Software licence agreement for the ANREP3D-generators

DATE

06-01-2017

PARTIES

1.   AnRep3D, a company based in Almere, the Netherlands (from now on referred to as "**Licensor**"); and

2.   Any company or individual using a generator provided by AnRep3D - be it a free (demo-package) or paid licence - from now on referred to as "**Licensee**"). A 3D-graph generators provided by AnRep3D, will be referred to as "ANREP3D-generator" from now on.

AGREEMENT

1.   Definitions

1.1   Except to the extent expressly provided otherwise, in this Agreement:

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in Europe;

"**Business Hours**" means the hours of [09:00 to 17:00 CET] on a Business Day;

"**Charges**" means the following amounts:

(a)   the amounts specified in Part 4 of Schedule 1 (ANREP3D-generator Licence Particulars); and

(b)   such amounts as may be agreed by the parties in writing from time to time;

"**Documentation**" means [the documentation for the ANREP3D-generator produced by the Licensor and delivered or made available by the Licensor to the Licensee];

"**Effective Date**" means [the date of execution of this Agreement];

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

"**Minimum Term**" means, in respect of this Agreement, the period [of 12 months beginning on the Effective Date];

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**ANREP3D-generator**" means the software identified in Part 1 of Schedule 1 (ANREP3D-generator Licence Particulars) in .jar/format (Java-code);

"**Software Defect**" means a defect, error or bug in the ANREP3D-generator having an adverse effect on the appearance, operation, functionality or performance of the ANREP3D-generator, but excluding any defect, error or bug caused by or arising as a result of:

(a)   any act or omission of the Licensee or any person authorised by the Licensee to use the ANREP3D-generator;

(b)   any use of the ANREP3D-generator contrary to the Documentation by the Licensee or any person authorised by the Licensee to use the ANREP3D-generator;

(c)   a failure of the Licensee to perform or observe any of its obligations in this Agreement; and/or

(d)   an incompatibility between the ANREP3D-generator and any other system, network, application, program, hardware or software not specified as compatible in the ANREP3D-generator Specification;

"**ANREP3D Specification**" means the specification for the ANREP3D-generator set out in Part 1 of Schedule 1 (ANREP3D-generator Licence Particulars) and in the Documentation][, as it may be varied by the written agreement of the parties from time to time; and

"**Term**" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2.

2.   Credit

2.1   This document was created using a template from SEQ Legal (http://www.seqlegal.com).

3.   Term

3.1   This Agreement shall come into force upon the Effective Date.

3.2   This Agreement shall continue in force indefinitely but only until one day after the date a new version is published by ANREP3D or its legal successors, at the beginning of which this Agreement shall terminate automatically.

4.   Supply of ANREP3D-generator

4.1   The Licensor offers the ANREP3D-generator:

a) in a way agreed upon (applies to paid licenses for the full generator) or

b) offer it for download or by email or any other convenient method for that matter (applies to the demo-package).

5.   Licence

5.1   The Licensor hereby grants to the Licensee from the date of supply of the ANREP3D-generator to the Licensee (to be documented in a separate document, like an invoice) until the end of the Term a company or household-bound, non-exclusive licence to:

(a)   install up to five instances of the ANREP3D-generator;

(b)   use up to five instances of the ANREP3D-generator in accordance with the Documentation;

(c)   create, store and maintain up to 3 back-up copies of the ANREP3D-generator subject to the limitations and prohibitions set out and referred to in this Clause 5.

5.2   The Licensee may not sub-license and must not purport to sub-license any rights granted under Clause 5.1.

5.3   The licence granted by the Licensor to the Licensee in Clause 5.1 is subject to the limitations regarding the number of installations, the identity of users and the number of concurrent users set out in Part 3 of Schedule 1 (ANREP3D-generator Licence Particulars).

5.4   The ANREP3D-generator may only be used by the officers and employees of the Licensee.

5.5   Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any licence granted under this Clause 5 shall be subject to the following prohibitions:

(a)   the Licensee must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the ANREP3D-generator;

(b)   the Licensee must not alter, edit or adapt the; and

(c)   the Licensee must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the ANREP3D-generator.

5.6   The Licensee shall be responsible for the security of copies of the ANREP3D-generator supplied to the Licensee under this Agreement (or created from such copies) and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this Agreement.

6.   No assignment of Intellectual Property Rights

6.1   Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the Licensee, or from the Licensee to the Licensor.

6.2   The of Intellectual Property Rights of the principle of the ANREP3D-generators remain with K.G.L. Löhlefink individually and is not a part of the intellectual property of ANREP3D.

7.   Charges

7.1   The Licensee shall pay the Charges to the Licensor in accordance with this Agreement. For the demo-packages no Charges apply related to the acquisition and use. Additional support may be charged, but only if the Licensor informs the Licensee in advance.

7.2   All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Licensee to the Licensor.

7.3   The Licensor may elect to vary any element of the Charges by giving to the Licensee not less than 30 days' written notice (on paper or by electronic means) of the variation.

8.   Payments

8.1   The Licensor shall issue invoices for the Charges to the Licensee on or after the invoicing dates set out in Part 4 of Schedule 1 (ANREP3D-generator Licence Particulars)

8.2   The Licensee must pay the Charges to the Licensor within the period of 30 days following the receipt of an invoice issued in accordance with this Clause 8.

8.3   The Licensee must pay the Charges by bank transfer using such payment details as are notified by the Licensor to the Licensee.

8.4   If the Licensee does not pay any amount properly due to the Licensor under this Agreement, the Licensor may:

(a)   charge the Licensee interest on the overdue amount at the rate of 5% per annum which interest will accrue daily until the date of actual payment and be compounded at the end of each named calendar month;

9.   Warranties

9.1   The Licensor warrants to the Licensee that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.2   The Licensor warrants to the Licensee that:

(a)   the ANREP3D-generator as provided will conform with the Manual;

(b)   the ANREP3D-generator will be supplied free from known ANREP3D-generator Defects, unless specified in the manual explicitly;

(c)   the ANREP3D-generator will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

9.3   The Licensor warrants to the Licensee that the ANREP3D-generator, when used by the Licensee in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under European law.

9.4   The Licensor warrants to the Licensee that the ANREP3D-generator, when used by the Licensee in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

9.5   If the Licensor reasonably determines, or any third party alleges, that the use of the ANREP3D-generator by the Licensee in accordance with this Agreement infringes any person's Intellectual Property Rights, the Licensor may acting reasonably at its own cost and expense:

(a)   modify the ANREP3D-generator in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not result in the ANREP3D-generator failing to conform with the ANREP3D-generator Manual; or

(b)   procure for the Licensee the right to use the ANREP3D-generator in accordance with this Agreement.

9.6   The Licensee warrants to the Licensor that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.7   All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

10.   Acknowledgements and warranty limitations

10.1   The Licensee acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the ANREP3D-generator will be wholly free from defects, errors and bugs.

10.2   The Licensee acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the ANREP3D-generator will be entirely secure.

10.3   The Licensee acknowledges that the ANREP3D-generator is only designed to be compatible with that ANREP3D-generator specified as compatible in the ANREP3D-

generator Specification; and the Licensor does not warrant or represent that the ANREP3D-generator will be compatible with any other software.

10.4 The Licensee acknowledges that the Licensor will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the ANREP3D-generator; and, except to the extent expressly provided otherwise in this Agreement, the Licensor does not warrant or represent that the ANREP3D-generator or the use of the ANREP3D-generator by the Licensee will not give rise to any legal liability on the part of the Licensee or any other person.

11. Limitations and exclusions of liability

11.1 Nothing in this Agreement will:

    (a) limit any liabilities in any way that is not permitted under applicable European law; or

    (d) exclude any liabilities that may not be excluded under applicable European law.

11.2 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this Agreement:

    (a) are subject to Clause 11.1; and

    (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

11.3 The Licensor shall not be liable to the Licensee in respect of any loss of profits or anticipated savings.

11.4 The Licensor shall not be liable to the Licensee in respect of any loss of revenue or income.

11.5 The Licensor shall not be liable to the Licensee in respect of any loss of use or production.

11.6 The Licensor shall not be liable to the Licensee in respect of any loss of business, contracts or opportunities.

11.7 The Licensor shall not be liable to the Licensee in respect of any loss or corruption of any data, database or software.

11.8 The Licensor shall not be liable to the Licensee in respect of any special, indirect or consequential loss or damage.

12. Termination

12.1 The Licensor may terminate this Agreement by giving to the Licensee not less than 30 days' written notice (on paper or by electronic means) of termination or, if it concerns the demo-package, by publishing a notification on the Licensor's website.

12.2 The Licensee may terminate this Agreement by giving to the Licensor not less than 30 days' written notice of termination (on paper or by electronic means).

12.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

   (a)   the other party commits any breach and the breach is not remediable;

   (b)   the other party commits a breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or

   (c)   the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).

12.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

   (a)   the other party:

         (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;

   (b)   an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

   (c)   an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or

   (d)   if that other party is an individual:

         (i)   that other party dies;

         (ii)   as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

(iii)   that other party is the subject of a bankruptcy petition or order.

12.5   The Licensor may terminate this Agreement immediately by giving written notice (on paper or by electronic means) to the Licensee if:

(a)   any amount due to be paid by the Licensee to the Licensor under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice (on paper or by electronic means) of termination is given; and

(b)   the Licensor has given to the Licensee at least 30 days' written notice (on paper or by electronic means), following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 12.5.

13.   Effects of termination

13.1   Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 8.2, 8.4, 11, 13, 15 and 16.

13.2   Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

13.3   For the avoidance of doubt, the licences of the ANREP3D-generator in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the Licensee must immediately cease to use the ANREP3D-generator upon the termination of this Agreement.

13.4   Within 10 Business Days following the termination of this Agreement, the Licensee shall:

(a)   return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the ANREP3D-generator; and

(b)   irrevocably delete from all computer systems in its possession or control all copies of the ANREP3D-generator,

and if the Licensor so requests the Licensee shall procure that [a director of the Licensee] certifies to the Licensor, in a written document signed by that person and provided to the Licensor within 5 Business Days following the receipt of the Licensor's request, that the Licensee has fully complied with the requirements of this Clause 13.4.

14.   Notices

14.1   Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 14.2):

(a)   delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or

(b)   sent by post, in which case the notice shall be deemed to be received 2 Business Days following posting; or

(c)   sent by regular email.

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

14.2   The parties' contact details for notices under this Clause 14 are as follows:

(a)   in the case of notices sent by the Licensee to the Licensor, *[contact details as provided with the package in a separate document]*; and

(b)   in the case of notices sent by the Licensor to the Licensee, *[contact details as specified in the personalising attachment added to this document]*.

14.3   The addressee and contact details set out in Clause 14.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 14.

15.   General

15.1   No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

15.2   If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

15.3   This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

On delivery of the full ANREP3D-generator, a personalisation document will be added, being a full part of this license-agreement and specifying the Licensee.

For the demo-generator, this license-agreement will be accepted upon the first use of the VRB-generator.

15.4   Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

15.5 This Agreement 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 Agreement are not subject to the consent of any third party.

15.6 Subject to Clause 11.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

15.7 This Agreement shall be governed by and construed in accordance with European law.

15.8 The courts of the Netherlands shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

16. Interpretation

16.1 In this Agreement, 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.

16.2 The Clause headings do not affect the interpretation of this Agreement.

16.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

THE SECTION BELOW (CALLED "EXECUTION") DOES NOT APPLY TO LICENSEES OF THE DEMO-PACKAGE OF THE ANREP3D-GENERATOR.

For the demo-generator, the licensee will unnamed.

This license-agreement will be accepted by using the first use of the ANREP3D-generator from the demo-package by a person using the ANREP3D-generator or by the company this person represents.

The parties have indicated their acceptance of this Agreement by executing it below.

EXECUTION

SIGNED BY [*[individual name]* on [...............], the Licensor] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Licensor]:

....

SIGNED BY [*[individual name]* on [...............], the Licensee] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Licensee]:

....

SCHEDULE 1 (ANREP3D-GENERATOR LICENCE PARTICULARS)

1.   Specification of ANREP3D-generator

The demo-package is the limited version of the full ANREP3D-generator, able to process only one data-line in the input-file. The output is limited to one "building" representing the values related to one company and one year in the input-file.

2.   Timetable

No timetable applies to the demo-package

3.   ANREP3D-generator licence

No details apply to the demo-package.

4.   Financial provisions

The demo-package can be used free of charge.