

# LICENSED MODE

## End-User License Agreement (EULA)

Please read this EULA carefully, as it sets out the terms and conditions upon which we license our Software for use.

By clicking "accept agreement" when you first install the Software, you agree to be bound by the terms and conditions of this EULA. You further agree that your employees / any person you authorise to use the Software will also be bound by the terms and conditions of this EULA. If you do not agree to this EULA, you must click "reject agreement" during the installation process.

If you do not agree to this EULA, you must not use the software for any purpose whatsoever.

ONCE YOU HAVE COPIED, INSTALLED, REGISTERED OR OTHERWISE USED THE SOFTWARE, IT IS NO LONGER RETURNABLE.

### 1. Definitions and interpretation

1.1 In this EULA:

**"Computer"** means a desktop, notebook, netbook or similar computer owned by and in the control of the Licensee;

**"Documentation"** means the documentation concerning the Software supplied by the Licensor or by the Software supplier to the Licensee with the Software;

**"Effective Date"** means the date when the Licensee agrees to the terms and conditions of this EULA, as detailed in the preamble to this EULA;

**"EULA"** means this end user licence agreement (including the preamble), and any amendments to it from time to time;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Licensee"** means the licensee of the Software under this EULA;

**"Licensor"** means MCL (registered in the Belgian crossroad bank of enterprises,

BCE/KBO n° 2.087.817.310) having its office at NYSDAM Office Park, Avenue Reine Astrid 92 (3rd floor), 1310 La Hulpe, Belgium;

**"Mobile Computer"** means a small, handheld computing device, featuring most of the time a screen to view information and a keyboard or keypad for entering information, and which may integrate dedicated I/O such as scanner, imager, RFID reader and audio capabilities.

**"Software"** means MCL-Client, MCL-Designer, MCL-Net and any add-on software or any integrated third party software, including following the application of any Upgrade; and

**"Upgrade"** an upgrade, update, enhancement, improvement or patch to the Software supplied by the Licensor.

- 1.2 In this EULA, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this EULA.

## **2. Term of EULA**

This EULA will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 9.

## **3. Licence**

3.1 The Licensee may only use the Software and Documentation for the Licensee's business purposes and in accordance with the provisions of this Clause 3.

3.2 For MCL-Client software  
Subject to the payment by the Licensee of the relevant charges and fees in respect of the MCL-Client software licence, and the Licensee's compliance with Clause 3.6 and the other provisions of this EULA, the Licensor grants to the Licensee a non-exclusive non-transferable licence to:

- (a) download instances of the MCL-Client software and Documentation;
- (b) install instances of the MCL-Client software and Documentation;
- (c) use instances of the MCL-Client software in accordance with the Documentation; and
- (d) use instances of the Documentation,

on Mobile Computers but only **up to the number of units of MCL-Clients as referenced in the MCL-Client license** and this anywhere in the world except in any country for which any applicable government, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining the license or approval.

3.3 For MCL-Designer and MCL-Net software

Subject to the payment by the Licensee of the relevant charges and fees in respect of the Software licence, and the Licensee's compliance with Clause 3.6 and the other provisions of this EULA, the Licensor grants to the Licensee a non-exclusive non-transferable licence to:

- (a) download 1 instance of the Software and Documentation;
- (b) install 1 instance of the Software and Documentation;
- (c) use 1 instance of the Software in accordance with the Documentation; and
- (d) use 1 instance of the Documentation,

on 1 Computer anywhere in the world except in any country for which any applicable government, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining the license or approval.

3.4 For MCL-Designer and MCL-Net software

THIS LICENSE MAY NOT BE USED CONCURRENTLY ON DIFFERENT COMPUTERS (HARDWARE). The SOFTWARE is licensed as a single product and may only be used with one HARDWARE at a time. The Licensee may permanently transfer all of its rights under this EULA in conjunction with a permanent sale or transfer of the HARDWARE on which it has been activated, provided he retains no copies, if the Licensee transfers all of the SOFTWARE (including all component parts, the media and printed materials, any upgrades, this EULA and the License Certificate), and if the recipient agrees to the terms of this EULA. If the SOFTWARE is an Upgrade, any transfer must also include all prior versions of the SOFTWARE.

3.5 Subject to the payment by the Licensee of the relevant charges and fees in respect of the Software licence, and the Licensee's compliance with Clause 3.5 and the other provisions of this EULA, the Licensor further grants to the Licensee the rights to:

- (a) print not more than 1 copy of the Documentation; and
- (b) make not more than 1 back-up copy of the Software and Documentation,

3.6 The Licensee must not:

- (a) copy or reproduce the Software or Documentation or any part of the Software or Documentation other than in accordance with the licence granted in this Clause 3;
- (b) sell, resell, rent, lease, loan, supply, distribute, redistribute, publish or republish the Software or Documentation or any part of the Software or Documentation;
- (c) modify, alter, adapt, translate or edit, or create derivative works of, the Software or Documentation or any part of the Software or Documentation;
- (d) reverse engineer, decompile, disassemble the Software or Documentation or any part of the Software or Documentation;
- (e) use the Software other than in accordance with the Documentation;

- (f) circumvent or remove or attempt to circumvent or remove the technological measures applied to the Software and Documentation for the purposes of preventing unauthorised use; or
- (g) for MCL-Client software, install and use MCL-Client software on more Mobile Computers than the number of units as referenced in the MCL-Client license,

providing that nothing in this Clause 3.5 will prohibit or restrict the Licensee or any other person from doing any act expressly permitted by applicable law.

- 3.7 All Intellectual Property Rights in the Software and Documentation are and will remain, as between the parties, the exclusive property of the Licensor.

If Licensee suggests new features or functionality that Licensor, in its sole discretion, adopts for the Software, such new features or functionality will be the sole and exclusive property of Licensor and any and all claims of Licensee as to the same are hereby waived and released.

Licensor reserves the right, in its sole discretion and without incurring any liability to Licensee, to update, improve, replace, modify or alter the specifications for and functionality of all or any part of the Software from time to time.

#### **4. Other Users**

- 4.1 The Licensee may permit any employee of the Licensee to exercise the rights granted by the Licensor to the Licensee under Clause 3.2(c) and (d), subject always to the restrictions set out in Clause 3.
- 4.2 The Licensee must ensure that any person using the Software and/or Documentation in accordance with Clause 4.1 is made aware of, and agrees to, the terms of this EULA.

#### **5. Upgrades**

- 5.1 The Licensee may apply to the Software each Upgrade released by the Licensor and made available by the Licensor to the Licensee from time to time.
- 5.2 The Licensor will have no obligation to provide support for the Software or repair or replace the Software under Clause 6.2(d) in relation to any version of the Software that does not incorporate the most recent Upgrade to the Software.

#### **6. Limited warranties**

- 6.1 The Licensee warrants to the Licensor that it has the legal right and authority to enter into and perform its obligations under this EULA.
- 6.2 The Licensor warrants to the Licensee:
- (a) that it has the legal right and authority to enter into and perform its obligations under this EULA;
  - (b) that the use of the Software by the Licensee in accordance with the terms of this EULA will not infringe the Intellectual Property Rights of any third party;
  - (c) that the Software will operate, and will continue to operate for a period of 90 days following the Effective Date in accordance with the Documentation

and if the Software does not so operate, the Licensor will, for no additional charge, either: (i) carry out any work necessary in order to ensure that the Software operates in accordance with the Documentation during this period; or (ii) provide the Licensee or arrange for the provision to the Licensee of alternative software performing substantially the same function as the Software; and

- (d) that the Licensor has tested the Software for computer virus and other malicious third party software infections in accordance with standard industry practice from time to time.

6.3 The Licensee acknowledges that:

- (a) the Software may not be error-free,
- (b) the Software has not been developed to meet the specific requirements of the Licensee, and accordingly the Licensee will be responsible for ensuring that the Software is suitable to meet the Licensee's requirements.

6.4 The warranty in Clause 6.2(c) is conditional upon the Licensee promptly providing to the Licensor all such information and assistance, and access to its premises and systems, as the Licensor may reasonably require.

6.5 All of the parties' liabilities and obligations in respect of the subject matter of this EULA are expressly set out herein. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this EULA will be implied into this EULA or any related contract.

## **7. Limitations and exclusions of liability**

7.1 Nothing in the EULA will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

7.2 The limitations and exclusions of liability set out in this Clause 7 and elsewhere in the EULA:

- (a) are subject to Clause 7.1; and
- (b) govern all liabilities arising under the EULA or in relation to the subject matter of the EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

7.3 The Licensor will not be liable to the Licensee for any losses arising out of a Force Majeure Event.

7.4 The Licensor will not be liable to the Licensee in respect of any business losses,

such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

- 7.5 The Licensor will not be liable to the Licensee in respect of any loss or corruption of any data, database or software.
- 7.6 The Licensor will not be liable to the Licensee in respect of any special, indirect or consequential loss or damage.
- 7.7 The Licensor's aggregate liability to the Licensee will not exceed (i) in case of sole payment by the Licensee, the charges and fees paid in respect of the Software licence that specifically caused the damage or that are subject to the action or that are directly linked to the cause of the action implicating the liability of the Licensor and (ii) in case of periodical payments the aggregate amount of the charges and fees paid for the last period of twelve months for the Software licence that specifically caused the damage or that are subject to the action or that are directly linked to the cause of the action implicating the liability of the Licensor.

## **8. Termination**

This EULA will terminate immediately and automatically if:

- (a) the Licensee or any employee of the Licensee or person authorised by the Licensee to use the Software and/or Documentation breaches any provision of this EULA;
- (b) the Licensee: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (c) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Licensee;
- (d) an order is made for the winding up of the Licensee, or the Licensee passes a resolution for its winding up.

## **9. Effects of termination**

- 9.1 Upon termination all the provisions of this EULA will cease to have effect, save that the following provisions will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7 and 10 but this sentence shall not imply or create any continued right to use the Software after termination of this License.
- 9.2 Termination of this EULA will not affect either party's accrued rights and liabilities.
- 9.3 Save as expressly provided in this EULA, the Licensee will not be entitled to a refund upon the termination of this EULA.

## **10. General**

- 10.1 No breach of any provision of this EULA will be waived except with the express written consent of the party not in breach.
- 10.2 If a Clause of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this EULA will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 10.3 The Licensor may freely assign this EULA and/or its rights and/or obligations under this EULA without the Licensee's consent. Save as expressly provided in this EULA, the Licensee must not assign, transfer, charge, license or otherwise dispose of or deal in this EULA and/or any its rights and/or obligations under this EULA.
- 10.4 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.
- 10.5 This EULA constitutes the entire agreement and understanding of the parties in relation to the subject matter of this EULA, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of this EULA.
- 10.6 This EULA will be governed by and construed in accordance with the laws of Belgium; and the courts of Brussels, Belgium will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

Notwithstanding the above, Licensor shall have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against Licensee in the event that, in the opinion of Licensor, such action is necessary or desirable.

## **SPECIFIC TERMS OF USE OF DEMO AND SAMPLE APPLICATIONS PACKAGED WITH MCL-DESIGNER**

### **DEMO AND SAMPLE APPLICATIONS STATUS.**

The Demo and Sample Applications are offering limited features allowing You only to evaluate and test the Software. You are not authorized to use the Demo and Sample Applications as such in any production system, and the Demo and Sample Applications may not be offered for sale or lease, or sold, leased or otherwise distributed.

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