

## **End User License Agreement**

### **Redistribution or Rental Not Permitted**

These Terms apply to the XXXXX Software (the “Product”).

**BY CLICKING THE “AGREE” BUTTON OR DOWNLOADING OR INSTALLING OR USING THE PRODUCT, THE INDIVIDUAL OR ENTITY LICENSING THE PRODUCT (“LICENSEE”) IS CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT. IF LICENSEE DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THE BUTTON INDICATING “DISAGREE” MUST BE SELECTED, THE LICENSEE MUST NOT INSTALL OR USE THE PRODUCT AND (IF APPLICABLE) THE PRODUCT MUST BE RETURNED TO THE PLACE WHERE THE LICENSEE OBTAINED IT, FOR A REFUND.**

### **1. License Agreement**

In this Agreement “Licensor” shall mean Daniels Electronics Ltd. (“Daniels”) except under the following circumstances:

- (a) if Licensee acquired the Product as a bundled component of a third party product or service, then such third party shall be Licensor; and
- (b) if any third party software is included as part of the default installation and no license is presented for acceptance the first time that third party software is invoked, then the use of that third party software shall be governed by this Agreement, but the term “Licensor”, with respect to such third party software, shall mean the manufacturer of that software and not Daniels.

With the exception of the situation described in (b) above, the use of any included third party software product shall be governed by the third party’s license agreement and not by this Agreement, whether that license agreement is presented for acceptance the first time that the third party software is invoked, is included in a file in electronic form, or is included in the package in printed form. If more than one license agreement was provided for the Product, and the terms vary, the order of precedence of those license agreements is as follows: a signed agreement, a license agreement available for review on the Daniels Web site, a printed or electronic agreement that states clearly that it supersedes other agreements, a printed agreement provided with the Product, or an electronic agreement provided with the Product.

### **2. Licensee Grant**

Licensor grants Licensee a non-exclusive and non-transferable license to reproduce and use for personal or internal business purposes the executable code version of the Product, provided any copy must contain all of the original proprietary notices. This license does not entitle Licensee to receive from Daniels hard-copy documentation, technical support, telephone assistance or enhancements or updates to the Product. Licensee may not customize the Product unless Licensor has given its express written consent, and then only to the extent permitted in the consent, as applicable. Licensee may not redistribute the Product unless Licensee has separately

entered into a distribution agreement with Daniels.

AMBE+2™ voice coding technology may be embodied in the communications equipment using the Product and is protected by intellectual property rights including patent rights, copyrights and trade secrets of Digital Voice Systems, Inc. This voice coding technology is licensed solely for use within the communications equipment for which the Product is supplied. The Licensee is expressly prohibited from attempting to extract, remove, decompile, reverse engineer or disassemble the object code or in any other way convert the object code into a human-readable form. Applicable patents include U.S. patent numbers 5,870,405; 5,826,222, 5,754,974; 5,701,390; 5,715,365; 5,649,050; 5,630,011; 5,581,656; 5,517,511; 5,491,772; 5,247,579; 5,226,084 and 5,195,166.

### **3. Restrictions**

Except as otherwise expressly permitted in this Agreement, or in another Daniels agreement to which Licensee is a party, Licensee may not:

- (a) modify or create any derivative works of the Product or documentation, including translation or localization;
- (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Product (except to the extent applicable laws specifically prohibit such restriction);
- (c) redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to the Product;
- (d) remove or alter any trade mark, logo, copyright or other proprietary notices, legends, symbols or labels in the Product; or
- (e) publish any results of benchmark tests run on the Product to a third party without Daniels's prior written consent.

### **4. Fees**

The license fee for the Product is set by the Licensor and must be paid prior to the Licensee downloading the Product.

### **5. Termination**

Without prejudice to any other rights, Licensor may terminate this Agreement if Licensee breaches any of its terms and conditions. On termination, Licensee shall destroy all copies of the Product.

### **6. Proprietary Rights**

Title, ownership rights and intellectual property rights in the Product shall remain in Daniels and/or its suppliers. Licensee acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with Daniels's or its suppliers' ownership of or rights with respect to the Product. The Product is protected by copyright and other intellectual property laws and by international treaties. Title and related rights in the content accessed through the Product is the property of the applicable content owner and is protected by applicable law. The license granted under this Agreement gives Licensee no rights to such content.

### **7. Disclaimer of Warranty**

USE OF THE PRODUCT IS AT YOUR OWN RISK. LICENSOR PROVIDES THE

PRODUCT ON AN “AS IS” BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, INCLUDING WITHOUT LIMITATION THE WARRANTIES THAT IT IS FREE OF DEFECTS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PRODUCT IS BORNE BY LICENSEE. SHOULD THE PRODUCT PROVE DEFECTIVE IN ANY RESPECT, LICENSEE AND NOT LICENSOR OR ITS SUPPLIERS OR RESELLERS ASSUMES THE ENTIRE COST OF ANY SERVICE AND REPAIR. IN ADDITION, THE SECURITY MECHANISMS IMPLEMENTED BY THE PRODUCT HAVE INHERENT LIMITATIONS, AND LICENSEE MUST DETERMINE THAT THE PRODUCT SUFFICIENTLY MEETS ITS REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO USE OF THE PRODUCT IS AUTHORIZED UNDER THIS AGREEMENT EXCEPT UNDER THIS DISCLAIMER.

### **8. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS SUPPLIERS OR RESELLERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED. IN ANY CASE, LICENSOR’S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE FEES LICENSEE PAID FOR THIS LICENSE (IF ANY) AND FEES FOR SUPPORT OF THE PRODUCT RECEIVED BY SUPPLIER UNDER A SEPARATE SUPPORT AGREEMENT (IF ANY), WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF LICENSOR TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT BE APPLICABLE. SUPPLIER IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING OUT OF CONTENT PROVIDED BY LICENSEE OR A THIRD PARTY THAT IS ACCESSED THROUGH THE PRODUCT AND/OR ANY MATERIAL LINKED THROUGH SUCH CONTENT.

### **9. Export Control Provisions**

Licensee agrees to comply with all export laws and restrictions and regulations of Canada, United States or foreign agencies or authorities, and not to export or re-export the Product or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals. As applicable, each party shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to its own export of the Product. By downloading or using the Product, Licensee agrees to the foregoing and represents and warrants that it complies with these conditions. If the Product is identified as being not-for-export (for example, on the box, media or in the installation process), then, unless Licensee has an exemption from the United States government, the following applies: EXCEPT FOR EXPORT

TO CANADA FOR USE IN CANADA BY CANADIAN CITIZENS, THE PRODUCT AND ANY UNDERLYING ENCRYPTION TECHNOLOGY MAY NOT BE EXPORTED OUTSIDE THE UNITED STATES OR TO ANY FOREIGN ENTITY OR "FOREIGN PERSON" AS DEFINED BY U.S. GOVERNMENT REGULATIONS, INCLUDING WITHOUT LIMITATION, ANYONE WHO IS NOT A CITIZEN, NATIONAL OR LAWFUL PERMANENT RESIDENT OF THE UNITED STATES. BY DOWNLOADING OR USING THE PRODUCT, LICENSEE AGREES TO THE FOREGOING AND WARRANTS THAT IT IS NOT A "FOREIGN PERSON" OR UNDER THE CONTROL OF A "FOREIGN PERSON".

## **10. U.S. Government End-Users**

The Product qualifies as a "commercial item" as that term is defined at Federal Acquisition Regulation ("FAR") (48C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, the Licensee may provide to a U.S Government end user or, if this Agreement is direct, a U.S. Government end user will acquire the Product with only those rights set forth in this Agreement. Use of the Product constitutes agreement by the U.S. Government that the Product is "commercial computer software" and "commercial computer software documentation" and constitutes acceptance of the rights and restrictions set out in this Agreement.

## **11. High Risk Activities**

The Product is not fault-tolerant and is not designed, manufactured or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance in which the failure of the Product could lead directly to death, personal injury or severe physical or environmental damage ("High Risk Activities"). Accordingly, Licensor and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. Licensee agrees that Licensor and its suppliers will not be liable for any claims or damages arising from the use of the Product in such applications.

## **12. Miscellaneous**

(1) This Agreement constitutes the entire agreement between the parties concerning the subject-matter hereof.

(2) This Agreement may be amended only by a writing signed by both parties.

(3) Except to the extent applicable law, if any, provides otherwise, this Agreement shall be governed by the laws of British Columbia and Canada, excluding its conflict of law provisions.

(4) Unless otherwise agreed in writing, all disputes relating to this Agreement (excepting any dispute relating to intellectual property rights) shall be subject to final and binding arbitration in British Columbia, Canada, under the auspices of the British Columbia International Commercial Arbitration Centre, using its International Commercial Arbitration Rules of Procedure, with the losing party paying all costs of arbitration.

(5) This Agreement shall not be governed by the *United Nations Convention on Contracts for the International Sale of Goods*.

(6) If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is

possible, and other provisions of this Agreement shall remain in full force and effect.

(7) The controlling language of this Agreement is English. If Licensee has received a translation into another language, it has been provided for Licensee's convenience only.

(8) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.

(9) The provisions of this Agreement which require or contemplate performance after the expiration or termination of this Agreement shall be enforceable notwithstanding said expiration or termination.

(10) Licensee may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein except in the case of a merger or the sale of all or substantially all of Licensee's assets to another entity.

(11) This Agreement shall be binding on and shall enure to the benefit of the parties, their successors and permitted assigns.

(12) Neither party shall be in default or be liable for any delay, failure in performance (excepting the obligation to pay) or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

(13) The relationship between Licensor and Licensee is that of independent contractors and neither Licensee nor its agents shall have any authority to bind Licensor in any way.

(14) If any dispute arises under this Agreement, the prevailing party shall be reimbursed by the other party for any and all legal fees and costs associated therewith.

(15) If any Daniels professional services are being provided, then such professional services are provided pursuant to the terms of a separate Professional Services Agreement between Daniels and Licensee. The parties acknowledge that such services are acquired independently of the Product licensed hereunder, and that provision of such services is not essential to the functionality of such Product.

(16) The headings to the sections of this Agreement are used for convenience only and shall have no substantive meaning.

### **13. Licensee Outside the U.S.**

(1) If Licensee is located outside the U.S., then the provisions of this Section shall apply.

(2) The parties confirm that this Agreement and all related documentation is and will be in the English language. Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue anglaise.

(3) Licensee is responsible for complying with any local laws in its jurisdiction which might impact its right to import, export or use the Product, and Licensee represents that it has complied with any regulations or registration procedures required by applicable law to make this license enforceable.

© 2008 Daniels Electronics Ltd. All Rights Reserved.