

# Coda Octopus Terms and Conditions of Sale

## Applicability

These Terms and Conditions apply to all our sales, unless we have a written agreement that we have waived these and accepted your terms and conditions for the purchase.

These Terms and Conditions along with our Quotation and our Sales Order Confirmation constitute the Contract for the purchase of the product we have quoted you.

These Terms and Conditions apply to the Sale of our Products and do not cover the Rental of our Products.

## Conditions of Sale of Coda Octopus Products Pty Ltd. (January 2018)

These are the standard terms and conditions under which our companies (the Companies Defined herein) sell its products and associated services and apply to all sales of its Products and associated services unless expressly agreed otherwise in writing by the Company.

### 1. Definitions

The definition and rules of interpretation in this provision apply to these Conditions.

**"Buyer"**: the person, firm or company who purchases the product (s) from the Seller.  
**"Condition" or "Conditions"** (as the context requires): the terms and conditions set forth herein including the End User Licence (where the product includes software deliverables) and which govern the sale and supply of the products and associated services to the Buyer.  
**"Contract"**: these terms and conditions of sale including our quotation, End User License and any other document expressly incorporated by reference by the Seller.  
**"End User License"**: the terms and conditions which govern the use of our software products including associated media, printed materials and other components and software modules.  
**"Order"**: the Buyer's purchase order accepting the Seller's quotation and to which these Conditions apply.  
**"Products"**: the product(s) described in the quotation and which is supplied to the Buyer by the Seller pursuant to the terms of this Contract including hardware, software and associated equipment that may be supplied by the Seller.  
**"Seller" or "Company"**: The Company furnishing the quotation and which shall be one of the Group Companies listed herein: Coda Octopus Products Limited (place of business Edinburgh); Coda Octopus Products, Inc. (place of business Lakeland, Florida), Coda Octopus Products Pty Limited (place of business Perth, Australia); Coda Octopus R&D Limited (place of business Edinburgh) or Coda Octopus R&D AS (place of business Bergen, Norway) and all together referred to as "Coda Octopus" or "Group Companies".

The headings in these Conditions are for convenience only and shall not affect their construction or interpretation.

### 2. Application of Terms

2.1. Subject to any variation under Condition 2.3, the Contract shall be on these Conditions to the exclusion of all other terms and conditions. The Contract specifically excludes any terms and/or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document issued to the Seller by the Buyer.  
2.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract with the Company simply as a result of such document being referred to in the Contract.  
2.3. These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Products and/or services shall have no effect unless expressly agreed in writing and signed by the Company.  
2.4. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.  
2.5. Each order or acceptance of a quotation for Products by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Products and/or services on these Conditions.  
2.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.  
2.7. Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgment (in writing) – Sales Order Confirmation - of order to the Buyer and prior to such time the Company reserves the right to withdraw or amend any quotation prior to such acknowledgement.  
2.8. Price lists, catalogues and any other promotional material supplied by the Company do not constitute contractual offers capable of acceptance. Prices shown in any such materials may be subject to change at any time prior to the entry by the Company and the Buyer into a binding Agreement.

### 3. Description

3.1. The quantity and description of the Products shall be as is set out in the Company's quotation or acknowledgement of order.  
3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or demonstrations are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample.  
3.3. The Seller reserves the right to make any changes in the specification of the Products which are required to conform to statutory or international requirements. The Seller reserves the right to add to or delete from its range or to change the Products without notice to the Buyer.

### 4. Limitation of Liability

4.1. Subject to Condition 5 ("Quality and Warranty"), the following provisions set out the entire financial liability of the Company to the Buyer in respect of: (a) any breach of these Conditions; (b) any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.  
4.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.

4.3. Nothing in these Conditions excludes or limits the liability of the Company: (a) for death or personal injury caused by the Company's negligence; or (b) under section 2(3), Consumer Protection Act 1987; or (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or (d) for fraud or fraudulent misrepresentation.

Subject to Conditions 4.2 and 4.3: (i) the Company's total 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 Contract shall be limited to the Contract price; and (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or in each case whether direct, indirect or consequential, or any claims for consequential losses or damages whatsoever (howsoever caused) which arise out of or in connection with the Contract.

### 5. Quality and Warranty

5.1. The Seller warrants that (subject to the other provisions of these Conditions) on delivery and for a period of 12 months from the date of delivery, the Products shall be of satisfactory quality and reasonably fit for purpose.  
5.2. The Company shall not be liable for a breach of any of the warranties in Condition 5.1 unless: (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and the Company is given a reasonable opportunity after receiving the notice of examining such Products and the Buyer (if asked to do so by the Company) returns such Products to the Company's place of business at the Company's cost for the examination to take place there.  
5.3. The Company shall not be liable for a breach of any of the warranties in condition 5.1. if: (i) the Buyer makes any further use of such Products after giving such notice; or (ii) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or (iii) the Buyer alters or repairs such Products without the written consent of the Company.  
5.4. Subject to Conditions 5.2. and 5.3, if any of the Products do not conform with any of the warranties in Condition 5.1, the Company shall at its option repair or replace such Products (or the defective part) or refund the price of such Products at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Products or the part of such Products which is defective to the Company.  
5.5. If the Company complies with Condition 5.4, it shall have no further liability for a breach of any of the warranties in Condition 5.1 in respect of such Products.  
5.6. Any Products replaced shall belong to the Company and any repaired or replacement Products shall be benefit from the warranties provided herein and shall extend to the unexpired portion of the 12 month period.

### 6. Price

6.1. All quotations and estimates of the purchase price for the Products are exclusive of VAT and all costs or charges in relation to packaging, loading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Products.

### 7. Payment

7.1. Payment for the Products supplied under the Contract shall be payable in accordance with these Conditions. Unless otherwise specified in the quotation, payment shall be prior to delivery of the Products.  
7.2. Time for payment shall be of the essence.  
7.3. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled:  
(i) to charge interest on the outstanding amount at the rate of 4% per annum above the base lending rate from time to time of the bank notified in writing and accruing on a daily basis until payment in full is made of the appropriate payment;  
(ii) to require payment in advance of delivery of undelivered Products;  
(iii) to refuse to make delivery of any undelivered Products whether ordered under the Contract or not and without incurring any liability whatever to the Buyer for non delivery or any delay in delivery;  
(iv) to terminate the Contract;  
(v) to appropriate any payment made by the Buyer to such of the Products as the Seller may think fit.  
(vi) The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counter-claim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

### 8. Delivery

8.1. Unless otherwise stated in the quotation terms, delivery of the Products shall take place at the Company's place of business.  
8.2. Any dates specified by the Company for delivery of the Products in its quotation or elsewhere are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.  
8.3. Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days without the consent of the Buyer.  
8.4. If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations: (a) risk in the Products shall pass to the Buyer (including for loss or damage caused by the Company's negligence); (b) the Products shall be deemed to have been delivered; and (c) the Company may store the Products until delivery,

whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

8.5. The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Products.

8.6. If the Company delivers to the Buyer a quantity of Products of up to 75% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such Products at the pro rata Contract rate.

#### **9. Risk and Title**

9.1. The Products are at the risk of the Buyer from the time of delivery.

9.2. Ownership of the Products shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of (a) the Products; and (b) all other sums which are or which become due to the Company from the Buyer on any account.

9.3. Until ownership of the Products has passed to the Buyer, the Buyer shall (a) hold the Products on a fiduciary basis as the Company's bailer; (b) store the Products (at no cost to the Company) separately from all other Products of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and (d) maintain the Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

9.4. The Buyer may resell the Products before ownership has passed to it solely on the following conditions: (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and (b) any such sale shall be a sale of the Company's property and the Buyer shall deal as principal when making such a sale and unless the contract price is paid in full, the proceeds of such sale shall belong to the Seller.

9.5. The Buyer's right to possession of the Products shall terminate immediately if (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.

9.6. The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.

9.7. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

9.8. Where the Company is unable to determine whether any Products are the Products in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Products of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

9.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 9 shall remain in effect.

#### **10. Assignments**

The Seller may assign the Contract or any part of it to any person, firm or company. The Buyer shall not assign the Contract and/or any of its rights or duties under the Contract without receiving the prior written consent of the Seller.

#### **11. Intellectual Property, Software Products and End User License**

11.1. Any drawings, specifications, computer programs, firmware, software, data, reports, tape, disk or other device or record embodying information in any form or other technical information (together "In-put Material") supplied to the Buyer by the Seller in connection with this Contract are provided on the basis of the End User License, the terms of which are incorporated herein by reference and form a part of the Contract between the Parties.

11.2. All rights in the In-put Materials accompanying the Products including software, instruction manuals etc. remain vested with the Seller and the Buyer has a limited licence to use the in-put Material but not for developing commercial offerings around the Seller's products.

#### **12. Reverse Engineering**

12.1. The Buyer will not attempt to reverse engineer, de-encrypt, or otherwise derive, decompile or reconstruction of the design, internal logic, structure or inner workings (including algorithms and source code) of any software, firmware, hardware, products, models, prototypes, or other items provided by Company.

12.2. The Buyer acknowledges that breach of this Condition may cause the Seller to be irreparably harmed and as such in connection with a claim under this Contract for breach of this Condition, the Seller will be entitled to seek all remedies available in the appropriate court including equitable remedy of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of this Condition and no proof of special damages will be necessary to enforce this Condition.

#### **13. Termination**

This clause applies if:

(a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation otherwise than for the purpose of amalgamation or reconstruction: or

(b) an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Buyer; or

(c) the Buyer ceases, or threatens to cease, to carry on business; or

(d) the Seller reasonably believes that any of the events mentioned in clauses 13 (a) through to (c) are likely to occur in relation to the Buyer and notifies the Buyer accordingly. If this clause applies, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary.

(d) the Buyer breaches the provision of Condition 11 or 12 (Intellectual Property and Reverse Engineering).

#### **14. Force Majeure**

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

#### **15. Cancellation of Order**

The Buyer shall not be entitled to cancel any order for Products and/or services or any part thereof except upon terms which reimburse the Company for loss of profit and all costs, charges and expense incurred by the Company in respect of the Product(s) and/or services or any part thereof up to the date of receipt by the Company of written notification of cancellation. Notwithstanding, the Buyer shall be responsible for the full purchase price of the Product for any cancellation which occurs after 7 days of entering into this Contract.

#### **16. General**

16.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

16.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

#### **17. Extended Hardware Warranty**

17.1. In the event that the Buyer purchases extended hardware warranty for the Product, the Company will be responsible for all manufacturer's defects arising during the Extended Hardware Warranty Period.

17.2. The Extended Warranty cover does not include damage or defects (including acts or omissions) howsoever caused by the Buyer or any of its agents.

17.3 Prior to Extended Warranty Cover being extended and accepted by the Company, the Buyer shall return the Product to the Company for service. Only upon receipt of an Extended Warranty Certificate by the Company does the cover for Extended Hardware Warranty apply.

#### **18. Applicable Law**

The formation, existence, construction, performance, validity and all aspects of this Contract shall be governed by the laws of Australia and the parties submit to the exclusive jurisdiction of the Australian Courts.

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## TERMS AND CONDITIONS

### END USER LICENCE AGREEMENT ("EULA")

PUBLICATION DATE 3 NOVEMBER 2014

### SOFTWARE LICENCE TERMS AND CONDITIONS

BY INSTALLING OR USING THE LICENSED SOFTWARE FROM CODA OCTOPUS, YOU ARE AGREEING TO BE BOUND BY THIS SOFTWARE LICENCE AGREEMENT ("AGREEMENT").

IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT INSTALL OR USE THE LICENSED SOFTWARE OR CODA OCTOPUS ENHANCEMENTS.

THE "EFFECTIVE DATE" FOR THIS AGREEMENT IS THE DAY YOU INSTALL THE SOFTWARE (INCLUDING ANY DERIVATIVE THEREFROM SUCH AS UPDATES AND/OR UPGRADES).

#### AGREED TERMS

##### 1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

**Activation Key:** means collectively the specific Serial Number, code and authorization for each copy of the Licensed Software issued by Coda Octopus to You.

**Agreement or License:** means this agreement under which the Licensor licenses the Product (as is defined hereinafter)

**Coda Octopus:** means any of the following legal entities:

- Coda Octopus Products Limited a Scottish company with its place of business at Breadalbane Street, Anderson House, Edinburgh EH6 5JR (COPL); or
- Coda Octopus Products, Inc. a Delaware corporation with its place of business at 4020 Kidron Road, Suite 4, Lakeland, Florida 33811 (COPI); or
- Coda Octopus Products Pty Limited, an Australian company with its place of business at Level 1, 100 Havelock Street, West Perth, WA 6005, Australia (COPTY);

and is also referred to as "we", "us" and "our" as the context requires.

**Coda Octopus Enhancements:** means files or enhancements to files in which the copyright is owned by Coda Octopus or distributed by Coda Octopus from time to time. Coda Octopus Enhancements are not defined as Software ("Enhancements").

**Coda Octopus Website:** means [www.codaoctopus.com](http://www.codaoctopus.com)

**Documentation:** means the user manuals and supporting documentation in electronic form (or otherwise) provided by Coda with the Licensed Software and/or Enhancements under this Agreement.

**Dongle:** means the hardware device on which licence key is loaded and which carries a unique Serial Number.

**Initial Warranty Period:** means the period which we warrant that the Product will be free from material defects and work in accordance with our specification provided in the Documentation.

**Licensor:** means Coda Octopus.

**Licensee:** means You and "Your" is also a reference to You.

**Licensed Software:** means the specific software licensed to You under the terms of this Agreement (as specified in the LAAK or LAD (defined in Clause 2 of this Agreement) including any Updates or Upgrades but excludes Coda Octopus Enhancements.

**Product:** means the Licensed Software including, if applicable, any Updates and Upgrades but excluding any Coda Octopus Enhancements, which is the subject matter of this Agreement.

**Serial Number:** means a unique set of characters associated with a specific copy of the Licensed Software issued by Coda Octopus (based on the specific configuration and release of the Licensed Software and the license type and term).

**TEAM:** means Coda Octopus technical support program. Terms and Conditions for TEAM can be accessed from Coda Octopus Website.

**Temporary Licence:** means a temporary Licence of the Licensed Software which Coda Octopus may supply to you for either trial purposes or such specific purpose as Coda Octopus may agree with you from time to time.

**Third-Party Software:** means certain software supplied by third parties that Coda Octopus provides access to as part of the Licensed Software.

**Update:** means a revision or patch to the Licensed Software that improves the functionality of the Licensed Software and may contain new features or enhancements, which is not an Upgrade.

**Upgrade:** means a subsequent version of the Licensed Software that Coda Octopus designates as a new release and makes generally commercially available or a different variant of the Licensed Software that Coda Octopus makes generally commercially available.

1.2. The headings in this Agreement are inserted for convenience only and shall not affect its construction.

1.3. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4. A reference to one gender includes a reference to the other gender.

1.5. Any schedule to this agreement forms part of (and is incorporated into) this agreement.

#### AGREEMENT

This "License" is a legal agreement between the Licensor and the Licensee for the use of the Licensed Software and the Documentation. This may include associated media, printed materials, and other components and software modules including but not limited to drivers that Licensor or its authorized agents may provide to You or make available to You either at the time of the Licence or thereafter ("Product"). We

have licensed the Product to You and not sold it. The terms of the License are set out in this Agreement.

The Product is protected by copyright laws as well as other intellectual property laws.

##### 2. LICENSE, DONGLE AND ACTIVATION KEY.

2.1. Coda Octopus shall issue You a "License and Activation Key ("LAAK") via electronic delivery or courier (e.g. FedEx, UPS, DHL) or a "Licence and a Dongle (LAD)" via post or courier. The LAAK or LAD, as the context requires, are incorporated herein by reference into this Agreement.

2.2. Single –User Licence Grant. Subject to the terms and conditions of this Agreement, Coda Octopus grants to You a non-assignable, non-transferrable license and non-exclusive licence of the Product without the right to sublicense, to use the Licensed Software in object-code form only and solely for Your business.

2.3. All Upgrades and Updates or Temporary Licence pertaining to this Product are licensed to You on these terms and conditions also and the grant of the licence for such Upgrades or Updates are on a non-assignable, non-transferrable and non-exclusive basis. Unless otherwise agreed, all Updates and Upgrades are released to You on these terms and conditions.

2.4. If you have a licence for a LAAK you may install and run on a single computer.

2.5. If you have a LAD you may install on multiple computers but may only run the said Licenced Software on a single computer at any one time.

2.6. You may transfer the Licensed Software from one computer to another owned by You.

2.7. During the Warranty Period, which is one year from the date we licence You the Product, we will provide You with a TEAM subscription under which we will provide technical support for the Product including provision of minor releases of the Licensed Software and bug fixes.

2.8. Unless You renew Your TEAM subscription after the first year, Your Product will be classified as unsupported by Coda Octopus.

2.9. All rights not expressly granted to You are retained by the Licensor.

##### 3. LICENCE TO CODA OCTOPUS ENHANCEMENTS

3.1. Subject to the terms and conditions of this Agreement, Coda Octopus grants You a non-assignable, non-transferrable and non-exclusive license without the right to sublicense to use Coda Octopus Enhancements solely with the Licensed Software for Your internal business. In addition, Coda Octopus grants a non-assignable, non-transferrable and non-exclusive license to modify, reproduce and distribute the Coda Octopus Enhancements to create Your enhancements solely for use with the Licensed Software.

3.2. THE CODA OCTOPUS ENHANCEMENTS ARE PROVIDED TO YOU ON AN "AS IS" AND "WHERE IS" BASIS AND WITHOUT WARRANTY OF ANY TYPE OR KIND. CODA OCTOPUS AND ITS THIRD PARTY LICENSORS HEREBY EXPRESSLY DISCLAIM AND EXCLUDE ALL WARRANTIES AND CONDITIONS, WHETHER STATUTORY, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE CODA OCTOPUS ENHANCEMENTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY ON FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY'S RIGHTS.

##### 4. RESTRICTIONS.

4.1. Neither the Licensee nor his agents or affiliates may:

- (a) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code of the Licensed Software or the Temporary Licence; or
- (b) modify, translate or create derivative works of the Licensed Software, the Temporary Licence or the Updates or Upgrades; or
- (c) remove, modify, or obscure any copyright notices or other proprietary notices or legends appearing on or in the Licensed Software, Temporary Licence or Coda Octopus Enhancements or any portion thereof; or
- (d) rent, lease, lend, sell or transfer the Licensed Software; or
- (e) embed the Licensed Software in any third-party application unless otherwise authorized in writing in advance by an authorized officer of Coda Octopus; or
- (f) make unauthorized copies of the Licensed Software, Coda Octopus Enhancements or Temporary Licence (as the context requires); or
- (g) apply any new release of software released to You under our TEAM program to any other Licensed Software which does not have the benefit of an active Coda Octopus TEAM subscription.

##### 5. THIRD PARTY SOFTWARE

5.1. The Third Party Software is subject to various other terms and conditions imposed by the licensors of such Third-Party Software. A list of the applicable Third Party Software license terms is provided at the end of this Agreement and on Coda Octopus website. Your use of the Third Party Software is subject to, and governed by, the specified Third Party license terms. You agree to comply with such Third-Party license terms (as are in force from time to time). It is the Licensee's responsibility to make himself aware of the Third Party Licensor's terms and conditions as in force from time to time.

##### 6. DOCUMENTATION

6.1. Subject to the terms and conditions of this Agreement, Coda Octopus grants to You a non-assignable, non-transferrable and non-exclusive license, without right to sublicense, to use the Documentation in connection with Your authorized use of the Licensed Software. You may not reproduce or distribute the Documentation in any manner, whether physically or electronically, without the express written permission of Coda Octopus.

##### 7. TECHNICAL SUPPORT (CODA OCTOPUS TEAM PROGRAM)

7.1. The Product comes with a twelve (12) months warranty (Initial Warranty Period).

7.2. During the Initial Warranty Period, you will have the benefits of a TEAM membership under which we will provide You with the support set forth in the terms

and conditions for TEAM membership. A summary of these terms and conditions are set out in Clause 8. The full TEAM membership terms and conditions can be found on Coda Octopus Website.

7.3. Upon the expiry of the Initial Warranty Period Your Product will only benefit from the TEAM support set out in Clause 8 below, if You pay the membership fee quoted to You by the Licensor.

#### 8. TEAM SUPPORT MEMBERSHIP

8.1. Subject to having an active TEAM membership and following our recommendations concerning the use of the Product, we will provide You with the following Support:

- (a) The Licensor will provide email and telephone support to You for the current and the immediately preceding versions of the Product.
- (b) The Licensor will investigate problems or questions that You have relating to the Product promptly.
- (c) You agree to provide adequate information to us to assist in the investigation and to confirm that any problems have been resolved.
- (d) The Licensor does not provide guaranteed response time but will make good faith effort to answer emails and voice mails promptly.
- (e) We will supply to You, at no additional charge, any improvements or modifications to the Product that we make generally available as a minor release including bug fixes. Any such improvements or modifications shall become part of the Product for all purposes of this Agreement.

8.2. You acknowledge and agree that the Support to be provided by us hereunder is limited to the most current version of the Product and the immediately preceding version.

8.3. If You lose Your Dongle we will be unable to replace this unless You pay the full Licence Fee for this. During the Initial Warranty Period or where You renew Your TEAM membership or if you have purchased our Through Life Support package, we will replace damaged dongles (but not lost Dongles).

#### 9. EXCLUSIONS.

9.1. The Licensor's obligation to provide Support is contingent upon proper use of the Product and full compliance with this Agreement. The Licensor shall be under no obligation to provide Support should such services be required due to (a) failure to operate the Product within the systems requirements provided for the Product; (b) any modification or attempted modification of the Product by You or any third party; or (c) Your failure or refusal to implement Product changes recommended by the Licensor.

9.2. Unless You have purchased our Through Life Support package to receive Updates and Upgrades (which are not minor releases) You must pay the applicable fee and agree to our standard terms and conditions governing the use of the Updates and Upgrades.

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11.1. The Licensor warrants that for a period of twelve (12) months from the date of delivery ("Warranty Period"), under normal use, the Product will perform substantially in conformance with the specifications published in the Documentation.

11.2. During the Warranty Period, the sole obligation of the Licensor (and Your sole remedy under the warranty in this Section), if You provide written notice of the Licensor's failure to comply with the above Warranty, is that the Licensor will use reasonable commercial efforts to correct such nonconformity in the Product in accordance with Coda Octopus terms and conditions. In addition, if the Licensor determines it is not commercially reasonable to correct the nonconformity, the Licensor may elect to terminate the license to the Product. In the event of such termination, the Licensee will promptly return the Product to the Licensor. Upon receipt of the Product from Licensee, the Licensor will return to Licensee all license fees (and any unused support fees) paid to the Licensor by You for the Product.

11.3. The Warranty set forth above in Clause 11.1 does not apply to, and the Licensor shall have no obligation with respect to, any non-conformity arising as a result of (i) use of the Product other than as specified under this Agreement and the related Documentation; (ii) any modification or alteration of the Product performed other than by the Licensor or its agents, or (iii) transfer of the Product to any computer system other than the ones on which the Product is authorized to be installed, except as permitted in this Agreement.

11.4. Nothing in this Clause affects the Licensee's statutory rights.

#### 12. DISCLAIMER.

12.1. Other than the Warranty set forth in Clause 11 herein, and to the maximum extent permitted by applicable law, the Licensor, its authorized resellers and their subsidiaries provides the Product and any support services related to the Product ("Support Services") AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Product, and the provision of or failure to provide support services.

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13.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LICENSOR, ITS AUTHORIZED RESELLERS OR THEIR SUBSIDIARIES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE OR DOCUMENTATION, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS LICENSE.

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15.1. You may not assign this Agreement or any right or interest hereunder, by operation of law or otherwise, without the express prior written consent of the Licensor. Any attempt to assign this Agreement, without such consent, will be null and void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

15.2. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

15.3. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

#### 16. COMPLIANCE WITH LICENSES.

16.1. You agree that upon request from the Licensor or its authorized representative You will within thirty (30) days fully document and certify that the use of any and all of the Licensor's Products at the time of the request is in conformity with Your valid licenses from the Licensor.

#### 17. DISCONTINUING OR MODIFYING SERVICES.

17.1. You acknowledge that the Licensor has the right to discontinue the manufacture and development of any of the Product and the support for that Product, in its sole discretion at any time, including the distribution of older Product versions, provided that the Licensor agrees not to discontinue the support for that Product during the current annual term of this Agreement, subject to the termination provisions herein.

17.2. Notwithstanding the foregoing of this clause, if the Licensor discontinues the manufacture and support for a particular Product, Support for any remaining Products covered by this Agreement shall not be adversely affected.

17.3. The Licensor reserves the right to alter the Support, in its sole discretion but in no event shall such alterations result in (a) diminished support from the level of support set forth herein; (b) materially diminished obligations for the Licensor; or (c) Your rights being materially diminished.

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