Company under or arising out of any breach of this Agreement or obligation implied or arising at law (including negligence) shall not exceed the Licence Fee actually paid by the Customer to the Company. The Customer agrees that this clause is in all respects fair and reasonable having regard to the Licence Fee, the availability of insurance for the Customer, the Company's limited knowledge of the Customer's business, any Customer Modifications and the fact that the Company has no control over the use made

by the Customer of its hardware and software.

9. CUSTOMER'S ACKNOWLEDGEMENTS

- (a) The Customer acknowledges that the Software is a complex piece of programming and that the Company has no control over the Customer's actual use of its hardware and software, and the Customer accepts that the Company does not warrant that the Software will meet the Customer's computing/data processing needs or requirements or that the Customer's use of the Software will be entirely uninterrupted or error free.
- (b) The Customer acknowledges that the Software is intended for operation on standard unmodified computing equipment and operating systems as designated on the Website and that other software from third parties can modify such equipment and operating systems, including without limitation the system registry, in such a way that may render the Software inoperable, and that in consequence the Company does not warrant that the Software will operate in all operating system configurations.
- (c) The Customer acknowledges that the Software contains source and object code and other software products owned by third parties ("Third Party Software") and that the permission of such third party owners must be obtained before Third Party Software can be modified and in consequence, the Company gives no warranty in relation to Third Party Software or to the use to which it may be put by the Customer or its fitness or suitability for any particular purpose.

10. CUSTOMER'S OBLIGATIONS

- (a) For the duration of this Licence and for a period of 5 years thereafter, where any Customer Modifications have been undertaken, the Customer hereby agrees not to (without the prior written consent of the Company) be directly or indirectly engaged, interested or concerned in any business carried on by any person, company or undertaking which competes, or is likely to compete with any business carried on by the Company.

11. TERMINATION

- (a) If the Customer:-
 - (i) makes default in or commits any breach of its obligations to the Company in terms of this Agreement; or if the Customer:-
 - (ii) commits an act of bankruptcy, becomes apparently insolvent, or any proceedings are commenced with a view to the appointment of an administrator, receiver or administrative receiver in relation to the Customer over all or substantially all of its assets or any party gives notice of its intention to appoint an administrator to the Customer or if the Customer is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986) or shall cease or threaten to cease to pay its debts as they fall due or shall make or seek to make any composition or arrangement with its creditors; or
 - (iii) ceases or threatens to cease to carry on the whole or a substantial part of its business or if serious doubt arises as to the Customer's solvency,

then in such case the Company shall immediately become entitled (without prejudice to its other claims and rights under this Agreement) to suspend further performance of this Agreement for such time not exceeding six months as it shall in its absolute discretion think fit or (whether or not notice of such suspension shall have been given) to treat this Agreement as wrongfully repudiated by the Customer and forthwith to terminate this Agreement. The Company will notify the Customer of the exercise of its option to suspend or terminate this Agreement within a reasonable time of its becoming aware of the fact or default on the Customer's part giving rise to the Company's rights under this clause.

- (b) On termination of this Agreement (for whatever reason), the Customer will immediately cease using the Software and will remove the Software from any computer equipment and will destroy or immediately return all copies of the Software to the Company.

12. FORCE MAJEURE

The Company shall not be responsible for failure to fulfil its obligations to the extent that this results from any cause beyond its reasonable control (which shall, for the avoidance of doubt, include illness of its employees).

13. SEVERABILITY

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of such Agreement and all provisions unaffected by such invalidity or unenforceability shall remain in full force and effect.

14. WAIVER

The rights and powers which the Company may acquire in terms of the Agreement shall not be prejudiced or restricted by any delay in the exercise of those rights or powers or by any indulgence or by any forbearance extended to the Customer. No failure or delay by the Company to exercise any such right or power shall operate as a waiver thereof nor shall any partial exercise of any such right or power preclude any other or further exercise of that or any other right or power.

15. DISTANCE SELLING REGULATIONS

This clause shall only apply where the Customer is a natural person who enters into this Agreement for purposes which are outside his business ("the Consumer").

- (a) Subject to clause 14(b), 14(c) and 14(d) below, the Consumer shall be entitled to serve notice of cancellation of this Agreement in writing or in another durable medium to the Company at any time within seven days of the date of conclusion of the contract in accordance with clause 1(b) above ("the Cancellation Period").
- (b) Prior to issuing a notice of cancellation in accordance with clause 14(a) the Consumer shall destroy all Software he has received from the Company under the terms of this Agreement and shall, if the Company so requests, certify to the Company that he has done so in writing or in another durable medium.
- (c) The effect of a notice of cancellation served in accordance with clause 14(a) shall be to terminate this Agreement as though it had not been made.
- (d) The Consumer shall not be entitled to provide notice of cancellation in accordance with clause 14(a) if, during the Cancellation Period, he has installed the Software on any computer system or has otherwise engaged in Unsealing the Software received by him.
- (e) The Consumer shall not be entitled to provide notice of cancellation in accordance with clause 14(a) if, during the Cancellation Period, he has requested the Company to make Modifications in accordance with clause 2(e) above.

16. REJECTION AND REFUNDS

The Customer shall carefully inspect and test the Software immediately on delivery to ensure that the Software is fit for the intended purpose. In the event that the Software is rejected the Customer must advise the Company in writing with the reasons for rejecting the Software within 30 (thirty) days of the date of delivery of the Software.

17. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Company and Customer and supersedes all prior oral or written agreements, understandings or representations between them with respect to the subject matter of this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by Scots law and the Company and the Customer submit themselves to the non-exclusive jurisdiction of the Scottish Courts.

