DXcharts Trial License Agreement

Last updated: 29.02.2024

This **DXcharts Trial License Agreement** (v.1) (the "Agreement") is made by and between **Devexperts Solutions IE Limited**, having its registered office at 6 Trinity House Charleston Road, Ranelagh, Dublin, Ireland D06 C8X4, registered number 720583 ("Devexperts" or the "Licensor") and the **Customer** as defined in the applicable Order Form ("Customer", "You", "Licensee") (hereafter each referred to as a "Party" or collectively referred to as the "Parties") regarding Your usage of [DXcharts - HTML5 Financial Charting Library](https://devexperts.com/dxcharts/) (defined as "Program" below). **This Agreement is aimed at the Customer who is an entity**, hence, if You are a representative of an entity and are entering this Agreement on behalf of such entity, the "Customer" means such entity. **If You wish to use the Program as an individual, please contact Devexperts at sales@devexperts.com.**

In case of conflict, the Order Form will take precedence over these Agreement.

Devexperts reserves the right, at its sole discretion, to change, modify, add or remove portions of these terms and conditions, at any time upon providing a notice to You via email. Please note that it is your responsibility to review it to ensure you understand the provisions which will apply at that time.

If you have any questions about this Agreement, please contact Devexperts at:
By email: legal@devexperts.com
By visiting this webpage on our website: https://devexperts.com/dxcharts/

1. DEFINITIONS – INTERPRETATION OF TERMS

1.1.   In this Agreement, unless expressly deviated from in the context, the following words shall have the following meanings:

(i)   **"Access"** means admission to the part of the Program interfaces through the authorization procedure via internet, using unique login and password;
(ii)   **"Affiliate"** means an entity or person, which directly or indirectly controls, is controlled by or is under common Control with the applicable Party;
(iii)   **"Agreement"** means this DXcharts Trial Licence Agreement, including any Annexes, exhibits attached hereto, and any later addendums or amendments made between the Parties in writing;
(iv)   **"Confidential Information"** is defined as all material and information concerning any matters relating to the business and technology of a Disclosing Party or its Affiliates including without limitation all trade secrets, know-how, ideas, schematics and drawings, specifications and plans, concepts and methodologies incorporated therein, any of a Disclosing Party's or its Affiliates' customers, prices of their products and services, or any other information concerning the business or technology of a Disclosing Party or its Affiliates, their manner of operation, plans, business concepts, marketing plans, any financial information or other data - all on any media and if it is clearly marked confidential. If the information is provided orally, it shall be deemed Confidential Information and proprietary if so identified by a Disclosing Party at the time of such disclosure. **Confidential Information** shall not include any materials or information, which a Receiving Party shows: (i) is at the time of disclosure generally known by or available to the public or which becomes so known or available thereafter through no fault of a Receiving Party or its employees, subcontractors or agents; (ii) is furnished by a Disclosing Party to third parties without restriction; or (iii) is furnished to a Receiving Party by a third party, who legally obtained said information and the right to disclose it free of any obligation of confidentiality; or (iv) is approved for release by written authorization of a Disclosing Party; or (v) is developed independently by a Receiving Party, where a Receiving Party can demonstrate such independent development occurred without reference to any information or materials obtained from or through a Disclosing Party pursuant hereto;
(v)   **"Control"** means control which an entity or person has over an Affiliate and any of the following: (a) direct or indirect ownership of more than 50% (fifty per cent) of the share capital or other ownership interest in any other entity; or (b) the right to exercise more than 50% (fifty per cent) of the votes in any other entity; or

(c) the contractual right to designate more than half of the members of such entity's board of directors or similar executive body;

(vi) **"Data"** means any data supplied to the Licensor by or on behalf of the Licensee including without limitation, any working documents, data concerning the business of the Licensee or its End-users (if any), including Personal data of the Licensee's employees, agents or End-users;

(vii) **"End-user"** means any natural person or legal entity, which obtains trading services directly from the Licensee via entering into the applicable contracts;

(viii) **"Intellectual Property Rights"** mean all intellectual and industrial property rights of any nature, anywhere in the world, including without limitation copyright, database rights, patents, design rights, registered designs, trademark rights, service mark rights, domain name rights and topography rights, whether or not registered or capable of protection by registration and the right to apply for any of them including any applications for any of them;

(ix) **"Materials"** mean all tangible materials containing Confidential Information, including without limitation drawings, schematics, written or printed documents, computer disks, tapes and optical discs (CD, DVD, Blue-ray Disc, etc.), whether machine or user readable;

(x) "**Order Form**" means the ordering document that includes the specific conditions agreed upon between Devexpets and the Customer, including License Period and email to receive the Program.

(xi) **"Personal data"** shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

(xii) **"Program"** means DXcharts Web which is a JS-based solution tailored for the visualization of financial markets data and providing various tools for technical analysis in a browser that belong(s) exclusively to/is(are) under rightful possession of Devexperts and is(are) licensed to the Licensee according to the provisions of the Agreement. DXcharts Web is designed to be integrated into external environments, such as brokerage terminals, trading applications, analytical platforms, websites, etc.

(xiii) **"Source Code"** means the human readable form of the Program.

1.2.   References to "clauses" and "sections" are to clauses and sections of this Agreement. Headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

1.3.   Words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, or partnership.

1.4.   References to "includes" or "including" or like words or expressions shall mean "including without limitation". For the avoidance of doubt, the word "ensure" as used in this Agreement does not constitute a guarantee, but a contractual obligation.

2.   AGREEMENT

2.1.   Save as expressly provided herein, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties hereto preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated herein save for any fraudulent misrepresentations or any misrepresentation as to the fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.

2.2.   This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.

2.3.   This Agreement is the agreement of adhesion and shall be legally formed and the Parties shall be legally bound, when the Customer agrees to be bound by its terms as described in the preamble. Except as expressly

provided in this Agreement, no change to this Agreement shall be binding unless it is agreed in writing, signed by the Parties and expressed to be for the purpose of such amendment.

2.4.   In case of change by the Party of its company details (such as company name, or registered address), the applicable Party shall inform the other Party via email within 10 (ten) calendar days after such change. For the avoidance of doubt, this clause is not applicable for cases of assignment, novation or change of corporate structure resulted in this Agreement's assignment, such cases are governed by the "Assignment" Section hereunder.

3.   LICENSE PROVISION

3.1.   Upon executng the Order Form, the Licensor will grant to the Licensee a worldwide, term-limited, non-exclusive, non-transferable, revocable, non-sublicensable, fee-free, object code trial license to use the Program in accordance with the following provisions (the "License").

3.2.   Term of the License shall be stated in the applicable Order Form (the "License Period"). The Licensor shall make the Program available under the License within 14 (fourteen) calendar days following the Delivery Date as agreed in the Order Form by providing the link to the Program to the Licensee's email address You have stated in the Order Form.

3.3.   The Licensee is entitled to use the Program only as expressly provided herein:

(i)   Display, run the Program;
(ii)   Create back up copy;
(iii)   Use the Program in order to provide Access to its End-users.

3.4.   The Licensee shall:

(i)   Prevent granting a right on its own behalf to third parties for unauthorized reproduction or other unlawful use of the Program and all of its components;
(ii)   Notify the Licensor immediately, if the Licensee becomes aware of any unauthorized use of the whole or any part of the Program by any third party.

3.5.   It is prohibited for the Licensee to:

(i)   Decompile or disassemble the Program, separate into its component parts, or in any way attempt to reverse engineer, reconstruct or discover any Source Code or algorithms by any means whatsoever;
(ii)   Remove any product identification trademark, copyright, confidentiality, proprietary or other notice, contained on or within the Source Code of the Program;
(iii)   Translate, modify or create any derivative works from the Program or any part hereof;
(iv)   Sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Program or any components thereof;
(v)   Publish or otherwise make available to any third party any benchmark testing information or results related to Program without prior written consent of the Licensor;
(vi)   Provide or allow any unauthorized individual or entity access to the Program or its operations without prior written consent of the Licensor;
(vii)   Otherwise copy or use the Program for any purpose or in any manner not expressly permitted in this Agreement;
(viii)   Knowingly permit or encourage any third party to do any of the foregoing.

4.   FEES AND PAYMENT PROCEDURE

4.1.   The License under this Agreement shall be provided without remuneration to the Licensor.

4.2.   Each Party shall be liable for its own tax obligations and shall bear responsibility for payment of its own taxes in accordance with the applicable tax rules. If the Licensee pays or economically bears any tax to be paid by the Licensor, the Licensor will promptly refund such amount to the Licensee. If the Licensor pays or economically bears any tax to be paid by the Licensee, the Licensee will promptly refund such amount to the Licensor. Each Party shall bear its own banking expenses charged by its bank.

5.   PROPRIETARY RIGHTS

5.1.   The Licensee acknowledges that the Licensor/or applicable third party Program owner owns all Intellectual Property Rights and other proprietary rights, including, without limitation, rights to file for patents, for inventions, designs, processes (including any business process patents), formulas, copyrights, copyrightable works, logos, and all goodwill associated with the foregoing, trade secrets, financial information, technical information, data, software programming information, marketing strategies or any other Confidential and proprietary information and all other right, title and interest (including any renewals or extensions thereof, and the right to sue for past, present and future infringement thereof) in and to the Program (including its Source Code). Nothing in this Agreement can be interpreted as an intention to assign/transfer to the Licensee the Source Code of the Program or to provide other rights except as explicitly specified in the Agreement.

5.2.   The Licensor is entitled to perform reasonable control activities in order to ensure that the Program usage by the Licensee and its End-users (if any) complies with the present Agreement.

5.3.   The Licensee shall have no rights in and to any updates and upgrades, changes, adaptations, modifications, enhancements or derivative works based on the Program created by or on behalf of the Licensor, all of which (and all copyright and other Intellectual Property Rights therein) shall belong to the Licensor/the applicable third party Program owner. The Licensee may not perform any other actions, infringing the Licensor's/the applicable third party Program owner's Intellectual Property Rights.

6.   INDEMNIFICATION

6.1.   Subject to the terms and conditions of this Agreement, including the limitations on liability set out below, the Licensor agrees to indemnify, defend, and hold the Licensee, its owners, officers, directors, employees and consultants harmless from and against any claims, liabilities, losses, damages, costs and expenses (including attorneys' fees and reasonable legal expenses) (collectively "Losses") harmless from any and all actions, claims, demands, liabilities and damages to the extent arising out of or in connection with any claim that the Program infringes Intellectual Property Rights of any third party.

6.2.   Subject to the terms and conditions of this Agreement the Licensee agrees to indemnify, defend, and hold the Licensor, its owners, officers, directors, employees and consultants harmless from and against any Losses, whether or not involving a third party claim, which arise out of or relate to (i) any breach or violation of obligations or warranties of the Licensee under this Agreement; (ii) any Licensee's/End-users misuse of the Program or use in breach of the Agreement.

6.3.   If the Program or its part becomes or in the reasonable opinion is likely to become the subject of any claim or action against the Licensee for actual or alleged infringement of the Intellectual Property Rights, once duly notified by the Licensee, the Licensor shall use its best efforts to either:

● procure for the Licensee the right to continue using the affected part of the Program as contemplated hereunder;

● modify the affected part of the Program, provided that such modification does not adversely affect Licensee's use of the Program and/or its functionality; or

● replace with the same quality, functionally suitable equivalent.

In such case, any of the abovementioned actions will be a sufficient remedy.

6.4.   Notwithstanding the abovementioned, the Licensor shall not indemnify or hold harmless the Licensee in any way for any claim based on:

- any modification, alteration, incorporation/combination with any other software or part of it under the Licensee's sole discretion if in the absence of such a modification, alteration, combination or incorporation there would not have been infringement;

- ongoing use of any version of the Program, with respect to which the provider has provided a non-infringement update, repaired version or other applicable cure or improvement changes.

7.   CONFIDENTIALITY

7.1.   Each Party may serve as either receiving party ("the Receiving Party") or disclosing party ("the Disclosing Party") depending on the situation. The Receiving Party means the Party that is receiving Confidential Information under this Agreement. The Disclosing Party means the Party that is disclosing Confidential Information under this Agreement.

7.2.   During the period of this Agreement and until the end of five (5) years from its expiration or termination for any reason, the Parties shall: (i) hold Confidential Information in strict confidence and protect Confidential Information in accordance with the applicable laws and, at least, to the same extent and by the same means it uses to protect the confidentiality of its own proprietary or confidential information and not less than reasonable means; (ii) not make any use of Confidential Information, save for the purposes of this Agreement; (iii) restrict disclosure of Confidential Information solely to employees and its Affiliates' employees on a need to know basis, and be responsible and liable for any breach of confidentiality by such employees; (iv) return to the Disclosing Party or destroy all Confidential Information on request; and (v) at the Disclosing Party's request, have such employees enter into similar confidentiality undertakings for the benefit of the Disclosing Party.

7.3.   The Receiving Party is entitled to disclose such Confidential Information pursuant to a court order or, if otherwise required by the applicable law, provided however that the Receiving Party provides to the disclosing Party prior written notice of such disclosure and a reasonable opportunity to contest such disclosure to the extent permitted by law.

7.4.   The Receiving Party shall take all the necessary measures to ensure that its employees and the persons involved in performance of obligations of this Party are familiarized with confidentiality rules and with prohibition on disclosure of Confidential Information to third parties and are bound by the same.

7.5.   The owner of Confidential Information may at its option require the other Party to delete promptly all Confidential Information from any computer disks, tapes or other material in its possession or under its control or promptly deliver up or destroy materials and tangible items in its possession or under its control, which contain any Confidential Information belonging to the Party requiring the action. The owner of Confidential Information may require the other Party to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this clause.

7.6.   The Parties agree that any breach of this Agreement, including without limitation any actual or threatened disclosure of Confidential Information without the express prior written consent of the Disclosing Party, would cause irreparable injury to the Disclosing Party for which no adequate remedy at law exists; therefore, the Parties agree that in addition to all other remedies available to the Parties, equitable remedies, including without limitation unilateral injunctive relief and specific performance are appropriate remedies to redress any breach or threatened breach of this Agreement by the Receiving Party, any of its representatives, or any other persons directly or indirectly acting for or on behalf of or with the Receiving Party.

7.7.   No Party shall be deemed to make any expressed or implied representation, warranty, assurance or guarantee with respect to any Confidential Information disclosed hereunder, including without limitation any representation or warranty of merchantability, fitness for any particular purpose, or non-infringement of intellectual property or other rights of third parties.

7.8.   Licensor may use aggregated anonymized data concerning the usage of the Program by the Licensee and its End-Users to combine, compile, disclose and study it in conjunction with anonymized data of other Licensee's clients for the purposes of publicly reporting on the performance, developing and providing new and different products and improving the Program and other legitimate business purposes. Such anonymized data may include number of users; session statistics; approximate geolocation; browser and device information. This paragraph shall survive the termination of this Agreement.

7.9.   Each Party agrees not to disclose the terms, conditions or scope of this Agreement without the prior express written consent of the other Party. Notwithstanding the abovementioned, the Licensor may disclose and use the fact of execution of the Agreement, including name, logo, trademark, trade name, or other marks of the Licensee only for the advertising, public relations and marketing purposes. The Licensee may disclose and use Devexperts name, logo, trademark, trade name, or other marks only for public relations and marketing purposes and shall notify the Licensor of such publication.

7.10.   Notwithstanding anything to the contrary above, the Licensor reserves the right to publish a brief case study and other materials of the Parties' collaboration under the Agreement ("Publication") in Internet or media, with due regard to the protection of the Parties' Confidential Information. The Licensor will submit the manuscript of any proposed Publication to the Licensee at least ten (10) calendar days before Publication, and the Licensee shall have the right to review and comment upon the Publication.

8.   WARRANTIES

8.1.   The Licensor warrants that:

(i)   all design methods, programming languages and software development tools that have been utilized for the Program are in compliance with good IT industry practices;
(ii)   the Program does not contain any virus, spyware, adware, back-doors or other malicious code.

8.2.   The Customer represents and warrants that it has the power and authority to enter into this Agreement and has all the necessary rights, permissions and consents to enter into this Agreement. The Customer represents and warrants that its representative who is agreeing to the terms via the applicable teckbox has been and is on the date of this Agreement duly authorized by all necessary corporate or other appropriate action to enter into this Agreement.

8.3.   The Program is provided "**AS IS**". The Licensor makes no express or implied representations or warranties, including, but not limited to, warranties of title or implied warranties of merchantability, completeness, and fitness for purpose. Warranties under the clauses of this Section above are exclusive and replace any other warranties. The Licensee's use of the Program is solely at its own risk. To the extent permitted by the applicable law, the Licensor is not responsible for any decisions made upon the Program operation, or compliance of any reports created by means of the Program with laws of any nation. The Licensor is acting solely in the capacity of a licensor.

9.   LIABILITY AND LIMITATION OF LIABILITY

9.1.   The Licensor is not responsible for financial performance of the Program use, wrong data received from third parties and processed by the Program, the Program failures associated with power interruptions, communication channel cut-offs or faults, or feasibility of the Program interaction with any other technical means not on the list of compatible technical facilities.

9.2.   The Licensor is not responsible for possible undetected errors in the operation system, Java runtime environments, or other system software or hardware capable of impacting the Program security and stability and not being part of the Licensor's in-house design.

9.3.   The Licensor shall have no direct or indirect liability to the Licensee or any third party in respect of any information or Data that the Licensee or its clients use in connection with the Program usage. It is Licensee's

responsibility to obtain (and procure that its clients obtain) all necessary third party consents for the Data or information that it uses.

9.4.   Neither the Licensor nor the Licensee shall have liability to each other or any third party for any loss of revenue, profit, data or goodwill, or for any indirect, special or consequential loss or damage arising out of or in connection with this Agreement or any collateral, whether in contract, tort or otherwise, except for the indemnification for non-infringement and breach of the Intellectual Property Rights.

9.5.   Neither Party excludes or limits its liability for:

(i)   its fraud;
(ii)   death or personal injury caused by its material default;
(iii)   any other liability which cannot be excluded or limited by applicable law.

9.6.   The limitations of liability under this Section 9 have effect in relation to any liability expressly provided for under this Agreement and to any liability arising by reason of the invalidity or unenforceability of any term of this Agreement.

9.7.   The Parties agree that the terms in this limitation of liability represent a reasonable allocation of risk; this section is essential element of the Agreement. This liability applies whether alleged liability based on contract, negligence or bad faith of the Licensor. In no event shall the Licensor's liability to the Licensee exceed $1000 (one thousand US Dollars). The existence of one or more claims will not enlarge this limit.

10.   TERM AND TERMINATION

10.1.   This Agreement shall be in effect commencing on the Registration Date and till the expiration of the License Period, except if terminated earlier. Licensor is entitled at any time for reasons of convenience to terminate the Agreement upon 5 (five) calendar days written notice to the other Party before the desired date of the Agreement termination.

10.2.   In case of breach by the Licensee of any of its confidentiality obligations, as well as in case of the Program use in breach of the Agreement, the Licensor may terminate this Agreement, in whole or in part, without incurring any liability, immediately upon written notice to the Licensee or with effect from such date as the notice may state.

10.3.   The Licensee's rights under this Agreement will automatically terminate upon expiration/termination of this Agreement (including, but not limited to all granted rights to use the Program according to the Section 3 are immediately void) and the Program usage must be ceased immediately.

10.4.   Termination of this Agreement shall be without prejudice to any accrued remedies of either Party. Termination or expiration of this Agreement for any reason shall not release the Licensee from any payment obligations (if any) incurred prior to such termination or expiration.

10.5.   Notwithstanding anything to the contrary in this Agreement, Sections 5-17 and any other provisions of this Agreement that are explicitly mentioned as surviving shall so survive and shall continue to apply after termination or expiration of this Agreement.

11.   FORCE MAJEURE

11.1.   Neither Party shall be liable for any breach, hindrance or delay in performance of its obligations under this Agreement, which is caused by circumstances beyond its reasonable control including without limitation act of God, actions of third parties (including governments or supra-national authorities, whether officially declared or non-officially imposed including any limitations, bans or restrictions on use of the Internet and/or messengers or other technologies and/or means of communications), insurrection, riot, civil commotion, war, hostilities, warlike operations, national emergencies, terrorism, piracy, arrests, restraints or detainments of any competent authority, epidemic, earthquake or other natural disaster, failure or problems with public utility supplies

(including without limitation electrical, telecoms or general Internet failure) ("Event of Force Majeure"), regardless of whether the circumstances in question could have been foreseen. Covid-19 pandemic is excluded from this clause unless it causes disability to work of the significant number of Parties' employees/subcontractors engaged in the Agreement fulfilment which shall be proved.

11.2.   Each of the Parties agrees to notify the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

11.3.   The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.

11.4.   The Party subject to the Event of Force Majeure shall make its reasonable commercial efforts to cure such event or find appropriate replacements so as to be able to continue to perform its undertakings.

11.5.   Each Party shall bear its own costs incurred by the Event of Force Majeure.

11.6.   In the event any liability of a Party under this Agreement is in failure, delay or obligation cannot be fulfilled otherwise because of any Events of Force Majeure for more than 2 (two) months, the other Party may terminate this Agreement by sending a written notice. The consequences specified in the Section "Term and termination" of the Agreement shall apply.

12.   DATA PROTECTION

12.1.   The Parties hereby agree to comply with the applicable data processing laws, rules and regulations, including EU General Data Protection Regulation (the "**GDPR**"), (if applicable) the EU member state law on the processing of personal data and ePrivacy.

12.2.   The Parties hereby acknowledge that the scope of this Agreement does not encompass any processing of the Personal Data. If such scope changes and the Personal Data shall be processed under this Agreement, the Parties hereby agree to enter into a data processing agreement.

13.   NOTICES

13.1.   Any notice or other communication required or authorised to be given under this Agreement shall be in writing, in English and may be served by personal delivery, or by pre-paid, or recorded delivery letter, or by courier, or by email addressed to the relevant Party at its address stated in this Agreement, or at such other address, as is notified by the relevant Party to the other for this purpose from time to time or at the address of the relevant Party last known to each other.

13.2.   Any notice so given by post shall be deemed to have been served upon receipt of a mail delivery/courier notification confirming the delivery and any notice so given by email shall be deemed to have been served upon receipt of an email delivery acknowledged receipt, and in providing such service it shall be sufficient to prove that the letter or facsimile was properly addressed or numbered and, as the case may be, posted as a prepaid or recorded delivery letter.

13.3.   Any notice or other communication under this Agreement, which is served by email or by facsimile, shall be replaced by documents in writing within a reasonable time.

14.   ASSIGNMENT

14.1.   No Party may assign, novate this Agreement or any of its rights under this Agreement whether voluntary or involuntary, by merger or operation of law, except with the prior written consent of the other Party, which shall not be unreasonably withheld.

14.2.   Notwithstanding the abovementioned the Licensor may assign its rights or delegate its duties to its Affiliate subject to such Affiliate having the technical, financial and other capabilities, as may deem necessary, to fulfill its obligations under this Agreement.

15.   WAIVER

15.1.   No failure by either Party in exercising any right under this Agreement shall operate as a waiver of such right or extend to or affect any other or subsequent event or impair any rights or remedies in respect of it or in any way modify or diminish that Party's rights under this Agreement, nor it shall it preclude or restrict any further exercise of that or any other right or remedy.

14.2.   If any act or omission by any Party will require the consent or approval of another Party, such consent or approval of such act or omission on any one occasion will not be deemed a consent to or approval of said act or omission on any subsequent occasion or consent to or approval of any other acts or omission on the same or any subsequent occasion. Waiver of any right or remedies must be in a signed writing by the waiving Party.

16.   NO PARTNERSHIP OR AGENCY

16.1.   Nothing in this Agreement is intended to or shall be deemed to establish any partnership, joint venture, agency or a relationship of employer and employee between the Parties. Neither Party has any power to bind other Party or to assume or to create any obligation or responsibility on behalf of other Party or in other Party's name.

17.   SEVERABILITY

17.1.   In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

18.   GOVERNING LAW AND CHOICE OF JURISDICTION

18.1.   This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the internal laws, and not the laws of conflict, of Republic of Ireland.

18.2.   Unless negotiations do not lead to resolution, You agree that this Agreement and Your use of Program are governed by the Rules of the London Court of International Arbitration ("LCIA", and the rules, "LCIA Rules"). Any dispute will be heard by three (3) arbitrators appointed in accordance with the LCIA Rules. The seat of arbitration will be London, England. The language of the arbitral proceedings will be English. No arbitration proceeding shall be consolidated with, or joined in any way with, any other arbitration proceeding. The arbitration decision shall be final and binding. The Parties agree that each may bring claims to the other only in their individual capacity and not as plaintiff of class member in any purported class or representative action.

18.3.   In the event of any dispute with respect to the subject matter of or construction of this Agreement, the substantially prevailing party will be entitled to recover its reasonable attorneys' fees and court costs incurred in resolving or settling the dispute, in addition to any and all other damages or relief, which a court may deem proper.