LICENCE AGREEMENT

The program in this software package is licensed to the original purchaser. By using this software package, you indicate your acceptance of this Agreement. If you do not agree to the terms of this Agreement, do not use this software package.

This Agreement is an agreement between you, the original purchaser, and Xarios Ltd ("Xarios"). By using this software package, you are agreeing to be bound by the terms of this Agreement.

TERMS AND CONDITIONS

1.   Definitions

In this Agreement, unless the context otherwise requires, the under mentioned expressions shall have the respective meanings shown therefore as follows:

"this Agreement" means these terms and conditions including the Licence and limitations of warranty contained in Clause 6;

"the Dealer" means any dealer, reseller or partner (including Mitel Networks Corporation) with whom Xarios has a supply agreement for the supply of Software;

"Intellectual Property Rights" means copyright, know how, confidential information, patents, trademarks, registered design rights and applications for any of the foregoing, trade or business names and any other similar protective rights in any part of the world;

"Licence" means the Licence granted pursuant to Clause 2 hereof;

"Licence Fee" means the fee chargeable by the Dealer;

"Manual" means the operating manuals, user instructions, technical literature and any updates thereto or any other related materials supplied by Xarios to you from time to time during the continuance of the Licence in connection with the use and application of the Software;

"Software" means all or any part of the software contained in this software package you are about to use together with any modifications or enhancements from time to time made thereto and any modified, enhanced, updated or revised version thereof supplied from time to time to you hereunder;

"Software Activation Key" means a software code without which the Software will not function;

"Software Protection Device" means a supplementary piece of software without which the Software will not function;

"the Specification" means the specification of the Software describing the

functions thereof as set out in the Manual;

"the Supplier" means either Xarios, where Xarios supplies the Software direct to you, or the Dealer, where the Dealer supplies it to you;

"Territory" means the geographic region where Software and Services may be deployed and used for which you have paid the applicable fees.

2.   Licence

2.1   Xarios hereby grants to you a non-exclusive non-transferable Licence to use the Software, any Software Protection Device where applicable and the Manual subject to and in accordance with the terms of this Agreement.

2.2   You shall use the Software solely for the purpose of processing your own data for your own internal business purposes and without prejudice to the generality of the foregoing you shall not permit any third party to use the Software in any way whatsoever.

2.3   The Licence shall commence immediately upon receipt by you of the Software and / or the Manual and shall continue until terminated in accordance with clause 8 hereof.

2.4   You hereby acknowledge that the Software has not been prepared to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions described in the Specification meet your requirements. Xarios shall not be liable for any failure of the Software to provide any facility or function not included in the Specification.

2.5   For the avoidance of doubt, you hereby acknowledge that you shall provide all hardware required for the use of the Software, including computer networks and telephone systems and that they will meet the specification required for the Software to run efficiently.

2.6   You also acknowledge that any programming on any third party system required to enable the Software to operate will be your responsibility and chargeable if required by the Supplier.

3.   Software Protection

3.1   The Software contains features to ensure that it will not function unless used in conjunction with either a Software Protection Device or a Software Activation Key. You agree not to attempt to circumvent them.

3.2   You acknowledge that upgrades to the quantity of users of the Software are subject to additional Licence Fees and a corresponding Software Protection Device or Software Activation Key.

4.   Security

4.1   The information contained on magnetic media, in documentation and on any other information carriers delivered to you and relating to or forming part of the Software or the Manual shall be retained under your effective control during

the continuance of the Licence and without prejudice to the generality of the foregoing you shall ensure that no unauthorised person has access to the Software or the Manual.

4.2   You shall not alter, remove, conceal or deface any copyright or proprietary rights notice or identification or logo, which indicates the ownership of the Software or the Manual or any interest therein.

4.3   The Software shall not be loaded into, transmitted to or used on any computer other than a computer at the premises of and under your control or such other computer as Xarios may agree from time to time in writing. You may arrange for Xarios, the Supplier or another party with the prior written approval of a director of Xarios to de-install the Software from one such processor and re-install it on another such processor.

4.4   You shall not modify or enhance the Software nor combine the Software with or incorporate the Software in any other computer programs.

4.5   You shall be entitled to make one copy of the Software and in addition you may make one copy solely for back-up purposes.

4.6   No copies of the Manual may be made without the prior written consent of Xarios.

4.7   You shall not disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the Software nor attempt to do any such things except to the extent that such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:

(i) is used only for the purpose of achieving inter-operability of the Software with another software program; and

(ii) is not unnecessarily disclosed or communicated to any third party without the Licensor's prior written consent; and

(iii) is not used to create any software which is substantially similar to the Software.

5.   Proprietary Rights

5.1   You hereby acknowledge that all Intellectual Property Rights in the Software and the Manual are and shall at all times remain vested in Xarios and you shall not alter the Software or infringe or prejudice such rights in any way. Without prejudice to the generality of the foregoing you shall not remove or tamper with any copyright notice of Xarios on or relating to the Software.

5.2   You shall notify Xarios immediately of any infringement of Xarios' proprietary rights in the Software of which you become aware and (if Xarios is unable to take action itself for legal reasons) you shall take all reasonable steps to protect and defend Xarios' proprietary interests in the Software within the Territory, but the taking of such steps by you shall not preclude Xarios from taking any action it deems necessary in order to protect its rights.

5.3   You will permit Xarios to check your use of the Software and the Manual at all reasonable times and for that purpose Xarios shall be entitled to enter any of your premises upon giving reasonable notice to you.

5.4   Xarios hereby reserves the right to grant other licences to use the Software and the Manual to any other party or parties.

6.   Warranties and Liability

6.1   Xarios warrants that the Software is the original copyright work of Xarios.

6.2   Xarios shall at its own expense defend you against any suit brought against you (the defence of which shall be controlled by Xarios) for the infringement of any Intellectual Property Rights appertaining to the Software.

6.3   In the event but not otherwise that any such suit shall derive from and evidence a breach of the warranty contained in clause 6.1 hereof Xarios shall indemnify you against any claims, actions, costs or liabilities other than loss of profits or indirect or consequential loss (whether or not constituting loss of profits) incurred by you from any third party as a direct result of such breach.

6.4   Xarios shall have the right to replace, change or withdraw all or any part of the Software in order to avoid any infringement and such replacement or change shall constitute the entire liability of Xarios to you in respect of the infringement of the Intellectual Property Rights of any third party.

6.5   The Licence operates as a permission only and does not imply that the Software will be free of faults or viruses nor does it imply any obligation or liability on the part of Xarios in respect of the quality, fitness, suitability or performance of the Software except as provided under these terms and conditions. Save as expressly set out herein all express and implied representations, conditions and warranties as to quality, fitness, suitability or performance of the Software are hereby excluded and Xarios shall be under no liability to you nor any third party for any direct, indirect or consequential loss including loss of profits arising out of, or in connection with, any use of the Software hereunder.

6.6   If within the period of three months from the date hereof the Software is found by you not to operate substantially in accordance with the Specification then Xarios at its option shall:

(a)   refund the Licence Fee in exchange for the return of the defective Software; or
(b)   make good the defect at Xarios' expense as soon as reasonably practicable; or
(c)   replace the Software by delivering replacement software as soon as reasonably practicable.

6.7   Xarios' liability under the warranty set out in clause 6.6 shall be limited as specified therein and Xarios shall have no further liability in respect of any defect in the Software.

6.8   You shall repay the Licence Fee for any copy of the Software exchanged pursuant to clause 6.6(a) if the original Software is subsequently found by Xarios not to have been in breach of the warranty set out therein.

6.9   Without prejudice to the generality of the foregoing Xarios shall be under no liability in respect of any defect in the Software arising from any drawing, design or specification supplied or approved by or on behalf of you, or in respect of any defect in the Software arising from improper installation, fair wear and tear, wilful damage, negligence, abnormal working conditions or failure to follow Xarios' instructions, misuse or alteration or repair of the Software without Xarios' approval.

6.10   Xarios does not seek to limit or exclude liability for fraud or fraudulent misrepresentation, for death or personal injury caused by negligence or any other liability that cannot be excluded or limited as a matter of law.

7.   Confidentiality

7.1   You and Xarios each undertake to the other not to use or disclose any information whether written or oral concerning the business or affairs of the other (including but not limited to the Software) which you or Xarios have obtained or received during or in connection with the entering into of this Agreement or which you or Xarios have obtained or received during the continuance of the Licence save that which is already in or comes into its possession or into the public domain other than as a result of a breach of this clause.

7.2   You and Xarios shall each take such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 7.1 by their respective employees, agents sub-contractors and other representatives and each shall indemnify the other party against any loss or damage which that other party may sustain or incur as a result of any failure to comply with this clause.

7.3   You shall promptly notify Xarios if you become aware of any breach of confidence by any person to whom you divulge details of all or any part of the Software or the Manual and shall give Xarios all reasonable assistance in connection with any proceedings which Xarios may instigate against such person for breach of confidence.

7.4   The foregoing obligations of this clause 7 shall remain in full force and effect notwithstanding any termination of this Agreement.

8.   Term of Licence

8.1   The Licence shall continue until terminated either:

(a)   by you giving to Xarios 30 days' prior written notice of surrender; or
(b)   by Xarios giving you notice of termination following you having committed a material breach of these terms and conditions and (in the case of a breach capable of being remedied) you having failed, within 30 days after the receipt of a request in writing from Xarios so to do, to remedy the breach (such request to contain a warning of Xarios' intention to terminate).

8.2   The Licence shall lapse forthwith and without notice by Xarios to you if (being a company or Limited Liability Partnership) you shall have a receiver or administrator appointed to any of your assets or shall enter into liquidation whether compulsory or voluntary or if (being an individual or partnership) you

or any member of your partnership shall commit any act of bankruptcy or (in Scotland) shall be declared bankrupt or if any equivalent circumstance shall apply if you are not resident in England and Wales or Scotland.

8.3   Any Software acquired for evaluation purposes will be subject to this Agreement and limited to a maximum term of 30 Days from the date of installation. Upon expiry of this term the Agreement will be terminated and subject to the "Effect of Termination" herein.

8.4   Any Software acquired on a periodic licence basis will be subject to this Agreement provided that it will remain in force only so long as you make the necessary payments. Upon your failure to make any such payment the Agreement will be terminated and subject to the "Effect of Termination" herein.

8.5   For the avoidance of doubt, in the event that the Licence shall be terminated under clause 8.1 or 8.2 hereof, the Licence fee shall not be refunded by Xarios.

9.   Effect of Termination

9.1   On termination of the Licence for any reason you shall cease to use the Software and shall return the Software and the Manual to Xarios and shall confirm in writing that all copies thereof have been delivered to Xarios or destroyed and that the Software has been permanently eliminated from any processor within your possession or control.

9.2   Any termination of the Licence howsoever occasioned shall not affect any accrued rights of either Xarios or you nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

10. Miscellaneous

10.1 The Licence is personal to you and you shall not assign, part with or sub-let any interest in it or grant any right under it to any third party or seek to exercise the Licence for or on behalf of any third party.

10.2 Xarios shall be entitled to assign, part with or sub-let any interest in the Licence or grant any right under it to any third party.

10.3 All notices which either you or Xarios are required or may desire to give to the other shall be given by letter or facsimile posted or transmitted to the other at their usual business address. Any notice sent by post shall be deemed to be served 24 hours after the time of posting and any notice sent by facsimile shall be deemed to be served at the time of transmission.

10.4 Neither you nor Xarios shall be liable to each other or be deemed to be in breach of the terms of this Agreement by reason only of any delay in performing or any failure to perform any of their obligations hereunder if the delay or failure is due to any cause beyond the party's reasonable control.

10.5 You agree that Xarios may collect and use technical data and related information, including but not limited to technical information about Your device, system and application software, and peripherals, that is gathered periodically

to facilitate the provision of software updates, product support and other services to You

11   Jurisdiction and Waiver

11.1 The terms of this Agreement shall be governed by English law and the parties hereto submit to the exclusive jurisdiction of the courts of England and Wales provided that Xarios shall also be entitled to bring proceedings in any court in the country where you are resident.

11.2 Any failure by either party to enforce any provision hereof shall not constitute a waiver or affect its right to require future performance thereof, nor shall its waiver of any breach or any provision hereof constitute a waiver of any subsequent breach or nullify the effectiveness of any such provision.

11.3 The Agreement constitutes the entire Agreement between you and Xarios with respect to the licensing of the Software. It supersedes any prior agreements, understandings or arrangements between the parties, whether oral or in writing, and no representation (unless made fraudulently), undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Agreement except as set out in the Agreement.

11.4 The invalidity or unenforceability of any term of, or any right arising pursuant to the Agreement shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

12   Technical Support

12.1 For technical support for the Software, contact the authorized Mitel dealer from whom you obtained (purchased a license for) the Software.