

- 1.1 The headings used in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.2 Unless the context otherwise requires a reference in this Agreement to any gender includes all genders and a reference to the singular includes the plural and vice versa.
- 1.3 References to any statute or similar instrument shall be read as including amendments and re-enactments.

2. LICENCE

- 2.1 In consideration of the Licence Fee and the Licensee's obligations in this Agreement, PureDev hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable (save in respect of the distribution of the Licensee Product(s) to end users) right and licence in the Territory to use the Software and any Updates developed during the Term in accordance with the terms of this Agreement ("Purpose").
- 2.2 Nothing in this Agreement shall prevent PureDev licensing, utilising or reusing the Software by itself, for or with any third parties in any manner, media or form that it wishes.
- 2.3 The Licensee shall permit PureDev to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this Agreement, for the purposes of ensuring that the Licensee is complying with the terms of this Agreement, provided that PureDev provides reasonable advance notice to the Licensee of such inspections, which shall take place at reasonable times.

3. UPDATES AND NEW VERSIONS

- 3.1 PureDev may from time to time make Updates available to Licensee and Licensee may at its discretion choose to incorporate such Updates into the Licensee Product(s). Licensee acknowledges that neither the Software nor Updates may be entirely free from defects or errors, and that Licensee uses the Software and any Updates at its own risk.

4. EVALUATION PERIOD

- 4.1 Provided that the Licensee has not previously obtained a licence from PureDev in respect of the Software, the Licensee may evaluate the Software for a period of 10 days from the Effective Date. If, prior to the expiry of that period, the Licensee does not wish to continue using the Software, the Licensee may choose to terminate this Agreement including the licence granted in clause 2 immediately by written notice to PureDev giving reasons for its decision, and PureDev shall refund to the Licensee the Licence Fee less any transaction fees incurred by PureDev in respect of payment or reimbursement of the Licence Fee. For the avoidance of doubt, PureDev shall be under no obligation to reimburse the Licensee for the Licence Fee following this evaluation period.

5. LICENSEE OBLIGATIONS

- 5.1 Licensee shall:
 - 5.1.1 keep reasonable records concerning the use of the Software;
 - 5.1.2 not use the Software otherwise than as expressly permitted by this Agreement;
 - 5.1.3 only distribute the Software as part of the Licensee Product(s) as compiled, executable, binary object code, and not as source code or in any other form;

- 5.1.4 not combine with any software where the licence terms of such software would require that the Software must be (1) disclosed or distributed in source code form, (2) licensed for the purpose of making derivative works, and/or (3) redistributed only free of enforceable intellectual property rights;
- 5.1.5 not include in or with the Software any software or program that is or is likely to infringe any third party Intellectual Property Rights or be subject to any open source licenses or arrangements that would require that any part of the Software be (1) disclosed or distributed in source code form, (2) licensed for the purpose of making derivative works, and/or (3) redistributed only free of enforceable intellectual property rights; and
- 5.1.6 credit PureDev as the creator of the Software in the credits of the Licensee Product(s) developed using the Software with the wording "Powered by VMem by PureDev Software".

6. INTELLECTUAL PROPERTY RIGHTS AND MODIFICATION

- 6.1 All Intellectual Property Rights in the Software and any Updates or additional features or functionality created by or for PureDev in connection with the Software shall belong to PureDev, and the Licensee shall have no rights in respect of the Software except as expressly granted under this Agreement. Licensee shall not by virtue of this Agreement or otherwise, obtain any proprietary right, title or interest in the Software or any Intellectual Property Rights subsisting in it.
- 6.2 The Licensee may modify the Software only for the Purpose, and the Licensee hereby grants to PureDev a royalty-free, perpetual, sublicensable, worldwide, irrevocable license to use any such modification for any purpose.
- 6.3 If any claim is made, or in the reasonable opinion of PureDev is likely to be made, against the Licensee or PureDev alleging that the possession or use of the Software (or any part thereof) in accordance with this Agreement infringes the Intellectual Property Rights of a third party (a "Claim"), then PureDev may at its sole option and expense:
 - 6.3.1 procure for the Licensee the right to continue to use the Software (or any part thereof) in accordance with the terms of this Agreement;
 - 6.3.2 modify the Software so that it ceases to be infringing;
 - 6.3.3 replace the Software with non-infringing software; or
 - 6.3.4 terminate this licence immediately by notice in writing to the Licensee and refund any of the Licence Fee paid by the Licensee as at the date of termination (less a reasonable sum in respect of the Licensee's use of the Software to the date of termination) on return of the Software and all copies thereof.
- 6.4 If any third party makes a Claim, or notifies an intention to make a Claim against the Licensee, the Licensee shall:
 - 6.4.1 as soon as reasonably practicable, give written notice of the Claim to PureDev, specifying the nature of the Claim in reasonable detail;
 - 6.4.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of PureDev (such consent not to be unreasonably conditioned, withheld or delayed);
 - 6.4.3 give PureDev and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Licensee, so as to enable PureDev and its professional advisers to examine them and to take copies (at PureDev's expense) for the purpose of assessing the Claim; and
 - 6.4.4 take such action as PureDev may reasonably request to avoid, dispute, compromise or defend the Claim.

7. **PAYMENT**

7.1 Licensee shall make payment of the Licence Fee immediately via bank transfer or by the method(s) notified to Licensee from time to time.

7.2 The Licence Fee shall be payable without deduction or set off and all sums are expressed to be exclusive of Value Added Tax or any other applicable sales tax or duties which shall additionally be paid by Licensee upon production of a valid VAT receipt.

8. **CONFIDENTIALITY**

8.1 PureDev and Licensee shall each:

8.1.1 keep confidential all information (in whatever form or medium) concerning the Software and information relating to the business of the other party, including but not limited to information relating to clients, customers, products, affairs and finances of the other party (the "Information");

8.1.2 not disclose the Information in whole or in part to any other person without the other party's written consent save those of its personnel and representatives involved in the development of the Software and who have a need to know the same; and

8.1.3 use the Information solely in connection with the Software and for the purpose of performing its obligations under this Agreement.

8.2 The provisions of clause 8.1 shall not apply to the Information to the extent that: (1) it is trivial or obvious; or (2) it is already in the other's possession other than as a result of a breach of a contractual obligation or obligation of confidence; or (3) it is already in the public domain other than as a result of a breach of a contractual obligation or obligation of confidence.

8.3 Upon expiry or termination of this Agreement for whatever reason, each party shall return, destroy or permanently erase (at the direction of the other party) all of the other party's Information in its possession or control within 30 days of such expiry or termination, save that the parties may retain one copy of any Information that they are reasonably required to retain by law.

8.4 Neither party shall make any public statement or press release in connection with this Agreement or use the other party's name, trademarks or logos in its marketing material without obtaining the prior written consent of the other party.

9. **WARRANTIES AND INDEMNITY**

9.1 Both Licensee and PureDev represent, warrant and undertake to the other that they have the requisite power and authority to enter into this Agreement and to perform fully their obligations hereunder and that they have not entered into and will not enter into any arrangement which would restrict or inhibit the exercise by the other party of its rights under this Agreement.

9.2 Licensee warrants to PureDev that it shall use the Software only in accordance with the terms of this Agreement.

9.3 Licensee shall indemnify, and keep indemnified, PureDev against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Licensee arising out of or in connection with any claim made by a third party in connection with use of the Software (including the Updates) contrary to the terms of this Agreement.

9.4 PureDev warrants that, to its reasonable knowledge and belief, the Software does not include any software or program that is subject to the GNU Public Licence or arrangements that would require that any Licensee Product which incorporates the Software must be (1) disclosed or distributed in source code form, (2) licensed for the purpose of making derivative works, and/or (3) redistributed only free of enforceable intellectual property rights.

10. **DISCLAIMER AND LIABILITY**

- 10.1 THE SOFTWARE (AND ANY UPDATE) IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF COPYRIGHT, PATENT, TRADE MARK, OR OTHER RIGHT. IN NO EVENT SHALL PUREDEV BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, INCLUDING ANY GENERAL, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING FROM OR OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR FROM OTHER DEALINGS IN THE SOFTWARE. PUREDEV SHALL HAVE NO RESPONSIBILITY TO FIX ANY DEFECTS IDENTIFIED IN THE SOFTWARE WHETHER OR NOT SUCH DEFECTS ARE NOTIFIED TO PUREDEV AND SHALL HAVE NO OBLIGATION TO OFFER TECHNICAL OR OTHER SUPPORT TO THE LICENSEE.
- 10.2 Notwithstanding any other term of this Agreement, nothing in this Agreement shall limit liability for death or injury resulting from a party's own negligence or that of its employees, agents or sub-contractors or liability in respect of any fraudulent misrepresentation.
- 10.3 Subject to clauses 10.1 and 10.2 above, in no event will PureDev's liability under or in connection with this Agreement exceed an amount equivalent to the Licence Fee actually received by PureDev from Licensee in the 12 months preceding the date upon which such liability arose.
- 10.4 Neither party shall be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any unforeseen circumstance beyond the reasonable control of such party including without limitation, fire, flood, war or act of God (a "Force Majeure Event"), provided that:
- 10.4.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event; and
- 10.4.2 it uses all reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 10.5 Except as expressly provided in this Agreement, both parties expressly exclude all conditions, warranties and terms and undertakings express or implied statutory or otherwise and neither party shall be liable for any loss of profit, goodwill or any type of special, indirect or consequential loss even if such loss was reasonably foreseeable or the other had been advised of the possibility of incurring the same.

11. DURATION AND TERMINATION

- 11.1 This Agreement shall come into force on the Effective Date and continue unless and until terminated forthwith by either party if:
- 11.1.1 the other party commits any other material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same; or
- 11.1.2 the other party convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with its creditors; or
- 11.1.3 if the other party (being an individual) is made subject to a bankruptcy petition or order; or
- 11.1.4 anything equivalent to the events or circumstances stated in clauses 11.1.2 and 11.1.3 occurs in any applicable jurisdiction; or
- 11.1.5 the other party fails to perform any of its obligations under this Agreement owing to a Force Majeure Event, which persists for a period of 30 continuous days; or
- 11.1.6 automatically in the event Licensee breaches the terms of this Agreement.

- 11.2 Any termination of this Agreement pursuant to this clause 11 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party.
- 11.3 On termination for any reason:
- 11.3.1 all rights granted to the Licensee under this Agreement shall cease;
- 11.3.2 the Licensee shall cease all activities authorised by this Agreement;
- 11.3.3 the Licensee shall immediately destroy or return to PureDev (at the option of PureDev) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to PureDev that it has done so.
- 11.4 Upon termination of this Agreement, clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: 1, 8, 9.3, 10, and 12.
- 12. GENERAL**
- 12.1 This Agreement shall be binding upon and inure for the benefit of the successors in title of the parties hereto.
- 12.2 This Agreement sets out the entire understanding between the parties with respect to the subject matter thereof and replaces and supersedes all prior oral and written representations, arrangements and understandings between the parties relating thereto. Nothing in this clause shall exclude or limit the liability of either party for fraudulent misrepresentation.
- 12.3 Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the parties and neither of the parties shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other party.
- 12.4 If any part of this Agreement is or becomes unenforceable, such part will be construed as far as possible to reflect the parties' intentions and the remainder of the provisions will remain in full force and effect.
- 12.5 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach of this Agreement.
- 12.6 This Agreement is made and shall be construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 12.7 A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 12.8 PureDev may at any time assign, novate or otherwise transfer any of its rights and obligations under this Agreement and shall use reasonable efforts to notify the other party within a reasonable period after doing so. Licensee may not without the prior written consent of PureDev transfer, assign or novate its rights or obligations under this Agreement.
- 12.9 All notices to be given under this Agreement must be in English, in writing and sent to the other party at the address stated at the head of this Agreement (or using such other contact details as either party has notified the other in accordance with this clause 12.9).

IN WITNESS the parties have caused this Agreement to be executed by their duly authorised representatives:

FOR AND ON BEHALF OF PUREDEV SOFTWARE LIMITED:	FOR AND ON BEHALF OF [INSERT NAME] LIMITED:

SIGNED	SIGNED
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

Schedule 1

Licence Fee	[£2210.00 per platform per product plus VAT (where applicable)]
Platforms	[FOR EXAMPLE: Xbox 360; Playstation 3; Microsoft Windows; iOS; Android]
Licensee Products	[insert product name]