

**Coda Octopus Terms and Conditions for Hire of  
Equipment – Publication Date June 2018**

## Conditions of Equipment Hire of Coda Octopus Products Limited

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

These Terms and Conditions apply to all our rentals, unless we have a written agreement that we have waived these and accepted your terms and conditions for the rental. These Terms and Conditions along with our Quotation and our Sales Order Confirmation constitute the Contract for the rental of the product and services we have quoted you.

### 1. DEFINITIONS

In these terms and conditions the following words and expressions shall have the following meanings:

**"The Company"** means Coda Octopus Products Ltd. a company registered in Scotland, UK, with registration number SC151068 whose registered office is at 38 South Gyle Crescent, South Gyle Business Park, Edinburgh, EH12 9EB, United Kingdom;

**"The Customer"** means the customer of the Company who is hiring the equipment pursuant to the Contract;

**"The Contract"** means the Contract between the parties for the hire of the Equipment, evidenced by a Quotation or an Order and acceptance of the Company as the case may be and including these terms and conditions; the End User License Agreement, the Trademark Acknowledgment and the Special Conditions covering the hiring of our expert engineers (where included in the Sales Order Confirmation) appended hereto and incorporated herein by reference.

**"The Equipment"** means the equipment hired by the Company to the Customer under the Contract;

**"An Order"** means an order of the Customer.

**"A Quotation"** means a quotation of the Company; and

**"Sales Order Confirmation"** means the Company's acknowledgment in writing of the Customer's order to the Company.

### 2. GENERAL

2.1. The Company agrees to hire the Equipment as the case may be in accordance with the Contract and these terms and conditions.

2.2. All Quotations and the acceptance by the Company of any Order is on the understanding that the Customer accepts these terms and conditions. These terms and conditions shall form the basis of the Contract notwithstanding anything to the contrary in any other terms and conditions of or referred to by the Customer and unless expressly varied in writing by an authorised representative of the Company.

2.3. Subject to sub-clause 2.2 hereof no employee, agent or other representative of the Company shall be empowered to waive the rights of the Company hereunder or vary these terms and conditions orally or otherwise.

2.4. Orders whether received as a result of a Quotation or otherwise are subject to acceptance by the Company in writing.

### 3. HIRE OF EQUIPMENT

3.1. The period of hire shall commence from the time and date when the Equipment is delivered in accordance with clause 4 and shall terminate when the Equipment is returned to the Company's premises.

#### 3.2. Hire Charges

- (a) Hire charges shall be at the rates shown in the Company's Quotation.
- (b) There is a minimum hire charge of the equivalent to 3 (three) days hire of the Equipment.
- (c) Quotations are subject to confirmation upon receipt of an Order and the Company reserves the right to amend any accidental errors and/or omissions and Quotations or invoices.
- (d) Hire charges are at the discretion of the Company. The Company will not, however, alter the hire charge quoted on a Quotation provided that an Order is received within thirty (30) days from the date of Quotation unless the Company has specified in writing to the contrary.
- (e) The Company reserves the right to revise hire charges where conditions change between the date of Quotation and the date of delivery.
- (f) Hire charges quoted "FOB Foreign Port" shall not include CIF, clearance charges, Value Added Tax or any other taxes or duties or delivery which shall be charged in addition.
- (g) The Customer waives any and all existing and future claims and rights of set off against hire charges or other payment (including interest) due hereunder and agrees to pay the hire charges and any other amounts payable hereunder regardless of any set off or cross claim on the part of the Customer against the Company.

#### 3.3. Ownership

The Equipment shall remain the property of the Company and is provided to the Customer solely on a rental basis.

#### 3.4. Customer's Obligations

During the continuance of the Contract the Customer shall:

- (a) Keep the Equipment at the delivery address as specified in the Contract and in its own possession and not remove the same from such address without first giving written notice to the Company of its destination and in any event, not allow the equipment to be transferred to any country prohibited by the Department of Trade and Industry.
- (b) Not assign the benefit of the Contract without the prior written consent of the Company.
- (c) Permit an authorised representative of the Company at all reasonable times to enter upon premises or vessel where the Equipment may be inspected, maintained, repaired or tested.
- (d) Repay the Company on demand all costs, charges and expenses incurred in any way by reason of its breach of any of these terms and conditions including but not limited to all costs, charges and expenses incurred in ascertaining the location of the Equipment.
- (e) Take all reasonable and proper care of the Equipment, keep the Equipment in good condition and not subject the same to any misuse (normal wear and tear excepted) and indemnify the Company against any loss or damage to the Equipment.
- (f) Ensure that any instructions or manuals supplied by the Company for use of the Equipment will be fully observed.
- (g) Take all necessary steps to ensure that the Equipment will be safe and without risks to health and safety when properly used by it.
- (h) Ensure that the Equipment is operated in a skillful and proper manner and by persons who are competent to operate the same.
- (i) Permit the Company on reasonable notice to inspect and/or repair the Equipment.
- (j) Preserve on the Equipment the Company's and any manufacturer's identification number or mark or any nameplate that is or should be upon the Equipment.

- (k) Arrange and maintain at its expense adequate insurance for the Equipment satisfactory to the Company. Such insurance shall cover all loss and damage to the Equipment and also all risks to third parties in connection therewith. Such insurance shall commence from the time and date of delivery for the period of hire up to and including the date when the Equipment is delivered back to and received by the Company and acknowledged by it in writing.
- (l) Notify the Company in writing of any loss, damage or claim relating to the Equipment and on demand, reimburse the Company in respect thereof within thirty (30) days of the occurrence. The Company shall continue to charge the Customer the full hire charge for the Equipment until such payment is received. The Customer shall be liable under this clause for the full cost of replacing the Equipment.
- (m) Not sell, assign, sub rent, transfer or charge the Equipment or any part thereof or the benefit of the Contract or part with possession of the Equipment or any part thereof at any time during the period of hire.
- (n) Not make any alterations, modifications or technical adjustments or do, or, subject to sub-clause 3.6, attempt any repairs to the Equipment without the prior written consent of the Company and the Customer acknowledges that any items or non-expendable material not returned to the Company will be charged to it at full replacement cost.
- (o) Not by any act or default render the Equipment liable to any distress, execution or other legal process or suffer the appointment or presentation of a petition for the appointment of an Administrator under the provisions of Part II of the Insolvency Act 1986.
- (p) Punctually pay all duties and taxes concerning the Equipment.
- (q) Procure that by the terms of any mortgage, charge or debenture of or in respect of its assets or any premises or vessel in which the Equipment may be installed or stored no rights whether present, future or contingent are created or become exercisable in respect of the Equipment notwithstanding that the Equipment may be or have become a fixture thereof. The Customer acknowledges the right on the part of the Company to notify any mortgagee or chargee from time to time of the Equipment and of such of these terms and conditions as the Company shall consider appropriate.
- (r) Upon expiry of the period hire, return the Equipment at its expense to the Company unencumbered and in good repair and condition.

### 3.5. Cancellation

The Customer shall not cancel the Contract or any part thereof prior to commencement of the hire of the Equipment unless the Company gives written consent including terms which fully indemnify it against any loss, damage or claim in respect thereof.

### 3.6. Maintenance

The Customer shall notify the Company if any maintenance of the Equipment is required. The Customer shall undertake routine maintenance but shall first obtain the Company's written consent in respect thereof. Other maintenance and repairs shall be undertaken by the Company provided that the Customer at its expense returns the Equipment to the Company.

## 4. DELIVERY AND RISK

Delivery shall be deemed to take place when the Equipment leaves the Company's premises and is placed in transit to the Customer when the whole risk shall pass to the Customer. The Company shall endeavour to adhere to delivery dates but time shall not be deemed to be of the essence and the Company shall not be liable for any loss, damage or claim occasioned by or consequential on the non-delivery on the expected date or for delayed delivery. Deliveries offered ex-stock are subject to the Equipment being available at the date of receipt of the Order. In case of

unforeseen delay in delivery, the Company will notify the Customer as soon as reasonably practicable.

#### 5. CARRIAGE

In addition to hire charges or sale prices, the Company may make a separate charge for outward delivery and/or collection as the case may be. The Company's packaging materials are chargeable in full if not returned upon completion of hire. All carriage and packing charges will be invoiced at cost plus fifteen (15) per cent unless agreed in writing to the contrary.

#### 6. PAYMENT

Unless otherwise specified in writing in the Quotation, all invoices for hire charges are payable within thirty (30) days of the invoice date. Hire charges are net and no deduction or settlement discounts are allowed. The Company may charge and the Customer shall pay interest on any overdue payment at a rate of 4 per cent above the base rate of the Bank of Scotland.

#### 7. DEFECTS AND LIABILITY

7.1. When the Customer is hiring the Equipment, it shall notify the Company of any defects in the Equipment within twenty-four (24) hours of receipt by it. Failing such notification, it shall be conclusively presumed as between the Company and the Customer that the Equipment has been received in good condition and in every way satisfactory for the Customer's purposes. The Company does not give any warranty as to the quality of the Equipment nor as its fitness for the purposes of the Customer. The Company does not warrant that the Equipment corresponds with any description or specifications either contained in catalogues or given verbally. The Company accepts no responsibility whatsoever (except such as cannot by law be excluded) for any claims of any kind resulting from the use, nature or condition of the Equipment during the period of hire irrespective of negligence on the part of the Company. The Company shall in no circumstances be responsible for any loss of use, loss of profits or any consequential loss of any kind suffered by the Customer or any other party in any way connected with the Contract or the use, nature or condition of the Equipment.

7.2. The liability of the Company including that for breach of contract, negligence, strict liability, in delict or otherwise for the Equipment and the Customer's remedy in respect thereof is limited as follows. The Company will repair or replace the Equipment or any part thereof (excluding installation) provided that the Equipment or any part thereof is returned by the Customer at its expense to the Company's premises for inspection and provided further that such of the Equipment or any part thereof is accepted by the Company as defective from the time of delivery.

#### 8. FORCE MAJEURE

The Company shall not be liable to the Customer for any loss, damage or claim suffered by the Customer directly or indirectly as a result of the Company's failure or delay in performing any of its obligations under these terms and conditions where such failure or delay is caused by an occurrence beyond the reasonable control of the Company. In the event that the Company is unable to fulfil its obligations because of such force majeure it shall give written notice to that effect to the Customer stating the particulars and the period of time that it is likely to be unable to perform its obligations.

#### 9. SEVERANCE

If any provision is or becomes illegal, invalid or unenforceable in any respect, the remaining provisions hereof shall in no way be affected or impaired thereby.

#### 10. WAIVER

No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions.

#### 11. TERMINATION OF CONTRACT

If the Customer shall make default in payment, or commit any breach of the Contract or if any distress or execution shall be levied upon the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with creditors or become apparently insolvent or commit any act of bankruptcy, or if any petition of bankruptcy shall be presented or made against him or her, or if the Customer is a limited company, a resolution or petition to wind up such company (other than for the purposes of amalgamation or reconstruction) shall be passed or presented, or if a liquidator or receiver or administrator of such company's undertaking property, assets or any part thereof shall be appointed, the Company shall have the immediate right to terminate the Contract and to declare all sums due and to become due hereunder either for the full term of the rental period or the sale price of the Equipment as the case may be immediately due and payable. The Company may demand that the Customer returns all Equipment in the same condition as delivered, ordinary fair wear and tear excepted, at the Customer's risk and expense to such location as the Company may designate. The Company may enter upon any premises where the Equipment is located and take immediate possession of and remove the same, all without court order or other process of law and all without any liability but without prejudice to all rights or remedies available to the Company in respect of the non-payment or any other breach of the Contract of these terms and conditions by the Customer.

#### 12. HEADINGS

The headings in these terms and conditions are inserted for convenience only and shall not affect the construction hereof.

#### 13. NOTICES

Any notice required to be given hereunder shall be in writing addressed to the other party as its registered office or principal place of business or such other address as may have from time to time been notified for this purpose.

#### 14. ARBITRATION

Any dispute or difference arising out of or relating to the Contract, its interpretation or the breach thereof, shall be settled by arbitration before an arbiter selected and appointed by the President or Vice-president for the time being of the Law Society of Scotland from the panel or arbiters maintained by the Law Society of Scotland and conducted in accordance with the Arbitration Rules of the Law Society of Scotland current at the date of the appointment of the arbiter.

15.LAW

These terms and conditions and the Contract shall be governed by the law of Scotland and the parties submit to the jurisdiction of the Scottish Courts insofar as not already subject thereto.

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## TERMS AND CONDITIONS

### END USER LICENCE AGREEMENT (“EULA”)

PUBLICATION DATE 5 June 2018

### 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 38 South Gyle Crescent, South Gyle Business Park, Edinburgh, EH12 9EB, United Kingdom

Coda Octopus Products, Inc. a Delaware corporation with its place of business at 7380 W. Sand Lake Road, Suite 500, Orlando, Florida, 32819 (COPI); or

Coda Octopus Products Pty Limited, an Australian company with its registered address at Shop 10, 2 Murrajong Road, Springwood, Queensland 4127, 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.

## **A G R E E M E N T**

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 Licensed 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 License 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.

## 10. INTELLECTUAL PROPERTY RIGHTS.

10.1. Subject to the license granted herein, the Licensed Software, Updates, Upgrades, Coda Octopus Enhancements and the Documentation contain copyrighted material and other proprietary material and information of Coda Octopus and/or its licensors. Coda Octopus and/or its licensors shall retain all right, title and interest, including all intellectual property rights in and over the Licensed Software, Updates, Upgrades, Coda Octopus Enhancements and Documentation. The Licensee will not remove, alter, or destroy any form of copyright notice proprietary markings, or confidential legends placed upon or contained within the Licensed Software, Updates, Upgrades, Coda Octopus Enhancements, Documentation or any component or part thereof.

## 11. WARRANTY.

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.

### 13. LIMIT OF LIABILITY AND EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.

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.

### 14. LIMITATION OF LIABILITY AND REMEDIES.

14.1. Notwithstanding the foregoing, any damages that You might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of the Licensor, its resellers and their subsidiaries under any provision of this License and Your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by You for the Product. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

### 15. GENERAL.

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.

#### 18. GOVERNING LAW AND JURISDICTION

18.1. If You licence Your Product from COPL then Your rights are governed by the Laws of Scotland.

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## **SPECIAL CONDITIONS**

### **1. Background**

- A. We are supplying you with Personnel for the scope of services identified in our Quotation and Sales Order Confirmation.
- B. These terms described as **Special Conditions** apply solely to the conditions upon which the Personnel is supplied to you. The terms governing the purchase, lease or hire of the equipment identified in our Quotation and Sales Order Confirmation are separate and contained in the terms and conditions attached.
- C. In the event that our Quotation and Sales Order Confirmation include the supply of Personnel, then these Special Conditions shall apply to the contract between the Parties.

### **2. Agreed Terms**

2.1. The definitions in this paragraph shall apply to these Special Conditions:

**“Customer”**: The Company identified in the Company’s Quotation and Sales Order Confirmation for, amongst other things, the supply of engineering expertise.

**“Echoscope Operator”** or **“Personnel”**: The personnel supplied for us to assist you solely in operating the Echoscope.

**“Services”**: the services to be provided by the Supplier and which are set out in Schedule 1 of these Special Conditions and our Technical Brief (if supplied).

**“Supplier”**: Coda Octopus Products Limited with its principal place of business 38 South Gyle Crescent, South Gyle Business Park, Edinburgh, EH12 9EB

### **3. Scope of Services**

- 3.1. The Personnel shall only be used to provide the Services.
- 3.2. The Customer shall ensure that it only uses the Personnel for the envisaged Services.

### **4. Privacy and Protection of Personal Data**

- 4.1. The Customer may be given personal data of our Personnel (PPD) for the sole purpose of facilitating the performance of the Services. Our Personnel are required to comply with the Health and Safety Requirements on the Customer’s premises (including offshore vessels and installations). This and other obligations may require sharing certain personal data concerning the Personnel supplied including medical information, next of kin, date of birth, passport number etc.
- 4.2. If the Customer principal place of business is in the European Union, it shall treat PPD in accordance with the European Union’s General Data Protection Regulation (GDPR).

- 4.3. If the Customer's place of business is outside of the European Union, then such Customer shall apply confidentiality and security measures to PPD equivalent to those that are laid down in the GDPR for the protection of PPD and shall comply with the obligations set out in Clause 4.4 of these terms and conditions.
- 4.4. Without limiting the provisions of the GDPR, the Customer shall:
  - 4.4.1. Require and only be given PPD that is necessary for the purpose of performing the Services.
  - 4.4.2. Use the PPD only for the legitimate purposes of the Project.
  - 4.4.3. Not use the PPD for any other purpose than specified in this Clause 4 without the written consent of the Supplier.
  - 4.4.4. Not share PPD unless required by applicable local legislation or required to facilitate medical assistance to the Personnel while on Customer assignment.
  - 4.4.5. Ensure that PPD is only given on a need-to-know-basis to staff members and sub-contractors subject to obligations similar to those required under this Clause 4.
  - 4.4.6. Protect PPD from unlawful disclosure and data breaches by restricting the access to it. If the PPD is stored on paper it shall be kept under lock with authorized staff only having access. PPD stored by electronic means shall be protected by encrypting the information and/or ensuring that only authorized personnel has access to it.
  - 4.4.7. Destroy and/or delete from everywhere it is stored at the end of the Project or latest when it is allowed to do so under local applicable laws.
  - 4.4.8. Notify the Supplier of any breach of confidentiality relating to the PPD without delay and latest within 72 hours of becoming aware of the breach.
  - 4.4.9. Acknowledge the right of the Personnel and/or Company to seek information on PPD held on the said Personnel by the Customer.
  - 4.4.10. While Personnel is on the Customer Assignment only collect PPD as is necessary for the performance of the Services.
  - 4.4.11. In the event that there is an Incident requiring an Incident Report which is likely to involve a claim from a third party, provide the Supplier with information of the Incident and the PPD it intends to retain for the purpose of processing any such claim with third party bodies, such as insurers.

## **5. Safety at Work**

- 5.1. The Customer shall be responsible for ensuring the safety of the Personnel at all times while the Services are being provided for the Customer at its premises or those of its customers.
- 5.2. The Customer shall be responsible for ensuring that the Personnel is given sufficient safety briefing including where appropriate a safety tour at the work location prior to commencing duties.

- 5.3. Unless otherwise agreed by the Supplier, the Customer will provide Personnel Equipment for the Personnel.
- 5.4. Where the Customer stipulates that the Customer's equipment or clothing will be used by the Personnel, the Customer will supply these free of charge. The Personnel will wear hard hat in compliance with safety regulations at the work location. The Customer is responsible for the provision of any other safety clothing, footwear and equipment required to comply with industry legislation for any work location where the Echoscope Operation is directed.
- 5.5. The Supplier is not responsible in any way whatsoever for provision of safety equipment or clothing.
- 5.6. The Customer shall be responsible for providing a safe working environment for the Personnel and shall ensure that the working environment conforms with the international health and safety executive standards appropriate to the work place.
- 5.7. Personnel shall comply with the Customer's health and safety policies in place at the Customer's place of work or installation site.

## **6. Evacuation and Repatriation from Vessel or Work Location**

- 6.1. The Customer will be responsible for the evacuation and any necessary repatriation of the Echoscope Operator and will employ the same procedures and criteria which apply in the case of the Customer's own employees.
- 6.2. Where applicable the Customer will evacuate the Personnel to the nearest hospital. Thereafter the Customer will contact the Supplier to facilitate further treatment repatriation and/or evacuation of the Echoscope Operator.
- 6.3. The Customer will keep the Supplier informed at the soonest possible opportunity of any developments which require medical intervention, repatriation and/or evacuation of the Personnel.
- 6.4. The Customer shall notify the Supplier as soon as is reasonably possible of all incidents requiring actions under this Clause 6 but in any event no later than 24 hours after any such incident.

## **7. Travel and Subsistence**

- 7.1. The Customer will provide or reimburse at cost all travel of Personnel from the Point of Origin to the project location and return to the Point of Origin and accommodation costs.
- 7.2. The Customer will be responsible and liable for the cost of travel and making arrangements for the Personnel to travel to their Point of Origin as a result of the Customer's work project being suspended or terminated for whatever reason.
- 7.3. The Customer will provide reasonable subsistence and accommodation for Personnel whilst under contract.

7.4. An administration fee of 15% will be added to invoices presented to the Customer by the Supplier for accommodation, documented travel and associated expenses incurred by the Personnel during the contract with the Customer.

## **8. Non-Circumvention**

8.1. Neither the Customer nor its affiliates shall for a period of 12 months contract the Personnel for Echoscope Services unless this is agreed by the Supplier in writing waiving this Restriction.

8.2. The restriction set out in Clause 8.1 apply to actions carried out by the Customer in any capacity and whether directly or indirectly on its own behalf or on behalf of any person or jointly with other person.

8.3. The Supplier and Customer consider the covenants set out in this Clause 8 to be fair and reasonable.

## **9. Liability and Indemnity**

9.1. Whilst every effort is made by the Supplier to provide Personnel with reasonable standards of skills, integrity and reliability and to provide them in accordance with the Customer's booking details, the Supplier is not liable for any loss, expense, damage or delay arising from any failure to provide Personnel for all or part of the period of booking or from the negligence, dishonesty, misconduct or lack of skill of the Personnel. For the avoidance of doubt the Supplier does not exclude liability for death or personal injury arising from its own negligence.

## **10. Quotation for Supply of Personnel and Law**

10.1. In the event that your contract is for rental of equipment, our terms and conditions of rental shall apply and these Special Conditions shall be deemed incorporated therein (terms of condition for rental) by reference. These Special Conditions and terms and conditions of hire shall constitute the Contract between the Parties for the subject matter described.

10.2. In the event that your contract is for purchase of equipment for which you require Services as is defined herein, our terms and conditions of sale shall apply and these Special Conditions shall be deemed incorporated therein (terms and conditions for sale) by reference. These Special Conditions and terms and conditions of sale shall constitute the Contract between the Parties for the subject matter described.

10.3. In the event that your contract is for the lease of equipment for which you require Services as is defined herein, our terms and conditions of sale shall apply and these Special Conditions shall be deemed incorporated therein (terms and conditions for sale) by reference. These Special Conditions and terms and conditions of sale shall constitute the Contract between the Parties for the subject matter described.

**11. General including Applicable Law**

11.1. The formation, existence, construction, performance, validity and all other aspects of this Contract for the supply of Personnel shall be governed by the laws of Scotland and the Parties submit to the exclusive jurisdiction of the Scottish Courts.

## **Schedule 1: Description of Services to be provide by Personnel**

### **Operation**

On arrival at the designated mobilization site, the Engineer will:

- Set-up the Echoscope® and equipment
- Integrate navigation (as required) and test
- Operate the equipment during any on water testing
- Demonstrate operations to designated personnel
- Provide advice on optimum settings and geometry for the operation
- Operate the equipment to the customer's instructions
- Provide data processing and export data in support of operations

Such as "services" that may be described in the Technical Brief (if one is supplied)