

# **BETA AGREEMENT**

## ***Telex Communications (UK) Ltd.***

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**PLEASE READ THIS BETA AGREEMENT CAREFULLY. BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE YOU INDICATE ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE. THIS AGREEMENT DOES NOT SUPERCEDE ANY OTHER WRITTEN AGREEMENT BETWEEN YOU AND TELEX COMMUNICATIONS (UK) Ltd.**

This Beta Test Agreement (the "Agreement") is made between Telex Communications (UK) Ltd, with its principal place of business located at Walter Nash Road, Kidderminster, Worcester DY11 7HJ ENGLAND ("Telex Communications") and you ("Customer") for the purpose of testing the beta product indicated on the applicable Telex Communications Software Beta Program Application, which for purposes of this agreement shall be referred to as the "Beta Product". The terms and conditions of this Agreement are intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding which may involve the Agreement. This Agreement may not be modified except by a writing executed by both parties hereto.

**1. NATURE OF AGREEMENT.** The Beta Product is a release of a Telex Communications product that is not generally available for distribution at the time it is shipped to Customer and is not intended for use in a production environment. The Beta Product shall be used by Customer for testing purposes and within the parameters as mutually determined by the parties (the "Beta Test"). The purpose of the Beta Test shall be to facilitate the early commercial availability of the Beta Product and to obtain information about Customer's experience with such. Upon termination of this Agreement Customer shall return the Beta Product to Telex Communications or certify in writing destruction of such.

**2. TERM AND TERMINATION.** This Agreement shall become effective upon Customer's acceptance of the Agreement and download of the Beta Product, and will continue until the date Telex Communications makes the Beta Product generally available to the public; provided, however, either party may terminate this Agreement at will before that date.

**3. RESERVATION OF RIGHTS.** Telex Communications retains all right, title and interest in the Beta Products and in all materials delivered in connection with such. Customer has no rights other than those granted in this Agreement.

**4. CONFIDENTIAL INFORMATION.** "Confidential Information" shall be defined to include

the Beta Product, any software, source code, object code, documentation and any proprietary tools, proprietary knowledge or proprietary methodologies disclosed by Telex Communications to Customer under this Agreement. Customer shall observe complete confidentiality with respect to the Confidential Information, and shall use its best efforts and take all reasonable steps to protect such from any use, reproduction, publication, disclosure, or distribution except as specifically authorized by this Agreement. Customer shall promptly notify Telex Communications of any known unauthorized use or disclosure of the Confidential Information and will cooperate with Telex Communications in any litigation brought by Telex Communications against third parties to protect its proprietary rights. Customer may not permit a third party access to, or use of, the Confidential Information without Telex Communications' prior written authorization. Customer expressly agrees not to disclose to persons in its own organization who do not have a need to know the existence or contents of (i) the Beta Product(s); (ii) the Beta Test and its results, or (iii) this Agreement. Customer's reports must be marked " Telex Communications Confidential".

## **5. DISCLAIMERS**

A. The design of the Beta Product may be changed prior to general availability from Telex Communications without notice, and Telex Communications does not guarantee that compatibility of Customer's system can or will be maintained with versions of Beta Product that may become generally available from Telex Communications. Telex Communications reserves the right to withdraw any Beta Product from Beta Testing and never release it as a commercial product. Telex Communications' plans to market the Beta Product is subject to Telex Communications' internal business and technical reviews.

B. THE BETA PRODUCTS AND TECHNICAL SUPPORT (IF ANY) ARE PROVIDED "AS IS" WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Customer remains solely responsible for the design of Customer's system and Customer's results.

C. IN NO EVENT WILL TELEX COMMUNICATIONS BE LIABLE FOR ANY DAMAGES UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY CUSTOMER BASED ON A THIRD PARTY CLAIM.

D. The Beta Product may not be at the level of performance, compatibility or safety of generally available Telex Communications products. Customer understands and agrees that Telex Communications makes no representation or warranties regarding use of the Beta Product. Customer shall have sole responsibility for adequate protection and backup of its data or equipment used in connection with the Beta Product and Customer shall not claim against Telex Communications for lost data, re-run time, inaccurate input, work delays or lost profits resulting from the use of the Beta Product.

**6. GENERAL.** This Agreement will be construed under the laws of the United Kingdom, save to the maximum extent permitted by the law of the country in which the Licensee is situated. In the event there is a dispute concerning the subject matter of this Agreement, the proper venue shall be the county of Worcestershire, United Kingdom. Each party hereby waives opposition to

jurisdiction in such court. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.