

The Customer's attention is drawn to the exclusions from and limitations of liability contained in this EULA and in particular to the provisions of clauses 4.3, 5.6, 7.2, 9.6, 9.7, 9.8, 11 and 12 of this EULA.

END USER LICENCE AGREEMENT

PARTIES

- (1) Cadaptor Solutions Limited (registered in England under number 12110944) of The Heritage Exchange, Wellington Mills, Plover Road, Lindley, Huddersfield, West Yorkshire, HD3 3HR (**"Cadaptor"**); and
- (2) The person, partnership, company or other undertaking named as the Customer in the Proposal (the **"Customer"**).

RECITALS

- (A) The parties have been in negotiation regarding the supply of certain computer software.
- (B) The Customer wishes to purchase a licence to use the Cone Software as indicated below.
- (C) The parties have agreed to enter into this End User Licence Agreement (**"EULA"**) to define their contractual rights and liabilities between themselves and to regulate the other documentation which has been produced in the course of those negotiations.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In this EULA:

"Additional Charges"

means charges to be calculated by Cadaptor in accordance with Cadaptor's standard rate for time, materials, travel, accommodation and subsistence from time to time prevailing;

"Cone Software"

means the computer software known as **"CONE"** which has been written by Cadaptor and including also the data base rights referred to in clause 2.4 below;

"Consequential Loss"

means pure economic loss, loss of profit, loss of use of trade marks, loss of business and like loss;

“Copy”

means an individual copy on electromagnetic recording material of the Cone Software;

“EULA”

means this End User licence Agreement;

“Intellectual Property Right”

means a patent, right in a design, copyright, data base right, trade mark and any other intellectual property right whether or not registered or capable of registration;

“Loss of Data”

means a loss of or corruption to data or programs held or used by or on behalf of the Customer;

“Operating System”

means the operating system upon which the Cone Software is intended to run as identified by name and version number in the Proposal;

“Party”

means Cadaptor or the Customer;

“Proposal”

means the document entitled “Proposal”, “Quote” or a similar document, letter or email prepared by Cadaptor or an intermediary on behalf of Cadaptor and sent to the Customer and which document contains details of the Customer, the software and services to be supplied by Cadaptor to the Customer and the monies payable and which document forms part of this EULA;

“Rights of Entry”

in respect of premises means the right of Cadaptor upon demand for itself or an authorised representative of Cadaptor to enter those premises together with the right to be held harmless by the Customer from and against any loss, damage or other cost of whatsoever nature suffered or incurred by Cadaptor or its authorised representative as a result of a failure by the Customer to procure the necessary permission for Cadaptor or its authorised representative to make such entry;

“Services”

means the Software Support Services, any Training Services and any other services from time to time agreed to be supplied by Cadaptor to the Customer;

“Single Processor”

means the computer (being a laptop, single desktop computer or similar single-user item of computer hardware and excluding always a computer program or a

device such as a server which provides functionality for multiple devices) upon which the Cone Software is loaded and run by the Customer;

“Software”

means the computer software licensed to the Customer by Cadaptor under this EULA (including the Cone Software) as indicated in the Proposal together with any other software supplied from time to time by Cadaptor to the Customer;

“Software Licence Fee”

means the licence fee indicated in the Proposal for the Cone Software being the fee payable in respect of the right to use the Cone Software under this EULA;

“Software Support Services”

means the provision of the support services as detailed in clause 3.3 below;

“Specification”

means the user manual and on-line tutorials describing the use of the Cone Software made available by Cadaptor to the Customer and the “help” functions within the Cone Software;

“Termination Event”

means any of the following events:

- (a) the Customer fails to pay any moneys due under this EULA within fourteen (14) days of the due date;
- (b) the Customer breaches a material term or condition of this EULA (other than a term or condition requiring payment of moneys as provided for in paragraph (a) above) and (in the case of a breach capable of being remedied) fails to have remedied such breach within thirty (30) days of a written request by Cadaptor so to do;
- (c) (where the Customer is a company) (and otherwise than for the purposes of an amalgamation or reconstruction of a solvent company) the Customer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within part 1 of the Insolvency Act 1986 or a proposal is made for a composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a trustee, receiver, administrative receiver or a similar officer is appointed in respect of all or a part of the business or assets of the Customer or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order or (where the Customer is established in a country other than the United Kingdom) an event takes place in the territory in which the Customer is established which is similar to any of the foregoing;

- (d) (where the Customer is an individual or partnership) the Customer (or in the case of a partnership any of the partners) is made bankrupt or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a proposal is made for a composition scheme or an arrangement with (or an assignment for the benefit of) its creditors; or
- (e) the Customer ceases to carry on business or threatens so to do;

“Third Party”

means a person, partnership, company or any other undertaking not being Cadaptor or the Customer;

“Training Services”

means the Services (if any) to be provided by way of training as indicated in the Proposal; and

“Transport Typefaces”

means the sans serif typefaces known as Transport Medium, Transport Heavy and Motorway, the copyright in which typefaces belongs to the Crown.

2. SOFTWARE LICENCE

- 2.1 Notwithstanding a description of the Customer’s rights as or by virtue of a sale (and whether made orally or in writing and whether made in this EULA or in any other document, letter or email) the Customer’s only right to use the Cone Software is by virtue of the licence granted under this EULA. The Customer acknowledges that all Intellectual Property Rights in or relating to the Cone Software and all related documentation are and shall remain the exclusive property of Cadaptor or in the case of Software licensed to the Customer by a Third Party licensor, the exclusive property of such licensor. For the avoidance of doubt, this EULA shall bind the Customer upon the Customer’s use of the Cone Software.
- 2.2 Subject to payment by the Customer to Cadaptor of the Software Licence Fee, Cadaptor hereby grants to the Customer a non-exclusive non-transferable licence to use the Cone Software for a period of twenty (20) years from the Date of the Proposal on the terms and conditions of this EULA.
- 2.3 This licence shall be deemed to incorporate and include all Cone Software which is supplied from time to time to the Customer by Cadaptor) and whether such further Cone Software is expressly referred to in the Proposal or not. The provisions of this clause 2.3 are without prejudice to Cadaptor’s right to charge the Customer for the supply of such further Cone Software (including further releases and versions of the Cone Software).
- 2.4 This licence includes a licence of the data base rights in the library of traffic signs, symbols and layouts embedded within the Cone Software. While the copyright in those traffic signs is not owned by Cadaptor the variants of the traffic signs and the encoding of those variants within the Cone Software is the copyright of Cadaptor and a licence of that latter copyright is included within this EULA. This licence includes a licence of Cadaptor’s copyright and

data base rights in Cadaptor's re-drawings of the Transport Typefaces and which re-drawings are included within the Cone Software in order to produce, using the Cone Software, the placement of traffic signs, symbols and road layouts on maps. The Customer is not granted any other rights to use the copyright or the data base rights of Cadaptor. The Customer shall not extract Cadaptor's data base save from an individual Single Processor as expressly permitted pursuant to this licence.

- 2.5 This licence and the Customer's rights to use the Cone Software are subject to the following restrictions:
 - 2.5.1 the Cone Software shall be used only by the Customer for the purposes of the Customer's own business;
 - 2.5.2 the Cone Software shall be used only on an individual Single Processor and in conjunction with the Operating System;
 - 2.5.3 the Customer shall not assign, sub-licence, charge or otherwise dispose of or grant rights over or out of the licence hereby granted or the Cone Software and shall not attempt to do any such thing;
 - 2.5.4 the Customer shall not copy or reproduce in any way the whole or a part of the Cone Software: except that the Customer may maintain a reasonable number of Copies of the Cone Software in machine readable form for normal operational security and back-up purposes and this licence applies to such Copies as it applies to the original Copy of the Cone Software supplied to the Customer;
 - 2.5.5 the Customer shall not attempt to ascertain or list the source programs or source code relating to the Cone Software; and
 - 2.5.6 the Customer shall not decompile or translate the Cone Software into any other computer language nor attempt so to do.
- 2.6 The Customer agrees not to use the Cone Software or the associated documentation save in accordance with the terms and conditions of this EULA.
- 2.7 Save as provided in clause 2.5.4 above the Customer shall only use the single original Copy of the Cone Software provided on the electromagnetic or optical recording material supplied to the Customer by Cadaptor.
- 2.8 The Customer shall not interfere with or attempt to circumvent the operation of any software code or device whose function is to prevent the unlawful copying or use of the Cone Software.
- 2.9 After the Customer had purchased a copy of the Cone Software, Cadaptor shall provide a link allowing the Customer to download and install a copy of the Cone Software on a Single Processor being a single laptop, single desktop computer or similar single-user item of computer hardware and excluding always a computer program or a device such as a server which provides functionality for multiple devices.
- 2.10 The Customer must have internet access in order to install or uninstall the Customer's copy of the Cone Software from the initial Single Processor to a subsequent Single Processor. The Customer on installing [or using] the Customer's copy of the Cone Software on a

different Single Processor must first cease to use, uninstall and remove the Cone Software from the previous Single Processor. The Customer's copy of the Cone Software is only licensed for use on one Single Processor at any one time. The Customer may move the Customer's copy from a Single Processor to another Single Processor (by such uninstallation and reinstallation) up to four (4) times.

- 2.11 The Customer acknowledges and agrees that none of the acts which are prohibited by the provisions of this EULA (including the prohibitions on copying or adapting the Cone Software) are necessary for the purposes of the use of the Cone Software by the Customer in accordance with its intended purpose or for the purposes of the use of the Cone Software in accordance with this licence.
- 2.12 The Customer shall not modify, alter or in any way interfere with the Cone Software or merge the Cone Software with other data, programs or systems.
- 2.13 In order to use the Cone Software, the Customer must have a licence to use either the software known as Bricscad or Autocad. It is the Customer's responsibility to ensure that at all times the Customer has a valid licence of Bricscad or Autocad for each Copy of the Cone Software which the Customer is licensed to use.
- 2.14 Where any unauthorised use is made of the Cone Software (or any of it) and such use is attributable to the act or default of the Customer then, without prejudice to Cadaptor's other rights and remedies, the Customer will immediately be liable to pay Cadaptor an amount equal to the charges which Cadaptor would have levied had Cadaptor authorised such unauthorised user at the beginning of the period of such unauthorised user together with interest at the rate provided for in clause 5.3 below from the date of such unauthorised use to the date of payment.
- 2.15 Without prejudice to any other right or remedy of Cadaptor, Cadaptor shall be entitled to exercise the Rights of Entry over all premises in the possession of or under the control of the Customer in order to check that the use of the Cone Software and Copies is in accordance with this EULA and for those purposes to take print-outs from the hardware and software on those premises.

3. SOFTWARE SUPPORT

- 3.1 In consideration of the payment by the Customer of the Software Licence Fee in accordance with the provisions of this EULA, Cadaptor shall provide the Software Support Services in respect of the Cone Software until this EULA is terminated.
- 3.2 The Software Support Services shall commence on the Commencement Date and thereafter until the version of the Cone Software used by the Customer is superceded as provided for in accordance with clause 3.7 below.
- 3.3 Cadaptor agrees to provide the following Software Support Service to the Customer during Cadaptor's normal working hours in respect of the Cone Software:
 - 3.3.1 reasonable assistance in the resolution of queries via a telephone call or email originated by the Customer or using Cadaptor's online portal;

- 3.3.2 recommendations relevant to the course of action necessary to recover from a fault, error or failure emanating from the Cone Software or its use;
- 3.3.3 upon request by the Customer reasonable efforts to diagnose and rectify faults remotely in the Cone Software by the issue of fixes in respect of the Cone Software;
- 3.3.4 upon request by the Customer reasonable efforts to assist the Customer in transferring a lawful copy of the Cone Software from one computer to another computer;
- 3.3.5 the creation and dispatch to the Customer from time to time at Cadaptor's sole discretion of new releases (but not new versions) of the Cone Software.

For the avoidance of doubt, Cadaptor may issue a fix by the inclusion of that fix in a new release of the Cone Software.

- 3.4 The Customer shall supply to Cadaptor (in writing if Cadaptor so requests) a detailed description of the fault requiring Software Support Service by virtue of clauses 3.3.1, 3.3.2 or 3.3.3 above and the circumstances in which the fault arose promptly upon becoming aware of such circumstances.
- 3.5 The Software Support Services will be performed remotely from Cadaptor's premises or via a telecommunication or internet link with the Single Processor as Cadaptor determines. At the request of Cadaptor the Customer shall provide such internet connectivity and firewall access as Cadaptor reasonably requires.
- 3.6 The above Software Support Service shall not include the diagnosis and rectification of a fault resulting from:
 - 3.6.1 the improper use operation or neglect of the Cone Software, Operating System or the Single Processor or any associated hardware, software or network;
 - 3.6.2 the improper input of any authorisation key into the Cone Software (other than the authorisation key supplied by Cadaptor for the relevant Copy) or attempts to use the Software without the proper input of the same;
 - 3.6.3 the modification or alteration of or interference with the Cone Software or its merger (in whole or in part) with any other software;
 - 3.6.4 the improper use of AutoCAD or BricsCAD as the case may be;
 - 3.6.5 the improper use of a macro included in the Cone Software or the use of the Cone Software with a user interface not supplied as part of the Cone Software;
 - 3.6.6 the use of the Cone Software by an individual who has not undergone training with Cadaptor to the required level or is not otherwise reasonably competent in the use of the Cone Software;
 - 3.6.7 the use of the Cone Software on equipment other than the Single Processor in respect of which the Customer has a current authorisation key provided by Cadaptor or in conjunction with an operating system other than the Operating System;

- 3.6.8 the failure by the Customer to implement recommendations or fixes in respect of or solutions to faults previously advised by Cadaptor;
- 3.6.9 the failure by the Customer to use the latest release of the relevant version of the Cone Software;
- 3.6.10 a repair, adjustment, alteration or modification of the Cone Software by a Third Party save with the prior written authority of Cadaptor;
- 3.6.11 the use of the Cone Software for a purpose for which it was not designed.
- 3.7 The above Software Support Service shall not include the diagnosis and rectification of a fault arising in a version of the Cone Software other than:
 - 3.7.1 the then current version supplied by Cadaptor to the Customer; or
 - 3.7.2 the most recently replaced version which was supplied by Cadaptor to the Customer but has been superseded by the latest version within the period of one hundred and eighty (180) days ending on the date of the request for such diagnosis and rectification by Cadaptor.
- 3.8 Cadaptor may upon request from the Customer provide the above support notwithstanding that the fault results from any of the circumstances described in clause 3.6 above or which Cadaptor is not liable to maintain because of clause 3.7 above. Cadaptor shall in such circumstances be entitled to charge the Customer Additional Charges for the same. Cadaptor shall be entitled to invoice any Additional Charges monthly in arrears.
- 3.9 The provision of a new version of the Cone Software is not included in the Software Support Service unless the Customer has paid all additional fees to Cadaptor for the use of that new version. Cadaptor may inform the Customer of the contents of and the additional licence fee for a new version when the same becomes available.
- 3.10 Cadaptor shall determine in its discretion whether an upgrade of the Cone Software is considered to be a new version or a new release.

4. SERVICES

- 4.1 If so indicated in the Proposal, Cadaptor shall provide the Training Services upon payment of the Training Services Charge indicated in the Proposal.
- 4.2 The provision of all services by or on behalf of Cadaptor shall be subject to the terms and conditions of this EULA.
- 4.3 Any estimate or indication by Cadaptor as to the time required by Cadaptor to undertake a specific task shall be construed as being an estimate only. Cadaptor shall in no circumstances be liable for a delay howsoever arising or for any other loss, damage or other cost of whatsoever nature (including Consequential Loss and wasted expenditure) suffered or incurred by the Customer where such estimate or indication is incorrect.
- 4.4 The Training Services shall be provided at the premises of Cadaptor save where the contrary is expressly included in the relevant Proposal.

5. PAYMENT

- 5.1 The Customer shall pay the Software Licence Fee and the fee for the Training Services in advance.
- 5.2 All invoices issued by Cadaptor shall be paid by the Customer within thirty (30) days of the date of issue.
- 5.3 Cadaptor reserves the right to charge simple interest to the Customer on any sums, fees or other charges payable under this EULA which are not paid on the due date and such interest shall be charged (as well after as before a judgment) at the rate of three per cent per annum above the base rate of Barclays Bank plc from time to time subsisting; such interest to accrue on a daily basis.
- 5.4 If the Customer fails to pay any monies on the due date or does not comply with an obligation imposed upon the Customer under this EULA or where a Termination Event occurs then, without prejudice to any other right or remedy available to Cadaptor, Cadaptor shall be entitled to:
 - 5.4.1 withhold the supply of any software and services to be provided to the Customer by or on behalf of Cadaptor until such payment is made;
 - 5.4.2 suspend the performance of any obligation owed by Cadaptor under this EULA until such payment is made; and
 - 5.4.3 require payment in full by the Customer for all further software and services which Cadaptor agrees to supply further to this EULA before supplying that software and those services.
- 5.5 All sums quoted under or further to this EULA are exclusive of value added tax and any other similar tax which will be added at the rate prevailing as at the date of invoice.
- 5.6 The Customer shall not be entitled to make a set-off or counter-claim or claim a lien in respect of any monies owed by the Customer and shall pay all amounts due to Cadaptor under or further to this EULA without making a deduction of any kind.

6. SUBSTITUTION AND MODIFICATION

Cadaptor reserves the right, as Cadaptor shall in its discretion determine, to make an improvement, substitution or modification of the Cone Software or any of the Services provided that such improvement, substitution or modification will not substantially worsen the overall performance of the Cone Software and quality of the Services.

7. CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall:
 - 7.1.1 pay all sums, fees and other charges due under this EULA on the dates provided for under this EULA;
 - 7.1.2 promptly enter into an agreement with AutoCAD or BricsCAD as the case may be;

- 7.1.3 take all proper precautions to protect the health and safety of Cadaptor's personnel whilst at any location of the Customer.
- 7.2 The Customer acknowledges that it is relying solely upon its own skill and judgment and not that of Cadaptor in determining the suitability of the Cone Software and the fitness for any general or specific purpose of the Cone Software.

8. DOCUMENTATION

- 8.1 Cadaptor shall provide such detail in the Specification as it in its reasonable discretion considers necessary for the proper use of the Cone Software.

9. ORDANANCE SURVEY AND OTHER THIRD PARTY SOFTWARE

- 9.1 In this clause 9:
- 9.1.1 "hold Cadaptor harmless" includes being liable to reimburse Cadaptor for any fees, charges or damages payable to the licensors of the Third Party Data and the Party Software;
- 9.1.2 "Open API Data" and "Premium API Data" have the meanings given to them in the Ordnance Survey document contained [here](#);
- 9.1.3 "Third Party Data" means the "Open API Data", the "Premium API Data", the Google mapping data, the OpenStreetMap mapping data, the OpenCage geocoding data, What3Words mapping data and the routing data provided by the services of GraphHopper GmbH and any other similar data provided by a Third Party which Cadaptor from time to time integrates into or provides an interface with as part of the Cone Software; and
- 9.1.4 "Third Party Software" means the software supplied by Third Parties and required for the use of that Third Party Data and any other similar software provided by a Third Party which Cadaptor from time to time integrates into or provides an interface with as part of the Cone Software.
- 9.2 The Cone Software is designed to facilitate access to the Ordnance Survey maps in Great Britain. Cadaptor is not entitled to and does not purport to allow the Customer use of the Premium API Data. The Customer is entitled to use Open API Data under the terms of the Government's Open Government Licence, a copy of which can be found [here](#). Where the Customer wishes to use Premium API Data, the Customer must first obtain a licence to use the Premium API Data from Ordnance Survey a copy of which can be found [here](#). Guidance on how to do so can be found [here](#).
- Part of the information licensed by the Ordnance Survey is public sector information licensed under the Open Government Licence v3.0.
- 9.3 The Cone Software is designed to facilitate access to the Google mapping service in Great Britain. Cadaptor is not entitled to and does not purport to allow the Customer use of the Google mapping service. Where the Customer wishes to use the Google mapping service,

the Customer must first accept the relevant licence by opening an account with Google. A link to the relevant pages can be found [here](#).

- 9.4 The Cone Software is designed to facilitate access to the OpenStreetMap mapping service in Great Britain. Cadaptor is not entitled to and does not purport to allow the Customer use of the OpenStreetMap mapping service. Where the Customer wishes to use the OpenStreetMap mapping service, the Customer must first accept the licence to use the same from OpenStreetMap Foundation. A link to the relevant pages can be found [here](#).
- 9.5 The Cone Software is designed to facilitate access to the What3Words methodology for communicating locations in Great Britain. Cadaptor is not entitled to and does not purport to allow the Customer use of the What3Words service to determine a location from a three word location provided by the What3Words service. The Customer's use of the services provided by What3Words Ltd is determined by the Terms of Service of What3Words Ltd a copy of which can be found [here](#).
- 9.6 Integrated within the Cone Software is a map directional tool provided by OpenCage GmbH. This tool is included to facilitate access to the OpenCage geocoding service in Great Britain as part of the Customer's use of the Cone Software for the placement of traffic signs, symbols and road layouts on maps. The Customer's use of the services provided by OpenCage GmbH is determined by the Terms of Service of OpenCage GmbH a copy of which can be found [here](#).
- 9.7 Integrated within the Cone Software is a map directional tool provided by GraphHopper GmbH. This tool is included to assist the Customer in the Customer's determination of temporary alternative routes for traffic as part of the Customer's use of the Cone Software for the placement of traffic signs, symbols and road layouts on maps and where the Customer is effecting a temporary road closure. The Customer's use of the services provided by GraphHopper GmbH is determined by the Terms of Service of GraphHopper GmbH a copy of which can be found [here](#).
- 9.8 The Customer acknowledges that Cadaptor has no control over the Third Party Data or the Third Party Software and gives no warranties or promises of whatever nature regarding the existence, accuracy, continuity or otherwise regarding the same. The Customer acknowledges that the Customer's only right to use that data is pursuant to the licences referred to above or otherwise agreed to by the suppliers of the Third Party Data and the Third Party Software, and that those suppliers may cease to permit Cadaptor from permitting the use of the Third Party Data or the Third Party Software unless the Customer has a direct contract with those suppliers and pays those suppliers accordingly.

The Customer agrees to abide by the terms and conditions of the licences for the Third Party Data and the Third Party Software referred to in this clause 9.

The Customer shall not abuse the access to the Third Party Data and the Third Party Software referred to in this clause 9 which the Customer is afforded through its proper use of the Cone Software.

- 9.9 Some of the Third Party Data and the Third Party Software is limited by way of usage rights: that limitation being based on the number of queries generated which interact with that Third Party Data and Third Party Software. Cadaptor passes on those limitations to the

Customer by limiting the number of queries which the Customer can generate using the Cone Software which interact with that Third Party Data and Third Party Software. The limitations are usually expressed by way of a maximum number of such queries per day. Those limitations are shown to the Customer within the Cone Software. Where the Customer wishes to generate a greater number of queries, Cadaptor will use its reasonable endeavours to arrange the same for an Additional Charge.

The Third Party Data and Third Party Software which is subject to such limitations includes the map directional tool provided by GraphHopper GmbH, Open Cage and such other reasonable limitations as Cadaptor or any supplier of that Third Party Data or Third Party Software may impose from time to time.

- 9.10 Cadaptor shall in no circumstances be liable for any loss, damage or other cost howsoever arising of whatsoever nature (including Consequential Loss and wasted expenditure) suffered or incurred by the Customer arising out of the Customer's right to use, use of or inability to access the Third Party Data or the Third Party Software or the lack of availability of the same.
- 9.11 Cadaptor shall in no circumstances be liable for any loss, damage or other cost howsoever arising of whatsoever nature (including Consequential Loss and wasted expenditure) suffered or incurred by the Customer arising out of any errors in the Third Party Data or the Third Party Software or the lack of accuracy of the same.
- 9.12 The Customer shall at all times fully and effectively hold Cadaptor and the relevant supplier of the Third Party Data or the Third Party Software harmless in respect of all use made by or on behalf of the Customer of the Third Party Data or the Third Party Software.
- 9.13 The links provided in this Clause 9 and the similar links provided on Cadaptor's website are provided in good faith at the time of preparation of this End User Licence Agreement but are not be guaranteed to be accurate at the time the reader follows them.

10. GUARANTEE

- 10.1 Cadaptor warrants to the Customer that it has the right to grant the Customer the licence and rights hereby granted in the licence of the Cone Software set out in clause 2 above.
- 10.2 Cadaptor warrants that the Cone Software shall perform in accordance with the Specification in all substantial respects.
- 10.3 Cadaptor warrants that it will perform the Services with reasonable skill and care.

11. GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 11.1 Subject to clause 10 above and to the maximum extent permissible in law all conditions and warranties which are to be implied by statute, common law or otherwise howsoever arising into this EULA or relating to the Cone Software or the Services are hereby excluded. The Customer acknowledges that the Cone Software is merely a guide to the placement of traffic signs, symbols and layouts and routes for diversions on maps of highways and private road systems and does not obviate the requirement for a properly competent

professional (such as in the case of highways, properly competent within the meaning of the New Roads and Street Works Act 1991 as amended) to determine the actual placement of traffic signs, symbols, and layouts and routes for diversions in a live environment.

- 11.2 Cadaptor's charges to the Customer are determined on the basis of the exclusions from and limitations of liability contained in this EULA. The Customer expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the possibility that otherwise the amount of damages awardable to the Customer for a breach by Cadaptor of this EULA may be disproportionately greater than the price of the Cone Software.
- 11.3 The following provisions in this clause 11 set out Cadaptor's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:
 - 11.3.1 a breach of Cadaptor's contractual obligations;
 - 11.3.2 a tortious act or omission for which Cadaptor is liable;
 - 11.3.3 an action arising out of a misrepresentation made by or on behalf of Cadaptor,
arising in connection with the performance or contemplated performance of this EULA.
- 11.4 The total liability which Cadaptor shall owe to the Customer and in respect of all claims howsoever arising shall not exceed a sum equal to twice the Software Licence Fee.
- 11.5 Cadaptor shall in no circumstances be liable to the Customer for any Consequential Loss howsoever arising.
- 11.6 Cadaptor shall in no circumstances be liable to the Customer for any loss of bargain or any wasted expenditure howsoever arising.
- 11.7 Cadaptor shall in no circumstances be liable to the Customer for any indirect loss.
- 11.8 Cadaptor shall in no circumstances (whether before or after termination of this EULA) be liable to the Customer for any Loss of Data destruction, alteration or disclosure and the Customer shall at all times keep adequate back-up copies of the data and programs held or used by or on behalf of the Customer.
- 11.9 The Customer acknowledges that the Cone Software must be used in conjunction with the Third Party software known as AutoCAD or BricsCAD. The Customer must accept the relevant licence terms of the licensor of that Third Party software. The Customer acknowledges that Cadaptor has no control over that Third Party software and gives no warranties or promises regarding the same. The Customer agrees to abide by the terms and conditions of the licence which the Customer has with AutoCAD or BricsCAD, as the case may be.
- 11.10 The Customer shall only be entitled to bring a claim against Cadaptor where the Customer issues legal proceedings against Cadaptor within the period of twenty four (24) months commencing on the date upon which the Customer ought reasonably to have known of its entitlement to bring such a claim.

- 11.11 The exclusions from and limitations of liability referred to in clause 9 above and this clause 11 do not apply so as to exclude or limit Cadaptor's liability to the Customer for:
- 11.11.1 death or personal injury resulting from the negligence of Cadaptor, its employees, agents or sub-contractors;
 - 11.11.2 breach of Cadaptor's implied undertaking (if any) as to title to the Cone Software or the warranty (if any) as to quiet possession implied by law or statute
 - 11.11.3 damage for which Cadaptor is liable to the Customer under part I of the Consumer Protection Act 1987 where the Customer acts as a consumer pursuant to that Act; or
 - 11.11.4 fraud,
- save that nothing in clause 9 above and this clause 11 shall confer a right or remedy upon the Customer to which the Customer would not otherwise be entitled.
- 11.12 The exclusions from and limitations of liability set out in clause 9 above and this clause 11 shall be considered severably. The invalidity or unenforceability of any one part of clause 9 above or this clause 11 shall not affect the validity or enforceability of any other part of clause 9 above or this clause 11.
- 11.13 The provisions of clauses 9.8, 9.9, 9.10, 9.11, 9.12 and 9.13 above and this clause 11 shall survive the termination of this EULA.

12. FORCE MAJEURE

- 12.1 Any delay in or failure of performance of any obligation by either Party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation but only to the extent that such a delay or failure is caused by an event which is not within the reasonable control of the Party otherwise in default and which such Party is unable to prevent or to circumvent by the exercise of reasonable diligence including an event such as a war, riot, civil commotion, fire, flood, earthquake, epidemic, inability or delay in obtaining supplies of adequate or suitable materials, strike, lock-out or other industrial action or trade dispute (whether or not involving the work force or a part of the work force of the Party otherwise in default).
- 12.2 The Party otherwise in default shall (a) take all reasonable steps to circumvent and mitigate the effect of such event and to reduce any delay in the performance of such obligation and (b) give notice to the other Party of such event as soon as reasonably practicable.

13. TERMINATION OF THE EULA

- 13.1 Upon the happening of a Termination Event, Cadaptor shall be entitled by written notice to terminate the whole of this EULA with immediate effect. This right shall be notwithstanding the right of either Party to terminate this EULA as otherwise provided by operation of law.
- 13.2 The termination of this EULA shall be without prejudice to the rights and duties of either Party accrued prior to termination.

- 13.3 Upon any termination of this EULA the Customer shall not be entitled to a rebate of any monies paid in advance whether for the Software Support Service or the use of the Cone Software.
- 13.4 Following any termination of this EULA, the Customer shall immediately cease to be entitled to use the Cone Software and the Customer shall return to Cadaptor all Copies (whether authorised or unauthorised) of the Cone Software, associated documentation and manuals and from time to time as often as Cadaptor shall demand, Cadaptor shall be entitled to exercise the Rights of Entry over all premises in the possession of or under the control of the Customer to ensure that the Customer has complied with its obligations under this EULA.

14. COMMUNICATIONS

- 14.1 Where the Customer is required to contact Cadaptor then it shall contact Cadaptor at its service centre at Heritage Exchange, Wellington Mills, Plover Road, Lindley, Huddersfield, HD3 3HR or by telephone on 01484 489 339 or e-mail to info@conesoftware.com or by such other contact details as Cadaptor may from time to time specify in writing or by e-mail to the Customer.

15. ASSIGNMENT

- 15.1 The Customer shall not transfer, mortgage or charge this EULA or any of its rights, benefits or liabilities under this EULA (or purport to do so) without the previous consent in writing of Cadaptor (such consent not to be unreasonably withheld or delayed).
- 15.2 Cadaptor shall be entitled to assign this EULA as it sees fit.

16. SUB-CONTRACTING

Cadaptor shall be free to sub-contract any of its rights and obligations under this EULA as it sees fit.

17. AMENDMENT AND WAIVER

- 17.1 No amendment of this EULA shall be binding unless executed in writing and signed by an authorised representative of each of the parties.
- 17.2 Save in respect of a waiver granted in writing, the failure of either Party at any time to enforce a provision of this EULA shall not be deemed a waiver of such provision or of any other provision of this EULA or of such Party's right thereafter to enforce that or any provision of this EULA.

18. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

A Third Party who is not a Party to this EULA shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any provision of this EULA.

19. NOTICES

- 19.1 Any notice to be given pursuant to this EULA shall be in writing and may be served and if so served shall be deemed to have been duly served:
 - 19.1.1 if delivered by hand, when left at the proper address for service;
 - 19.1.2 if given or made by prepaid first class post, two working days after being posted (excluding days that are not Business Days) or if given or made by prepaid air mail, seven working days after being posted (excluding days that are not Business Days); or
 - 19.1.3 if given or made by e-mail, at the time of error-free transmission to the usual email address previously used by the Party being served.
- 19.2 Any notice shall be made in writing (which term shall in this EULA include e-mail) and (i) where by writing addressed to the recipient in the case of a company at its registered office, in the case of a sole trader or partnership to its principal place of business or its address stated in this EULA (or such other address as may have been previously notified by the recipient Party from time to time), (ii) where by e-mail and to Cadaptor, then to info@conesoftware.com and (iii) where by e-mail and to the Customer, then to the previous e-mail address that has been used for most of the prior e-mail correspondence sent by Cadaptor to the Customer.

20. ENTIRE AGREEMENT AND REPRESENTATIONS

- 20.1 This EULA sets forth the entire agreement and understanding of the Parties relating to the subject matter of this EULA, and supersedes all prior discussions and arrangements between them.
- 20.2 The Parties acknowledge that in entering into this EULA they have not relied upon any representations other than those reduced to writing in this EULA. The provisions of this Clause 20 shall not apply to any fraudulent misrepresentation.

21. INTERPRETATION

- 21.1 Reference in this EULA to a clause is to a clause of this EULA.
- 21.2 The headings to the clauses of this EULA shall not affect the construction of this EULA.
- 21.3 Where the context so admits and requires the same the use of the plural shall include the singular and the use of the singular shall include the plural.
- 21.4 References to the masculine, feminine or neuter genders shall include each and every gender.

- 21.5 References to “including”, “includes” and “included” mean respectively “including without limitation”, “includes without limitation” and “included without limitation”.
- 21.6 Where a consent or approval is to be given or a discretion is to be exercised under a term or condition of this EULA by Cadaptor then Cadaptor shall be entitled (unless the contrary is expressly indicated) to withhold (or give) such consent, approval or discretion at Cadaptor’s absolute discretion.
- 21.7 In the event of any conflict between the provisions in the Proposal and the provisions of the main body of this EULA, then (i) where the Proposal has been prepared by Cadaptor the provisions of the Proposal shall prevail but (ii) where the Proposal has been prepared by an intermediary on behalf of Cadaptor, the provisions of the main body of this EULA shall prevail.

22. LAW AND JURISDICTION

- 22.1 The formation, construction, performance, validity and all aspects whatsoever of this EULA (including also non-contractual disputes or claims howsoever arising) shall be governed by English Law and the parties hereby submit to the exclusive jurisdiction of the English courts.