

Software Licence Agreement

IMPORTANT NOTICE

Please read the Agreement carefully before creating an order, downloading, installing or using the Software (as defined below). If you do not accept all of the terms and conditions set out in the Agreement, do not progress with the order or install or use the Software. Proceeding with any one of these actions will be deemed to constitute your acceptance of all the terms of the Agreement.

Your attention is drawn in particular to the provisions of clause 7 and clause 11, and where you are purchasing a time-limited licence, clause 3.8.

1. INTRODUCTION

- 1.1. This Software Licence Agreement (**'Agreement'**) is an agreement between you (**'you'** or **'Licensee'**) and Performance Improvement Management Limited (**'PIM Ltd'**) whose registered office is c/o LDP Luckmans, Victoria House, 44-45 Queens Road, Coventry, CV1 3EH that applies to the use by you of the software provided by PIM Ltd and detailed in the Schedule, together with any printed materials or electronic and/or online documentation accompanying the software (collectively referred to as the **'Software'**).
- 1.2. In this Agreement, the following rules of interpretation shall apply:
 - 1.2.1. headings do not affect the interpretation of the Agreement;
 - 1.2.2. references to clauses and schedules are to clauses and schedules of this Agreement;
 - 1.2.3. references to PIM Ltd and the Licensee include their permitted successors and assigns;
 - 1.2.4. references to statutory provisions include those statutory provisions as amended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision; and
 - 1.2.5. references to one gender include all genders.

2. LICENCE

- 2.1. In consideration of payment of the licence fee, PIM Ltd hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Software in accordance with the terms of this Agreement.

2.2. SINGLE USER LICENSES

Where you have purchased one or more 'single user' licences you may install and run the Software on up to two computers for each 'single user' license. You may not install a 'single user' license on a computer that acts as a software server and provides multi-user concurrent access to the Software.

2.3. SERVER USER, NETWORK OR SITE LICENCE

Where you have purchased a server user, network or site licence you may run the Software on a computer that is configured as a server for the number of simultaneous users agreed with PIM Ltd.

3. USE OF THE SOFTWARE

- 3.1. You may use the Software only for your own personal purposes (if you are purchasing as a consumer) or for your internal business purposes (if you are purchasing as a business).
- 3.2. You will maintain accurate and up-to-date records of the number and identities of computers where the Software is installed.
- 3.3. You will supervise and control the use of the Software in accordance with the terms of the Agreement.
- 3.4. You will ensure that your employees, agents and any other person authorised to access the Software (as applicable) are notified of the terms and conditions of the Agreement prior to their using the Software, and use the Software in accordance with the Agreement.
- 3.5. You will not make the Software available in whole or in part to any person other than your employees or persons (as applicable) under your control without the prior written consent of PIM Ltd.
- 3.6. You will ensure that the number of computers on which the Software is installed and the number of users of the Software does not exceed the number authorised by the licenses you have purchased.
- 3.7. For permanent licences, you must ensure that at the time you install the Software and at the time of uninstalling the software, you remain connected to the internet.
- 3.8. For time-limited licenses, you must ensure that at the time you install the Software, at the time of uninstalling the software and when using the software, you remain connected to the internet.

4. PAYMENT

- 4.1. PIM Ltd shall not release an activation key to you that will enable you to access and use the Software until payment for the license or licenses has been received in full and cleared funds.
- 4.2. Where you have purchased additional annual maintenance and support beyond the standard 90 days from date of purchase, a maintenance charge will be due within 30 days from date of invoice (**'Maintenance Charge'**). PIM Ltd shall invoice you for the Maintenance Charge annually in advance. You acknowledge that if you fail to pay the Maintenance Charge when due, PIM Ltd shall immediately cease providing such maintenance and support.

5. RESTRICTIONS

Except as expressly set out in this Agreement or as permitted by any local law, you undertake:

- 5.1. not to make any copies of the Software apart from copies for back-up and recovery purposes. Any such copies that are made shall be subject to the Agreement and you undertake to keep all copies secure and maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- 5.2. not to reverse engineer, de-compile, disassemble 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 (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) 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:
 - 5.2.1. is used only for the purpose of achieving inter-operability of the Software with another software program;
 - 5.2.2. is not disclosed or communicated without PIM Ltd's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
 - 5.2.3. is not used to create any software which is substantially similar to the Software;
- 5.3. not to distribute any part or the whole of the software to any third party;
- 5.4. not to rent, lease, sub-licence, loan, copy, modify, merge, adapt or translate the Software;
- 5.5. not to use the Software in anyway other than in the manner specifically licensed under this Agreement;
- 5.6. not to display the Software on a public bulletin board, web log, website chat room or any other place on the internet that is not authorised by PIM Ltd;
- 5.7. not to reproduce or deal in the Software in any way or provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) without prior written consent from PIM Ltd; or
- 5.8. not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- 5.9. not to transfer the Software to a third party as OEM or in any other form gratis or for commercial gain without prior written consent from PIM Ltd.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. As between PIM Ltd and the Licensee, all copyright, patents, trademarks and any other intellectual property rights in the Software throughout the world are owned by and remain the property of PIM Ltd or its authors and are protected by national laws and international treaty provisions. By accepting the terms of the Agreement you do not obtain any rights in the Software other than those expressly granted by this Agreement.
- 6.2. You shall not remove or obscure any copyright, trademark notice or other proprietary notice relating to the Software. All notices must be duplicated as they appear on or in the Software on any authorised copies that are made.
- 6.3. You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.
- 6.4. The Software may contain code which has been developed by an independent third party software publisher. To the extent such third party code exists in the Software, by using the Software in accordance with the terms of this agreement you shall comply with the terms and conditions of use of such third party software. **(See Schedule 2)**
- 6.5. For the avoidance of doubt, PIM Ltd licences use of the Software to you on the basis of this Agreement. PIM Ltd does not sell the Software to you. PIM Ltd remains the owners of the Software at all times.

7. DATA PROTECTION

- 7.1. In creating your order or orders for the Software you enter information including your name and email address. This data is stored in a registration database together with the PIM serial number, the IP address and the computers identified as being where the Software is installed. This data shall only be used in connection with the purchase by you of the Software and PIM Ltd fulfilling the terms of this Agreement. In agreeing to the terms of this Agreement you consent to the storage of this data and to its use by PIM Ltd in accordance with this clause 7.

8. TERMINATION

- 8.1. Where you have purchased annual maintenance and support, subject to payment by you of the Maintenance Charge in accordance with this Agreement, this will continue from year to year unless terminated by either party by giving the other party not less than three (3) months' written notice. In the event of such termination, PIM Ltd will refund that proportion of the Maintenance Charge paid by you but for which you will not receive corresponding services, provided that where you serve notice of termination on PIM Ltd, you shall be liable to pay an administration charge of £100.
- 8.2. PIM Ltd may terminate this Agreement in whole or in part at any time, without incurring any liability where:
 - 8.2.1. you fail to pay any amount due under this Agreement on the due date for payment and remain in default not less than 14 days after being notified in writing to make such payment;
 - 8.2.2. you commit a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) you fail to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 8.2.3. you repeatedly breach any of the terms of this Agreement in such a manner as to reasonably justify the opinion that your conduct is inconsistent with you having the intention or ability to give effect to the terms of this Agreement;

- 8.2.4. (if you are an individual) you are declared bankrupt or make any arrangement with or for the benefit of your creditors or you have a county court administration order made against you under the County Court Act 1984;
- 8.2.5. (if you are a business) you go into liquidation, enter into a compromise with your creditors, become insolvent or have an administrator, receiver or similar officer appointed in respect of all or part of your undertaking (or are the subject of a filing with any court for the appointment of any such officer), or any event occurs, or proceedings are taken, with respect it has an effect equivalent or similar; or you cease or threaten to cease to carry on business, or cease to be able to pay your debts as they fall due.
- 8.3. In the event of the termination of the Agreement:
- 8.3.1. all rights granted to you under the Agreement shall cease;
- 8.3.2. you will remove the Software and all documentation relating to it from all the computers it is installed on;
- 8.3.3. you shall cease all use of the Software authorised by the Agreement;
- 8.3.4. you shall destroy any CD-ROMs of which the Software was supplied;
- 8.3.5. you will immediately pay to PIM Ltd any sums due to PIM Ltd under the Agreement; and
- 8.3.6. you shall not be entitled to a refund of any Maintenance Charges or payments made by you prior to termination.
- 8.4. Termination by either party in accordance with this Clause 8 shall not prejudice any other rights or remedies that either party may have accrued prior to termination.

9. SOFTWARE MAINTENANCE SUPPORT AND UPGRADES

- 9.1. Subject to payment by you of any sums due and payable under this Agreement, PIM Ltd Technical Support Staff will, for an initial 90 day period from date of purchase of the licence and during the period covered by any annual Maintenance Charge, endeavour to resolve any problems and answer any questions relating to the Software. This support is available by emailing PIM Ltd at support@deasoftware.co.uk.
- 9.2. Upon payment of the appropriate Maintenance Charge you will be entitled to upgrades of the Software as and when they are released by PIM Ltd.
- 9.3. Where upgrades of the Software are notified to you by email, it is your responsibility to download and install the upgrades when so notified and to notify PIM Ltd of the correct email address to which upgrade notices should be sent.

10. WARRANTIES

- 10.1. PIM Ltd warrants that (as applicable) the CD-ROM on which the Software is stored and distributed is (at the time it is supplied) free from defects in design, material and workmanship under normal use for a period of 90 days from the date of installation of the Software ('**Warranty Period**'). If a defect in the CD-ROM occurs during the Warranty Period, PIM Ltd will replace it free of charge if you return it and (so far as you are able) a documented example of such defect or error.
- 10.2. The warranty is unenforceable if the breach of warranty results from the modification, accident, abuse or misuse of the Software or from the use of the Software by an improperly trained user or from a failure by the user to check the output of the Software or from the use of the Software on a computer with inappropriate system requirements.
- 10.3. Except as expressly stated in this Agreement, PIM Ltd expressly disclaims all other conditions, warranties, terms and undertakings, expressed or implied, statutory or otherwise, relating to the Software and any related documentation or technical support including but not limited to warranties of quality, performance, satisfactory quality, or fitness for a particular purpose.
- 10.4. For the avoidance of doubt, PIM Ltd does not warrant the functions contained in the Software will meet your requirements or that the operation of the product is uninterrupted or error free.

11. LIMITATION OF LIABILITY

- 11.1. You shall be liable for any interpretation of the results obtained from the Software and you will be fully responsible for any losses, costs or damages which may occur as a result of using the Software. The entire risk arising from the use of the Software and any associated documentation remains with you.
- 11.2. You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the accompanying documentation meet your requirements.
- 11.3. Nothing in this Agreement shall limit PIM Ltd's liability for fraud or other criminal act, personal injury or death caused by PIM Ltd's negligence, or any other liability that cannot be excluded by law.
- 11.4. Subject to clause 11.3:
- 11.4.1. PIM Ltd shall not under any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:
- 11.4.1.1. loss of profits, sales, business, or revenue;
- 11.4.1.2. business interruption;
- 11.4.1.3. loss of anticipated savings;
- 11.4.1.4. loss or corruption of data or information;
- 11.4.1.5. loss of business opportunity, goodwill or reputation; or
- 11.4.1.6. any indirect or consequential loss or damage.

11.4.2. PIM Ltd's maximum aggregate liability for all other losses under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to 100% of the total fees paid or payable by the Licensee for the Software and any Maintenance Charges in the twelve month period immediately preceding the date the loss arose.

12. FORCE MAJEURE

12.1. PIM Ltd shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13. CONFIDENTIALITY

13.1. All information, data, specifications, logic, descriptions, documentation, software listings or source or object code which PIM Ltd may have imparted and may from time to time impart to you relating to the Software (other than the ideas and principles which underlie the Software) are proprietary and confidential. You hereby agree that you will use the same solely in accordance with the provisions of the Agreement and that you will not at any time, during or after the termination of the Agreement, disclose the same, whether directly or indirectly, to any third party without PIM Ltd's prior written consent.

14. SEVERABILITY

14.1. If a court or a competent authority decides that any provision of the Agreement is void or otherwise ineffective in whole or in part every other part the Agreement shall continue in full force and effect.

15. THIRD PARTY RIGHTS

15.1. The parties to the Agreement do not intend that the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

16. ENTIRE AGREEMENT

16.1. The Agreement constitutes the entire agreement between the parties with respect of the subject matter of the Agreement and supersedes all previous agreements, arrangements or undertakings between the parties relating to the subject matter of the Agreement and any other representations or warranties previously given or made by the parties.

16.2. You acknowledge that no representations were made prior to your entering into the Agreement. You agree that, in entering into the Agreement, you did not rely on any representations (whether written or oral) of any kind or of any person other than by the Director or Secretary of PIM Ltd if any. You will have no remedy in respect of any representation (whether written or oral) made to you on which you relied in entering into the Agreement and PIM Ltd shall have no liability otherwise than pursuant to the express terms of the Agreement.

17. ASSIGNMENT

17.1. PIM Ltd may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

17.2. You may not assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this the Agreement without PIM Ltd's consent in writing.

18. VARIATION

18.1. The Agreement may be varied by PIM Ltd publishing the revised terms of the Agreement at the time of providing you with any upgrade of the Software. You will be given the opportunity to accept or decline the revised terms of the Agreement. However you will be deemed to accept the revised terms of the Agreement if you decide to use the upgraded version of the Software.

19. WAIVER

19.1. Failure or neglect by either party to enforce at any time any of the provisions the Agreement shall not be construed as, nor shall be deemed to be, a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of the Agreement nor prejudice that party's right to take subsequent action.

20. NOTICES

20.1. All notices shall be given:

20.1.1. To PIM Ltd by email at info@deasoftware.co.uk and support@deasoftware.co.uk;

20.1.2. To you at any email or postal address you provide during the ordering process;

20.2. Notice will be deemed to be received when an e-mail is received in full (but on the next business day if it is received on a weekend day or a public holiday in the place of receipt) or 3 calendar days after the date of posting.

21. GOVERNING LAW

21.1. This Agreement is governed by and interpreted in accordance with English law. Any disputes or claims relating to this Agreement shall be subject to the exclusive jurisdiction of the English Courts.

Schedule 1

Name of Software

DEAssoft-V1 or V2 or V3

Capacity of version acquired

As in the email acknowledgement of payment received.

Schedule 2

In relation to clause 6.4 you agree to comply with the following terms:

[http://doc.xceedsoft.com/products/XceedZip/Xceed Software License Agreement.html](http://doc.xceedsoft.com/products/XceedZip/Xceed_Software_License_Agreement.html)