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# **Oasys Software Licence and Support Agreement**

This Software Licence and Support Agreement ("Agreement") is a legal agreement between you, either an individual or an entity, ("Licensee") and the licensor, Oasys Limited ("Oasys") whose registered office is at 13 Fitzroy Street, London, W1T 4BQ, United Kingdom for the accompanying computer software product(s), associated materials and documentation ("Software"). By installing, displaying, copying, accessing or otherwise using the Software, you, the Licensee, agree to be bound by the terms of this Agreement.

## 1 LICENCE

- 1.1 Subject to the terms of this Agreement and payment of all applicable fees ("Licence Fee"), Oasys grants to Licensee a non-exclusive and non-transferable licence to install and use the Software solely for the internal business purposes of the Licensee ("Licence"). Where the Licensee is an entity, its employees, agents and subcontractors shall be covered under this Agreement. Where the Licensee is a teaching establishment, the teaching staff, researchers and students shall be covered under this agreement.
- 1.2 Licensee shall use the Software only in accordance with its documentation.
- 1.3 Subject to clause 7.8 (a), Oasys will provide Licensee with minor enhancements and bug fixes, should there be any, to the Software free of charge for a period of one year from the date of the licence being issued or, if the Software is rented, for the duration of the agreed rental period.
- 1.4 Except where the Software allows the Licensee to transfer the licence themselves, Licensee may transfer the licence to another computer on two occasions in any 12-month term of the Agreement free of charge. Additional transfers not requiring an upgrade to the Software will incur a licence transfer fee at the then-current rate. Licensee shall pay an upgrade fee at the then-current rate for transfers requiring an upgrade to Software.
- 1.5 Licensee may enable multiple users to share the Software via remote access or computer virtualisation applications only if the number of users at any one time is equal to or less than the number of valid licences held for the Software.
- 1.6 The term of the License is perpetual unless the Licensee is renting the software for a set period.

## 2 INTELLECTUAL PROPERTY RIGHTS

- 2.1 The copyright, patents, trade marks and all other intellectual property rights in the Software and related documentation are owned by and remain the property of Oasys or its suppliers.
- 2.2 Licensee does not obtain any rights in the Software other than those expressly granted in this Agreement.

# 3 RESTRICTIONS ON USE

- 3.1 Except as expressly permitted by this Agreement or authorised in writing by a director of Oasys, Licensee shall not, nor permit others to:
  - (a) use, copy, modify, create derivative works from or distribute the Software, any part of it, or any copy, adaptation, transcription, or merged portion of it, except to the extent that the foregoing acts are permitted by law;
  - decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Software or any part of it, except to the extent that the foregoing acts are permitted by law;
  - (c) exploit or sell the Software commercially;
  - (d) use the Software in any country that is not stated in the billing address submitted by Licensee to Oasys at the time of
  - (e) incorporate the Software into programs not provided by Oasys:
  - (f) transfer, loan, lease, assign, charge, rent, or otherwise sublicense the Software or this Agreement;
  - (g) use the Software in any manner that infringes the intellectual property or other rights of Oasys or any other party;
  - (h) remove or alter any copyright, proprietary or similar notices from the Software (or any copies of it); or

- operate the Software or any part of it for the benefit of or on behalf of any third party, including by way of application service provider services, internet service provider services, timesharing arrangements, outsourcing services or bureau services.
- use the software for commercial purposes if it has been licensed to a teaching establishment or student/s for educational purposes.

## 4 WARRANTIES AND REPRESENTATIONS

- 4.1 Oasys warrants and represents to Licensee that:
  - (a) it has the right to grant to Licensee a licence to use the Software set out in this Agreement;
  - (b) the use of the Software in accordance with the terms of this Agreement will not infringe the intellectual property rights of any third party; and
  - (c) the Software will perform substantially in accordance with its documentation and specification.
- 4.2 Oasys does not warrant that:
  - (a) the operation of the Software will be uninterrupted or error-free; or
  - (b) Software will meet Licensee's particular requirements, whether or not those requirements have been made known to Oasys.
- 4.3 Licensee has tested the Software's suitability prior to purchase of any Licences. Acceptance is deemed to take place on payment of Licence Fee.

## 5 LIABILITY

- 5.1 Licensee shall indemnify Oasys and keep Oasys fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with:
  - (a) any breach by Licensee of this Agreement;
  - (b) a breach by Licensee of copyright or other intellectual property or proprietary right; and
  - (c) a breach of confidence by the Licensee, his servants, agents, employees and contractors.
- 5.2 The parties shall not be liable for any of the following types of loss or damage even if the party has been advised of the possibility of such loss or damage:
  - (a) indirect or consequential loss;
  - (b) loss of profits, revenue, contracts or anticipated savings;
  - (c) loss arising out of any delay or loss of time; or
  - (d) loss or damage arising from loss, damage or corruption of any data.
- 5.3 Oasys shall not be liable for any defect to the extent it results from:
  - (a) use of the Software otherwise than in accordance with its documentation and this Agreement;
  - (b) any modification of the Software not carried out or authorised in writing by Oasys;
  - (c) failure of electric power or environmental control systems; or
  - (d) failure of hardware, software or other products or services not supplied by Oasys or any other matter beyond the reasonable control of Oasys.
- 5.4 Without prejudice to Clause 5.2 and Clause 5.3, the total liability of Oasys under or in connection with this Agreement whether in contract, negligence or otherwise, shall be limited to the greater of £100,000 or 150% of the Licence Fee paid for the Software giving rise to the liability.
- 5.5 Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury caused by negligence, fraudulent misrepresentation or anything else which cannot be excluded or limited at law.
- 5.6 Limitations of liability shall not apply to (i) claims of infringement of another's copyright, patent, trademark, or other intellectual property right and violations of a trade secret or other contractual right, or (ii) damages to a real or tangible personal property as a result of the negligent or intentional acts or omissions by Oasys.

## 6 PAYMENT

- 6.1 The following payment terms only apply when purchasing Software direct from Oasys. Purchases via a reseller or any entity other than Oasys (the "Reseller") will be subject to the Reseller's terms & conditions.
  - 6.1.1 The Licence Fee is due and payable in full upon issue of the licence/s.

- 6.1.2 Payment of any amount owed by Licensee to Oasys pursuant to this Agreement shall be paid within thirty (30) days following invoice from Oasys. In the event any overdue amount owed by Licensee is not paid following ten (10) days notice from Oasys, then Licensee shall pay in addition a late payment charge at the rate of 3% per month on any overdue amount.
- 6.1.3 Invoices are produced electronically and will be sent by email. PDF copies are available on request. Oasys do not provide printed invoices.

## 7 SUPPORT

- 7.1 The following support terms only apply when purchasing Software direct from Oasys. Purchases via a reseller or any entity other than Oasys (the "Reseller") will be subject to the Reseller's terms & conditions.
- 7.2 Licensee shall nominate one or two persons to be the point of the contact ("Contact") for any Support requested and received. Support will only be provided to the Contact and Licensee must ensure that the Contact is a competent and knowledgeable user of the Software.
- 7.3 Licensee is entitled to the following services ("Support") for a period of one year from the date of the licence being issued or, if the Software is rented, for the duration of the agreed rental period ("Support Period"):
  - 7.3.1 updates to the Software including new releases and patches
  - 7.3.2 technical advice on the use of the Software, delivered by such means as Oasys deem appropriate at the time. This may include but is not restricted to, telephone, email and Internet based communication. In order to provide a flexible service, Oasys reserves the right to change its support delivery methods without notice;
    - (a) Oasys shall endeavour to respond and resolve a problem within 24 hours; however in giving response, a solution to the problem in question cannot be guaranteed; and
    - (b) if an issue cannot be resolved by first line support it will be escalated to second line support. Oasys will use reasonable endeavours to keep the Contact informed of progress throughout this process. If second line support cannot resolve the issue then it will be passed to Oasys development staff. When a problem is considered mission critical, Oasys will use reasonable endeavours to issue an "Emergency Patch" to resolve the problem.
- 7.4 At the end of the Support Period, the Support shall be automatically renewed for the same duration (each a Renewal Period), unless either party terminates, in writing, at least 30 days before the end of the Support Period or subsequent Renewal Period.
- 7.5 The Licensee authorises Oasys to charge the Support fee through one of the following methods:
  - (a) a valid credit card, if provided;
  - (b) a bank account authorised for automatic payment; or
  - (c) an invoice in accordance with clause 6.1.2
- 7.6 Where the Licensee purchases additional licences during the year, Oasys shall consolidate all licences to align the Support to a single renewal date. Oasys will advise the Licensee of any additional cost to move the Support for existing licences to a single renewal date and will charge the total cost via the Licensee's existing payment method.
- 7.7 Oasys reserves the right to refuse to provide Support on superseded versions of the Software once a new version has been available for six months.
- 7.8 Oasys may elect to discontinue Support at any time upon notice to Licensee and refund any then unearned support fee.
- 7.9 All maintenance releases, when delivered and installed, shall become part of the Software and shall be subject to this Agreement.
- 7.10 Oasys will not, under this Agreement, provide:
  - (a) versions of Software that contain platform upgrades, substantial additional functionality or improved performance;
  - (b) any consultancy advice including, but not limited to, best-practice technical advice, data conversion, engineering advice; or
  - (c) on-site installation or on-site support.
- 7.11 Oasys is not obliged to provide Support if any of the following occurs:
  - (a) malfunction of hardware or operating system software;
  - (b) negligence by Licensee;

- (c) Licensee changes to an un-supported operating system;
- (d) a point of contact is deemed by Oasys to be insufficiently competent with the Software for the issue to be tackled effectively; or
- e) where the problem is caused by third party applications that have not been developed by Oasys.

## 8 TERMINATION

- 8.1 Licensee may terminate this Agreement at any time.
- 8.2 Oasys may terminate this Agreement if Licensee fails to comply with any term or condition of this Agreement.
- 8.3 On expiry or termination of this Agreement, Licensee shall cease all use of the Software and shall promptly return or, at the option of Oasys, destroy all copies of the Software (including any documentation) in its possession or control.
- 8.4 All terms which by their nature, including clause 2, 5, and 12, should survive termination or expiration of this Agreement shall survive.

## 9 FORCE MAJEURE

9.1 Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties.

## 10 NO WAIVER

10.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of the party under this Agreement.

## 11 SEVERABILITY

11.1 If it is held under any enactment or rule of law that any provision of this Agreement is void or otherwise ineffective in whole or in part then any other part and the other terms and conditions of this Agreement shall continue in full force and effect.

#### 12 PUBLICITY

12.1 Oasys may, without the prior written consent of Licensee show on the Oasys website and in customer presentations that Oasys are providing software or services to Licensee. Oasys may not without the prior written consent of Licensee use Licensee's name in any paid advertising.

## 13 ENTIRE AGREEMENT

- 13.1 This Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements oral or written save any expressly agreed terms that have been signed by an authorised representative of Oasys and the Licensee and save as expressly set out in this Agreement all representations, conditions or warranties express or implied statutory or otherwise are excluded, to the maximum extent permitted by law.
- 13.2 Oasys may revise the terms and conditions of this Agreement at any time and it will notify the Licensee in writing before the changes are effective. Continued use of the Software after any such changes shall constitute the Licensee's consent to such changes. The Licensee can review the most current version of the terms and conditions of the Agreement at any time at: http://www.oasys-software.com/termsandconditions

## 14 VARIATION

14.1 A purported variation of this Agreement is not effective unless in writing signed by an authorised senior representation of both parties.

## 15 NOTICES

- 15.1 Any notice or consent required or given under this agreement shall be in writing, in English, either personally delivered or sent by email, or by first class airmail, and sent to the registered address of the receiving party or such other address as such party may from time to time designate by notice to the other party.
- 15.2 Communications shall be deemed to have been received as follows: 15.2.1 (if sent by post) three business days after posting;

- 15.2.2 (if delivered by hand) on the day of delivery, if delivered at least two hours before the close of business hours on a business day, and otherwise on the next business day;
- 15.2.3 (if sent by email) upon receipt of an acknowledgement email confirming the receipt of the email message, if received at least two hours before the close of business hours on a business day, and otherwise on the next business day. An automatic reply shall not be deemed as the acknowledgement of an email message

In this clause, "business hours" means between the hours of 09.00 and 17:30 GMT.

# 16 THIRD PARTY RIGHTS

16.1 The parties do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

## 17 LAW

- 17.1 This Agreement shall be governed by and construed in accordance with English law.
- 17.2 The English courts shall have exclusive jurisdiction to determine any disputes which may arise out of, under, or in connection with this Agreement.

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