ARCAD - END USER LICENSE AGREEMENT

The Agreement, which sets forth the terms and conditions governing the use of any software licensed by Arcad, is made and entered into by and between Arcad and the customer identified in the Purchase Order (the "**Customer**"), whether the Software is purchased directly with Arcad or through a Reseller. If the Customer is a business entity, the individual that accepts and agrees to the Agreement certifies that he has the right and authority to legally bind such an entity or organization to enter into the Agreement.

If the software licensed by Arcad is a third-party software, the Terms, as defined hereafter, apply only to the extent where they are not contradictory with the third-party applicable license agreement, nor do they extend Customer's rights under the third-party applicable license agreement.

BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE THE CUSTOMER AGREES TO THE TERMS OF THE AGREEMENT AND ACKNOWLEDGES AND ACCEPTS TO BE BOUND BY THESE TERMS. SHOULD THE CUSTOMER NOT ACKNOWLEDGE AND AGREE TO THESE TERMS, THE CUSTOMER MUST NOT INSTALL OR MUST IMMEDIATELY UNINSTALL THE SOFTWARE AND DISCONTINUE ITS USE. CONTINUED USE OF THE SOFTWARE SIGNIFIES CONTINUED ACCEPTANCE OF THE AGREEMENT AND OF ANY CHANGES BROUGHT TO IT.

If the Customer does not agree to the terms of the Agreement, the Customer may not use the Software.

1. Definitions

In this Agreement, the terms beginning with a capital letter shall have the following meaning unless the context otherwise requires:

"**Agreement**": means, if the Software is acquired with a Reseller, the Terms, and, if the Software is acquired with Arcad, the Terms and the Direct Purchase Order.

"**Arcad**": means ARCAD Software Ltd., a company having its principal place of business at 1 Austin Road West – International Commerce Centre, 7107B, 71/F, Kowloon, Hong Kong.

"**Documentation**": means the related user and/or technical documentation applicable to the Software and made available to the Customer in conjunction with the Software by Arcad or the Reseller.

"**Editor**": means Arcad or the third-party editor, when Arcad acts as the reseller of a third-party software.

"**Fees**": means the fees due by the Customer to Arcad or to Reseller, as agreed to in the Purchase Order.

"**Purchase Order**": means a completed order form or specific terms or proposal, including its exhibits and/or the documents listed herein, if any, for the software specified in such document, that has been:

> (i) submitted by Arcad to the Customer and accepted by the Customer, if the Software is acquired directly from Arcad. In this case, it corresponds to a "**Direct Purchase Order**", or
> (ii) submitted by the Reseller and accepted by the Customer if the Software is acquired through a Reseller. In this case, it corresponds to an "**Indirect Purchase Order**".

"**Release**":   means any maintenance release relating to the Software, including but not limited to error fixes, patches, upgrades and enhancements.

"**Reseller**":   means the Arcad authorized reseller from whom the Customer acquired the Software License, should the Software License not be acquired directly with Arcad.

"**Software**": means the object code of computer programs specified in the Purchase Order, related Documentation, and Releases provided to the Customer of such programs if any.

"(**Software) License**": means the software license as defined in article "2. End-User License" of these Terms.

"**Terms**": means the present End User License Agreement's terms and conditions.

"**Use**": means download, access, install, store, load, execute or otherwise use the Software.

2. End-User License

Grant of License. In consideration of the payment of the Fee(s), Arcad grants the Customer a limited, revocable, non-exclusive, non-transferable and non-licensable right to Use the Software for its internal business operations (the "**Software License**"), subject to the terms and conditions of the Agreement. The Software License is only provided to the Customer. It may not be shared, installed or used by any other entity or organization.

The Software License is granted for the term specified in the Purchase Order. The Software License can be granted for a perpetual term or for a specified term (the "**Initial Term**"). Should the License be granted for a specified term, the Software License is granted for a twelve (12) month term. The Agreement will automatically be renewed, at the end of each contractual period, for another twelve (12) month term, unless either party informs the other of its intent not to renew the Agreement at least three (3) months prior to the end of the ongoing contractual term.

Customer's right to Use the Software begins on the date the Software is made available for download or installation by the Customer, and continues until the end of the term specified in the Purchase Order, unless terminated earlier in accordance with the Agreement.

The Software License is subject to one or more of the license parameters specified in the Purchase Order. Customer shall not Use the Software in excess of such parameters.

The Customer may only install the Software, use it for its internal operations on the machine identified on the Purchase Order and, where necessary to preserve the Use of the Software, can make one copy of the Software in machine-readable form for non-productive backup purposes, provided that Arcad's proprietary legend is included in such a copy.

Limitations of rights. Any rights not expressly granted in the Agreement are expressly reserved.

Customer shall *inter alia* not:

- copy, modify, change, sublicense, rent, lease, sell or translate the Software, or any copy thereof, except as expressly provided in the Agreement or otherwise authorized by Arcad in writing;
- transfer, sublicense, assign any rights under this Agreement to any other person or entity, unless expressly authorized by Arcad in writing;
- make the functionality of the Software available to third parties and/or use the Software to provide services to third parties (such as Software as a Service or business process outsourcing);
- remove or alter any proprietary rights, trademarks, brands or any other kind of legend embedded in the Software;
- export the Software into any country, to the extent such country requires an export license or other governmental approval, without preliminarily obtaining such license or approval.

Customer acknowledges that the Software in source code remains a confidential trade secret of Editor and therefore, to the fullest extent permitted by law, the Customer is prohibited from converting the Software to any programming language or format, decompiling or disassembling the Software or any copy, modification or merged portion, in whole or in part.

Bug fixes and other services. Editor reserves the right to correct errors. Support and maintenance services may be provided to the Customer pursuant to a separate professional service agreement entered into between (i) the Customer and (ii) the Editor or the Reseller, as the case may be.

Interoperability legal rights. In accordance with article L.122-6-1 of the French Intellectual Property Code, and to the extent such article must be considered as applicable, the Customer may obtain from the Editor information necessary to the interoperability of the Software with another software used by the Customer. This information will be provided by the Editor to the Customer within a thirty (30) day period following the reception by the Editor of the Customer's request. In the absence of such communication, the Customer can carry out itself the necessary actions as provided under the article L.122-6-1 of the French Intellectual Property Code.

Access and Use of the Software. The Customer must keep confidential any access codes or any other identifier used to access and/or download the Software. Customer shall be responsible and liable for the acts and omissions of all users arising from the access to the Software provided by the Customer. The Software may contain license protection keys or other technologies intended to limit access to the Software to that Use permitted within the Agreement. The Customer shall not, directly or indirectly, circumvent or render inoperative any such protection or attempt to do so.

Third party Use of the Software. Customer may permit a third party to Use the Software if such Use is solely on the Customer's behalf, for the Customer's internal operations and in compliance with the Agreement. Customer shall be responsible and liable for any breach of this Agreement by such third party.

Open source components. The Software may contain certain components subject to open source software licenses, under separate license terms made available with the Software or Documentation.

In case of conflict between the license terms covering these components and the Terms, the terms of such licenses will apply in lieu of the Terms.

3. Reseller

If the Customer acquires the Software through a Reseller, the Customer acknowledges that:

- payment and delivery terms for the Software must be established directly between the Reseller and the Customer, separately from this Agreement;
- the Terms constitute the entire agreement between the Customer and Arcad regarding the license rights for the Software. The Reseller is not authorized to make any promises or commitments on Arcad's behalf;
- the terms and conditions of any order or other agreement entered into between the Customer and the Reseller are not binding Arcad;
- Arcad makes no representation or warranty with regard to any services provided by the Reseller;
- the Reseller is not authorized to grant any other rights relating to the Software than those set forth in the Terms;
- Customer's non-payment of any amount due to the Reseller related to licensed rights under the Terms shall constitute a basis for Arcad to terminate the Terms.

4. Fees

License fees. In consideration of the rights granted to Customer in the Agreement, the Customer will pay to Arcad or Reseller, as the case may be, a license fee, as further specified in the applicable Purchase Order.

The Customer is responsible for any taxes of any kind, including but not limited to all sales, use, value added, customs fees, and the Customer will pay Arcad without any reduction for these amounts.

Billing and payment terms. Arcad will bill the Customer on the Direct Purchase Order date. When the Software License is granted for a specified term, Arcad will bill the License fee for the first term on the Direct Purchase Order date and, for the following terms, Arcad will bill, for each year, on a date shortly prior to the anniversary of the Direct Purchase Order date. All invoices issued within a Direct Purchase Order must be paid by the Customer to Arcad in full within thirty (30) days after the date of issuance of the applicable invoice.

Without prejudice to any other rights or remedies Arcad may have under the Agreement, in the event that the Customer fails to pay any undisputed amount within fourteen (14) days of the due date for payment, Arcad may forthwith suspend performance of its obligations or terminate the Agreement without incurring any liability whatsoever.

Any late payment shall automatically result, on the day following the settlement date shown in the invoice, in the duty to pay late payment interests at a rate of three times the French legal interest rate.

Arcad shall also be entitled to recover all costs including reasonable expenses, legal fees and cost of collection, in an amount equal to actual collection costs ant that, in any event, shall not be less than the flat fee provided for in French Commercial Code (which provides for 40 euros).

If the Customer disputes part of an invoice, the Customer will only be entitled to withhold payment of the said part, until the dispute on this part has been settled. By no means will the Customer be entitled to suspend payment of the non-contested parts of the invoice.

Audit / Verification. The Customer agrees that Editor may audit the Customer's use of the Software in compliance with the Agreement, upon reasonable notice, during the license term for the Software and for a period of three (3) years after its expiration or termination. Employees of Editor and its auditors, which shall not be a Customer's competitor, and who agree in writing with the security and confidentiality obligations and procedures reasonably required by the Customer, shall be permitted to audit (at least once annually and in accordance with Editor's standard procedures, which may include on-site and/or remote audit) the use of the Software. The Customer shall cooperate reasonably in the conduct of such audits.

Notwithstanding any other rights Editor may have, in the event an audit reveals that (i) the Customer underpaid license Fees and/or (ii) the Customer has used the Software in excess of the rights granted or license quantities stated on the Purchase Order, the Customer shall pay such underpaid fees and/or for such excess use based on the applicable rates in effect at the time of the audit, as well as reasonable costs of Editor's audit, within thirty (30) days of written notice.

5. Intellectual property

Ownership. The Editor, and its licensors if applicable, retains sole and exclusive ownership of all rights, titles and interests pertaining to the Software and all modifications, version, patches, Releases and enhancements thereof (including, without limitation, ownership of all trade secrets, trademarks, brands, logos, and copyrights pertaining thereto), subject only to the rights expressly granted by the Editor to the Customer pursuant to the Agreement.

The Agreement does not provide the Customer with title to or ownership of the Software, but only with a right of limited Use as provided in these Terms. The Customer must keep the Software free and clear of all claims, liens, and encumbrances. No license, interest or other right in any trademark, trade name or service mark of Editor is granted pursuant to the Agreement.

Intellectual property warranty. Arcad guarantees the Customer that the delivery of the Software shall not infringe any intellectual property rights (copyright, patent right, trademark right) of any third party. Arcad shall indemnify and hold the Customer harmless from and against any third party claims and/or actions and/or proceedings relating to any item provided by Arcad to the Customer, based on an infringement of intellectual property rights, and shall bear, subject to the provisions of the "Limitations of lability" article, all related definitive damages and indemnities which may result from such claims and/or actions and/or proceedings in relation to the Agreement, provided that: (i) the Customer promptly notifies Arcad in writing of the claim, action or proceeding and provides Arcad with all information for defending its interests; (ii) the Customer agrees that Arcad shall have sole and exclusive control of the defense of the claim, action or proceeding should Arcad so desire and (iii) the Customer

makes no admission or statement of any kind whatsoever that may prejudice Arcad's defense. The indemnification referred to in this section is limited to the payment by Arcad of all damages and costs finally awarded for the claim based on the demonstration of counterfeit exclusively under Arcad' responsibly, or settlements costs approved in writing by Arcad.

If the Software violates a third party's intellectual property right or if Arcad reasonably believes they are likely to infringe a third party's intellectual property right, Arcad can promptly and at its own expense: (i) grant the right for the Customer to continue using the Software; or (ii) replace or modify the Software to make its use non-infringing. If Arcad cannot do either of the above, Arcad may terminate the Agreement *ipso jure*, without recourse to the courts, with immediate effect, and (i) if Customer has a perpetual license to the Software, Arcad will refund Customer a *prorata* portion of the license fee Customer paid for such Software, amortized on a three (3) year straight line basis from the date of the Purchase Order and (ii) if Customer has a term limited license to the Software, Arcad will refund Customer a *pro rata* portion of the annual license fee Customer paid for the Software.

The foregoing warranty does not apply (i) if the Software has been altered, modified, customized, except by Arcad; (ii) in case of unauthorized use of the Software or of use of the Software in excess of the License Software granted to the Customer; (iii) to any unsupported Release of the Software or if the Customer does not use the latest Release provided by Arcad or the Reseller or (iv) to any open source software or to any other third party code embedded in the Software which may be subject to specific terms and conditions provided to the Customer.

This article sets Arcad's, Arcad licensor's, Editor's and Reseller's sole liability and Customer's sole and exclusive remedy with respect to any claim of intellectual property infringement.

6. Warranty and liability

Limited warranty. Arcad guarantees that the Software will substantially conform to the applicable Documentation for a ninety (90) day period following the date the Software is made available to the Customer.

Arcad's sole obligation shall be to repair or replace the Software so that it will perform in accordance with the applicable Documentation. Arcad or the Reseller, as the case may be, could also, as a last resort, terminate the Agreement and refund the Fees paid for the non-conforming Software.

Arcad's above-mentioned obligation is the Customer's exclusive remedy regarding the warranty. This remedy is subject to the Customer reporting the non-conformance in writing to Arcad or to the Reseller, as the case may be, within the warranty period.

The warranty does not apply:

- if the Software has been altered, modified, customized, by anyone except Arcad, unless it has been expressly authorized and validated by Arcad;
- if the Software has not been installed, used or operated in accordance with Documentation or instructions supplied by the Editor or the Reseller;

- if the Software has been used with hardware, operating systems or other supporting environment other than the ones specified by the Editor as being compatible with the Software;
- if the Software has been used in a manner for which it was not designed;
- in case of failure caused by components or technology on which the Software is installed and/or by programs used in conjunction with the Software;
- to problems that cannot be reproduced in running the Software in a configuration meeting specifications specified by the Editor;
- if the Software is licensed for beta, evaluation, testing or demonstration purposes or other similar circumstances for which Arcad or the Reseller does not receive a payment;
- if the Software has not been provided by Arcad or a Reseller; or
- to versions and Releases of Software other than the most recent and the previous one.

Except as set forth in the Agreement, and to the maximum extent permitted by applicable law, there are no other warranties, express, implied or statutory made by Arcad, related to or arising in any way out of the Agreement, including for the avoidance of doubt those relating to merchantability, satisfactory quality or fitness for purpose, all of which are hereby expressly disclaimed.

Arcad does not guarantee that the Software will operate uninterrupted or error-free or that all errors will be corrected. Arcad does not guarantee that the Software is compliant with the Customer's environment, including the Customer's hardware, software or network. Arcad is not responsible for the results obtained from the use of the Software. The Customer acknowledges that it is not Arcad's duty to advise the Customer regarding compliance and obligations imposed by the law or other regulations.

Limitations of liability. The Customer acknowledges and agrees that it has accepted the terms of the Agreement, knowing that Arcad's liability is limited and that the prices and charges payable have been calculated so as to reflect such limitations and thus represent a reasonable and commercial allocation of risk between the Parties.

Except if the following restriction is expressly prohibited by applicable law, and only to the extent the following restriction is expressly prohibited by applicable law, in no event shall Arcad be liable for indirect damages, loss of profits, loss of goodwill, loss of business, loss of revenue, loss of contracts, loss of anticipated savings, loss of data, damage to or corruption of data or business information arising out of the Agreement or arising out of the use of or inability to use the Software, even if Arcad has been advised of, knew or should have known of the possibility of such damages.

Except if the following restriction is expressly prohibited by applicable law, and only to the extent the following restriction is expressly prohibited by applicable law, Arcad's total aggregate liability, for the period of the Agreement, for all claims and damages arising from negligence, breach of contract, warranty or indemnity, or any other legal theory of liability or otherwise, under or in connection with the Agreement, shall not exceed an amount equivalent to the Fees (excluding taxes) payable or paid by the Customer to Arcad or the Reseller under the Agreement, for the Software concerned. Concerning the Software License granted for a specific term, the above-mentioned amount will be limited to the Fees (excluding taxes) payable or paid by the Customer to Arcad or the Reseller under the Agreement, for the Software concerned, only during the year of occurrence of the (most serious) act or omission giving rise to the liability. This limitation of liability is cumulative and not per incident.

For the avoidance of doubt, clauses above-mentioned apply whether such loss is direct, indirect, consequential or otherwise.

The limitation of liability has effect in relation both to any liability expressly provided for under this Agreement and to any liability arising by reason of the invalidity or unenforceability of any terms of the Agreement.

The Customer has a duty to mitigate the damages that would otherwise be recoverable from Arcad pursuant to the Agreement by taking appropriate and reasonable actions to reduce or limit the amount of such damages.

For the avoidance of doubt, the provisions of this Article will survive the expiration or termination of the Agreement for any reason.

Any claim or cause of action arising out of or related to the Agreement must be filed within one year after such claim or cause of action arose or be forever barred.

The Customer acknowledges that by entering into and performing its obligations under the Agreement, Arcad will not bear and should not be exposed to the business and operational risks associated with the Customer's business, and the Customer therefore agrees to indemnify and defend Arcad from any and all losses arising out of, under or in connection with any third-party claim, including any claim from a Customer's client.

7. Termination

Termination for cause. If either party materially breaches any of its obligations under the Agreement, and fails to cure such breach within thirty (30) days from the date it received from the non-breaching party a notice of the breach and a demand for cure, then the non-breaching party may without any further formality (*ipso jure*) terminate the Agreement, without prejudice to any rights contained in the Agreement. Without limiting the foregoing, Arcad may namely terminate the Agreement if the Customer violates Editor's intellectual property rights or fails to pay the Fees due under the terms of the Purchase Order.

Consequences of termination. In case of termination of the Agreement, the Customer shall, upon effective termination date of the Agreement, stop to Use the Software, uninstall and destroy, or upon Arcad's request, deliver to Arcad, any and all copies of the Software.

No expiration or termination of the Agreement will relieve Customer of his obligation to pay any amounts accruing under such Agreement prior to such expiration or termination.

8. Confidentiality

Neither party shall, without the prior written consent of the other party, use or disclose the Confidential Information of the other party during the term of the Agreement and for 5 years following the expiration or termination hereof.

"**Confidential Information**" means any non-public information of each party hereto relating to its Software, products, prices, business activities, financial affairs, technology, marketing or sales plans that is disclosed to, and received by, the other party pursuant to the Agreement. Confidential Information shall not include information which: (i) is or becomes public knowledge through no breach of the Agreement by the receiving party, (ii) is received by recipient from a third party not under a duty of confidence, or (iii) is already known or is independently developed by the receiving party without use of the Confidential Information.

Each party will take all reasonable precautions to protect the other party's Confidential Information, using at least the same standard of care as it uses to maintain the confidentiality of its own Confidential Information.

Notwithstanding the foregoing, a party may disclose Confidential Information: (i) to any consultants, contractors, and counsel who have a need to know in connection with the Agreement and have executed a reasonably protective non-disclosure agreement, or (ii) pursuant to legal process; provided that, the disclosing party shall, unless legally prohibited, provide the non-disclosing party with reasonable prior written notice sufficient to contest such disclosure.

9. Miscellaneous

Export control. The Customer agrees to comply with all applicable export and re-export control laws and regulations. The Customer undertakes to not, directly or indirectly, transfer, export or otherwise dispose of the Software to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

Insurance. At all times during the term of the Agreement, each party shall maintain adequate insurance policies with a reputable insurance company.

Commercial reference. The Customer hereby authorizes Arcad to mention the latter's name as a business reference, to make public reference, in general terms, to the Agreement and to reproduce its trademark and logo for such communication and promotion purposes.

Waiver. Failure of Arcad to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision in that or any other instance.

Survival. Those provisions which should, by nature, survive termination of the Agreement, will survive termination of the Agreement.

Amendment. No major modification brought to the Agreement shall be effective, unless it is in writing and executed by a duly authorized representative on behalf of each of the Parties.

Severability. If any of the terms of the Agreement shall be deemed invalid, void or for any reason unenforceable, those terms shall be deemed severable and shall not affect the validity and enforceability of any remaining terms.

Titles. The section titles in this Agreement are provided solely for convenience and have no legal or contractual significance.

Assignment. The Customer will not transfer any of its rights under the Agreement without the prior written consent of Arcad. Subject to the foregoing, the Agreement will be binding upon the assignee.

Notices. Any notice, request, demand or other communication under the Agreement must be in writing (e-mail is acceptable), must reference the Agreement, and will be deemed to be properly given: (i) upon receipt, if delivered personally; (ii) upon confirmation of receipt by the intended recipient, if by e-mail; (iii) five (5) business days after it is sent by registered or certified mail, with written confirmation of receipt and email; or (iv) three (3) business days after deposit with an internationally recognized express courier and email, with written confirmation of receipt. Notices should be sent to the address(es) set forth on the Purchase Order, unless a party notifies the other that those addresses have changed.

Dispute resolution. In the event of a dispute arising out of or in connection with the Agreement, Arcad and the Customer (the "**Parties**") undertake to set up a diligent, good faith attempt to resolve amicably all disputes in accordance with the following principles. In this respect, as soon as a party considers there is a dispute with the other party, it will summon a meeting with chief executive level representatives of both Parties in order to discuss possible settlement of the said dispute. Such meeting shall be summoned by registered letter, return receipt requested, and shall take place within 15 days of receipt of the said letter by the recipient party. Should, within the aforementioned 15-day time period, the dispute not be settled or the meeting not be held, then each party will be free to submit the dispute to a court of competent jurisdiction.

Applicable law and jurisdiction. The Agreement shall, in all respects, be governed by and construed exclusively in accordance with the laws of France, unless provided otherwise by law or regulation.

If the Parties fail to settle a dispute in accordance with the dispute resolution process set forth in section "Dispute resolution" above-mentioned, any dispute arising from or relating to the Agreement shall be submitted to the courts of **PARIS**.

Accepted by :

Company name

ARCAD Software

_____

Name and title

Philippe Magne

CEO

_____

Signature

 Signature

Date: _____