

## **SOFTWARE LICENCE AGREEMENT**

### **1. DEFINITIONS**

In this agreement, unless the context otherwise requires:

- (a) "Infoplex" means Infoplex Ltd a company registered in Scotland under number 154345 and having its registered office at Alloa Business Centre, Whins Road, Alloa, Clackmannanshire, FK10 3SA;
- (b) "Software" means the System Integration Manager software program (object code only) as well as any of its additional application software program modules (object code only) purchased by you and shipped in the System Integration Manager installation or at a later date together with any relevant operational literature and other documentation;
- (c) "Trial Period" means a period of 30 days from the date of delivery of the Software to you;
- (d) "Free InfoCover period" means a period of 30 days from the date of delivery of the Software to you.

### **2. GRANT OF SOFTWARE LICENCE**

Infoplex grants you a non-exclusive, non-transferable, non-sublicensable, non-assignable licence to install, run and use the Software for internal business purposes only in accordance with the terms and conditions of this agreement.

### **3. PERMISSIONS**

You may:

- (a) If you have paid for a single user licence, install and run the software on any computer provided that only one person uses the software at any one time.
- (b) If you have paid for a site licence, install and run the Software on any system for an unlimited number of users provided all such users access the system from processors located within one mile of all other users.
- (c) If you have paid for a multi-user licence, install and run the Software on any system but only for use by the maximum number of concurrent users at any one time for which you have paid licence fees.
- (d) If you have paid for a multi-company licence, install and run the Software on any system but only for use with the maximum number of sets of data, whether company, partnership, group, person or otherwise, for which you have paid licence fees.
- (e) Upon receiving a request from you and provided the licence purchase price for the Software has been paid, be supplied by Infoplex with a registration code.

WARNING: some programs will cease to operate and/or request a registration code after a period of time if the registration procedure has not been completed.

- (f) Treat the Software as an archival copy and make a back-up copy for regular use or vice versa provided that copies are labelled as per the disk supplied, including a notice drawing attention to Infoplex's copyright in the Software, and that such copies are made solely for operational security purposes.

### **4. RESTRICTIONS**

Other than as expressly permitted under clause 3 above you shall not yourself nor shall you permit others to:

- (a) Reproduce, copy, duplicate, distribute, sell, rent, lease, assign, sub-license, transfer or part with possession of the Software or any part thereof.
- (b) Decompile, disassemble, alter, adapt, translate, merge, modify or reverse engineer the Software or any part thereof in any manner nor interfere with any security devices, encryption, passwords, embedded licence data or other devices in or supplied with the Software.
- (c) Alter, obscure, remove, conceal or otherwise interfere with any markings on or within the Software or its packaging which refer to Infoplex nor interfere with any copyright, trademark or other proprietary notices.

## **5. TERMINATION**

- (a) Infoplex may, at its sole and absolute discretion, terminate this agreement in which event it will refund to you the purchase price of the Software.
- (b) This agreement may be terminated by Infoplex without refund if you fail to make payment after 7 days notice of any sums due to Infoplex under this or any other contract with Infoplex.
- (c) Provided that you have not registered the Software this agreement may be terminated by you for a full refund of the purchase price if you return within the Trial Period and in good condition the original and any copies or part copies of the Software.
- (d) You may terminate this agreement at any time without refund by returning to Infoplex the original and any copies or part copies of the Software.
- (e) This agreement will terminate automatically without refund if you fail to comply with any of the terms or conditions of this agreement or if you become bankrupt, go into liquidation, suffer or make any winding up petition, make an arrangement with your creditors, have an administrator, administrative receiver or other receiver appointed, or if you suffer or file any similar action in consequence of debt.

Any use of any copies of the Software after termination of this agreement is unlawful. Within 14 days of termination of this agreement under sub-clauses 5(a), 5(b) and 5(e) you will return to Infoplex the original and any copies or part copies of the Software. Your obligations under clauses 4 and 9(d) shall survive the termination of this agreement.

## **6. INTELLECTUAL PROPERTY & CONFIDENTIALITY**

All Intellectual Property in the Software shall at all times remain the property of Infoplex and / or its licensors. No right, title or interest in or to any trade mark, logo, copyright (other than as set out in this licence) or trade name of Infoplex or its licensors is granted under this agreement.

## **7. INFRINGEMENT**

Should any part of the Software become, or in Infoplex's opinion be likely to become, the subject of a claim of infringement or trade secret misappropriation, Infoplex shall, at its option and expense:

- (a) obtain for you the right to continue using the Software;
- (b) replace or modify the Software without materially impairing the operation of the Software so its use becomes non-infringing or otherwise lawful or
- (c) terminate the agreement with respect to the infringing Software.

This clause states Infoplex's entire liability and your exclusive remedy for infringement of third party rights or trade secrets misappropriation.

## **8. TRANSFER**

Infoplex may at any time transfer any or all of its rights and/or obligations under this agreement without your consent.

## **9. WARRANTY AND MAINTENANCE & SUPPORT**

(a) Subject to the exclusions contained in clause 9(b) and to the limitations contained in clauses 9(c), 10(b) and 10(c) below, Infoplex, as the owner of the Software and having used reasonable skill and care in designing and developing the Software, warrants that:

- (i) it is entitled to grant the Licence to you upon these terms and conditions;
- (ii) the physical media upon which the Software is recorded and supplied will for a period of 30 days from the date of delivery to you be free from defects in materials, design and workmanship under normal conditions of use;
- (iii) the Software program(s) will, if used correctly, perform substantially in accordance with the relevant user documentation supplied as part of the Software; and
- (iv) if used correctly the Software program(s) will run in a substantially uninterrupted and error free manner.

Having regard to the fact that the Software is a complex piece of programming and Infoplex having no control over your use of your hardware and software, Infoplex does not warrant that the Software will meet your business requirements or that your use of the Software will be uninterrupted or error free.

All other warranties, conditions or terms (express or implied, statutory or otherwise) in respect of the Software are hereby expressly excluded. You agree that this clause is in all respects fair and reasonable having regard to the purchase price of the Software, the availability of insurance for you, Infoplex's limited knowledge of you and your business and the fact that Infoplex has no control over the use made by you of your hardware and software.

(b) The warranties contained in sub-clause 9(a)(ii), 9(a)(iii) and 9(a)(iv) shall not apply and shall be void where you or any third party:

- (i) make improper use of or neglect the Software or hardware upon which it is installed;
  - (ii) use the Software on any unsuitable hardware or use the Software for any unsuitable purpose;
  - (iii) repair, adjust, alter, decompile or modify the Software; or
  - (iv) are in breach of any of your obligations under this agreement.
- (c) You shall immediately notify Infoplex of any breach of the warranties. Where the breach is within the Trial Period and is of the warranties contained in clauses 9(a)(ii), 9(a)(iii) or 9(a)(iv) Infoplex shall remedy the breach by, at Infoplex's sole option and cost, either:

- (i) correcting the defect (either by effecting repairs or by supplying new conforming Software) or
- (ii) refunding to you the purchase price paid by you to Infoplex. Where the breach is of the warranty contained in clause 9(a)(i), Infoplex shall indemnify you against any loss which you have suffered directly as a result of having used the Software properly on suitable equipment. These shall be the only remedies

available to you in respect of a breach of the warranties contained in clause 9(a). Where, following receipt of a notification of a defect from you, Infoplex discovers that the defect has arisen in circumstances where the warranties made in clause 9(a) are rendered void pursuant to clause 9(b) or that the defect is not contained in any of the Software, then Infoplex may charge you a fee calculated by multiplying the number of hours spent investigating the defect by Infoplex's usual hourly charge out rate and any invoices so rendered by Infoplex to you (together with any VAT payable thereon) shall be paid by you to Infoplex in full within 14 days of the date of the relevant invoice.

(d) You shall indemnify Infoplex and keep Infoplex indemnified from and against any loss, costs, claims and expenses incurred by Infoplex as a result of any claim raised against Infoplex by a third party for any loss, injury, costs, damage or expenses caused to that third party by that third party's use of the Software.

(e) During the Free InfoCover period, unless the agreement is terminated in accordance with Clause 5 of this agreement, Infoplex may provide you with maintenance and support services comprising:

(i) technical advice, assistance and support by telephone and, where Infoplex considers it appropriate, by remote access, on Mondays to Fridays from 9.00am to 5.00pm excluding Bank Holidays, and

(ii) such updates of the Software as Infoplex may from time to time make available, which updates will be delivered either on media, by email or by remote access.

Whilst Infoplex will use reasonable endeavours to resolve any problems you may experience, it does not warrant that any assistance given will be successful in resolving problems in whole or in part.

(f) After the Free InfoCover period ends or at any other time during the existence of this agreement, annual Maintenance and Support (including the right to receive product updates) may be purchased from Infoplex charged in accordance with Infoplex's then current charging structure which includes surcharges in certain circumstances.

(g) Infoplex shall be under no obligation to notify you of any upgrades to the software or modifications, enhancements or amendments to it. If Infoplex supplies any upgrades, the terms of this agreement shall apply to them until the agreement is terminated in accordance with Clause 5 of this agreement and your licence to use previous versions of the Software shall be deemed terminated.

## **10. DISCLAIMER**

(a) You acknowledge that, in entering into this agreement, you do not do so on the basis of, and do not rely on, any representation, warranty or other statement except as expressly provided in this agreement and you waive any right you may have in respect of any breach of any representation, warranty or other statement which is not contained in this agreement. Any reseller, distributor or dealer (including any Infoplex approved dealer) who may have supplied you with the Software is expressly not appointed or authorised by Infoplex as its servant or agent; no such person has any authority, either express or implied, to enter into any contract or provide any representation, warranty or guarantee with or to you on behalf of Infoplex or otherwise to bind Infoplex in any way whatsoever.

(b) Infoplex makes no warranty as to the results that may be obtained from the use of the Software or as to the accuracy or reliability of any information obtained through the Software; it is your exclusive responsibility

to ensure that the Software is suitable for your needs and the entire risk as to its performance and as to results obtained from its use is assumed by you. You hereby acknowledge that the content and accuracy of documents produced by the Software are your sole responsibility and, whether or not produced using the Software, that you also remain responsible for ensuring that any information, opinions, recommendations, forecasts or other comments submitted to third parties are accurate and complete.

(c) Notwithstanding any other clause of this agreement and except in so far as cannot be excluded by law in respect of death or personal injury, Infoplex shall not under any circumstances be liable to you for loss of or corruption to data, 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) or arising as a result of the software ceasing to operate or requiring a registration code under sub-clause 3(e) or otherwise even if such loss or damage was reasonably foreseeable or Infoplex was aware of the possibility of that loss or damage arising. The term "consequential" includes, but is not limited to, loss of or reduced profit, loss of business revenue, loss of goodwill, loss of anticipated savings, loss of or reduced production, loss of materials of production, increased costs of production, loss of contract and costs of procurement of substitute software, goods or services. Save in the case of death or personal injury, the liability of Infoplex under or arising out of any breach of this agreement or obligation implied or arising at law (including negligence) in connection with this agreement shall not exceed the purchase price paid by you to the supplier. You agree that this clause is in all respects fair and reasonable having regard to the purchase price, the availability of insurance for you, Infoplex's limited knowledge of you and your business and the fact that Infoplex has no control over the use made by you of your hardware and software.

(d) Nothing in this agreement shall limit or exclude Infoplex's liability for death or personal injury caused by its negligence.

## **11. FORCE MAJEURE**

Infoplex shall not be responsible for failure to fulfil its obligations under this agreement to the extent that this results from any cause beyond its reasonable control.

## **12. 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 this agreement and all provisions of this agreement unaffected by such invalidity or unenforceability shall remain in full force and effect.

## **13. WAIVER**

The rights and powers of Infoplex under this 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 you. No failure or delay by Infoplex 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.

#### **14. DATA PROTECTION**

In entering into this agreement, you acknowledge and agree that Infoplex may keep records of your contact details, such as email address, and details of your use of the Software for the following purposes:

- (a) to enable Infoplex to analyse the success of the Software;
- (b) to provide Infoplex with information that could help it to develop and improve its products; and
- (c) to send you information that you may be interested in (unless you opt out of this "email alert" by sending email to that effect to info@infoplex.co.uk).

#### **15 ENTIRE AGREEMENT**

This agreement constitutes the entire understanding and agreement between Infoplex and you with regard to the subject matter hereof and supersedes all prior oral or written:

- (a) agreements, understandings or representations between Infoplex and you with respect to the subject matter of this agreement; and
- (b) quotations or representations issued or made by Infoplex to you with respect to the subject matter of this agreement.

#### **16. GOVERNING LAW**

This agreement and all matters relating thereto shall be governed and construed in accordance with the laws of Scotland and you agree to submit to the exclusive jurisdiction of the Scottish courts.