



Kakadu Software Licence

Terms and Conditions

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Part A Introduction

Parties

- 1 **Kakadu Software Pty Limited** ABN 28 622 830 335 of PO Box 1004, Glebe, NSW, 2037, Australia (**Kakadu Company**)
- 2 **The licensee of the Software, as specified in the Order Form (you, your)**

2 This Agreement

- (a) This Agreement consists of:
 - (i) the Order Form;
 - (ii) Part A (Introduction) of this document, setting out the structure and operation of this Agreement;
 - (iii) Part B (Specific Terms of Licence Types) of this document, setting out the specific provisions that apply to each Licence Type; and
 - (iv) Part C (General Terms of All Licence Types) of this document, setting out the general provisions that apply to all Licence Types.
- (b) If there is an inconsistency between the parts of this Agreement, the document or part of the document listed earlier in clause 2(a) will prevail to the extent of the inconsistency.

3 Licence Types

- (a) The Software may be licensed to you on any of the following licence types as further described in this Agreement (each, a **Licence Type**):
 - (i) SDK Evaluation Licence;
 - (ii) SDK Single Named User Licence;
 - (iii) SDK Public Service Licence;
 - (iv) SDK Commercial Licence;
 - (v) Speedpack Evaluation Licence; or
 - (vi) Speedpack Commercial Licence.
- (b) Your Order Form will specify the Licence Type applicable to you.

Part B Specific Terms of Licence Types

4 SDK Evaluation Licence

4.1 Applicability

The SDK Evaluation Licence is intended for an individual or organisation wishing to evaluate the Software with a view of procuring a longer term Licence Type.

4.2 Grant of Licence

- (a) Kakadu Company grants you during the Licence Term a non-exclusive, non-transferable, worldwide and revocable licence to install and use the Software and to use the Software to develop Applications, for evaluation purposes only, provided that:
- (i) any use of the Software is confined to your internal use and non-commercial purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications); and
 - (ii) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
 - (iii) any Applications developed by you or otherwise enabled by your use of the Software may not be used to conduct business or distributed to any third party. Any such distribution may require the purchase of an alternative licence as separately agreed between the parties; and
 - (iv) you comply with any special conditions as specified in the Order Form .
- (b) Unless the parties agree otherwise, you will not be entitled to any updates or upgrades to the Software.

4.3 Licence Term

The Licence Term will commence on the Commencement Date, and the SDK Evaluation Licence will terminate on the earlier of:

- (a) 6 months from the Commencement Date; or
- (b) the date this Agreement is terminated under clause 11.

4.4 Consequences of termination or expiry

Unless you have entered into a longer term Licence Type during the Licence Term, upon termination or expiry of the Agreement or the Licence Term, you must cease all use of the Software and Applications for any purpose and you must destroy any copies and components of the Software, Applications and derivative works of the Software.

4.5 Fees

Unless otherwise specified in the Order Form, the Licence Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.

5 SDK Single Named User Licence

5.1 Applicability

The SDK Single Named User Licence is intended for use by an individual in his or her personal capacity, for the sole purpose of the named individual's own academic or research purposes.

5.2 Grant of Licence

- (a) Kakadu Company grants you during the Licence Term a non-exclusive, non-transferable, worldwide, perpetual and revocable licence to install and use the Software and to use the Software to develop Applications provided that:
 - (i) any perpetual licence does not limit Kakadu Company's termination rights under clause 11(b); and
 - (ii) only the named individual specified in the Order Form is entitled to use the Software; and
 - (iii) any use of the Software is confined to your own personal, academic or research purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications); and
 - (iv) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
 - (v) any Applications developed by you or otherwise enabled by your use of the Software may only be distributed to a third party if required for your own academic or research purposes and provided any such distribution does not result in any direct or indirect financial return to you or any third party; and
 - (vi) you comply with any special conditions as specified in the Order Form.
- (b) From time to time during the Licence Term, Kakadu Company may, in its sole discretion, provide any updates or upgrades to the Software to you at no additional charge. Any additional terms (such as price) that will apply to the updates or upgrades will be separately agreed between the parties.

5.3 Licence Term

The Licence Term will commence on the Commencement Date and, subject to clause 5.2(a)(i) and any termination provisions in this Agreement, the term of the SDK Single Named User Licence is perpetual.

5.4 Consequences of termination

- (a) Subject to clause 5.4(b), upon termination of this Agreement or the Licence Term, you must cease all use of the Software and Applications for any purpose and you must destroy any copies and components of the Software, Applications and derivative works of the Software.
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 5.2(a)(v) prior to the date the Agreement or Licence Term is terminated.

5.5 Fees

Unless otherwise specified in the Order Form, the Licence Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.

6 SDK Public Service Licence

6.1 Applicability

The SDK Public Service Licence is intended for not for profit organisations and organisations that wish to use the Software for not for profit projects that are solely for the public good, as determined by Kakadu Company in its sole discretion.

6.2 Grant of Licence

- (a) Kakadu Company grants you during the Licence Term a non-exclusive, non-transferable, worldwide and revocable licence to install and use the Software and to use the Software to develop Applications, only for your not for profit activities that are solely for the public good, provided that:
 - (i) any use of the Software is confined to non-commercial purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications); and
 - (i) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
 - (ii) you comply with any special conditions as specified in the Order Form.
- (b) you may only distribute Applications to a third party if:
 - (i) any charges, fees, rental and/or other payment sort by you for the provision of an Application to the third party is done so on a cost-recovery basis only; and
 - (ii) any such distribution does not result in any direct or indirect financial return to you or any other third party.
- (c) Kakadu Company authorises you to sublicense to your subcontractors the rights referred to in clause 6.2(a) solely for your benefit, provided that:
 - (i) the subcontractor's use of the Software is limited to your direct beneficial purposes only; and
 - (ii) you remain responsible for ensuring that any such subcontractor complies with the terms of this Agreement as they relate to the use of the Software (on the same basis as applied to you, subject to the limitations described in this clause 6.2(c)); and
 - (iii) the subcontractor's use of the Software does not expand your rights under this Agreement; and
 - (iv) you remain liable for all acts and omissions of your subcontractors.

- (d) During the Licence Term, Kakadu Company will provide you with updates and upgrades to the Software as they generally become available from time to time.

6.3 Licence Term

- (a) The Licence Term will commence on the Commencement Date and will continue for 3 years, unless the licence or Agreement is terminated earlier in accordance with this Agreement (the **Initial Term**).
- (b) The Initial Term may be extended for further periods of 12 months each (**Extended Term**) if:
 - (i) you provide Kakadu Company with at least 30 days written notice before the end of the then current Licence Term; and
 - (ii) you provide Kakadu Company any information in relation to your organisation and your use of the Software, as reasonably requested by Kakadu Company; and
 - (iii) the parties agree a renewal fee payable for the Extended Term, and you pay that renewal fee within 30 days of the end of the then current Licence Term.
- (c) If any of the events described in clause 6.3(b) do not occur (for example, if the parties fail to agree on a renewal fee) then the Initial Term will not be extended unless otherwise agreed by Kakadu Company and your SDK Public Service Licence will expire at the end of the Initial Term.

6.4 Consequences of termination or expiry

- (a) Subject to clause 6.4(b), upon termination or expiry of this Agreement or the Licence Term, you (and any subcontractor of yours) must cease use of the Software and Applications for any purpose and destroy any copies of the Software.
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 6.2 prior to the date the Agreement or Licence Term is terminated or expires.

6.5 Fees

- (a) Unless otherwise specified in the Order Form, the Licence Fee for each year of the Initial Term is the single payment as specified in the Order Form, due on or before the Commencement Date and then each year on the anniversary of the Commencement Date .
- (b) Any renewal fee will be agreed between the parties having regard to the information you provide to Kakadu Company under clause 6.3(b)(ii).

7 SDK Commercial Licence

7.1 Applicability

The SDK Commercial Licence is intended for commercial organisations, individuals and entities using the Software for commercial purposes.

7.2 Grant of Licence

- (a) Kakadu Company grants you during the Licence Term a non-exclusive, non-transferable, worldwide and revocable licence to install and use the Software and to use the Software to develop Applications for your internal business and commercial purposes, provided that:
 - (i) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
 - (ii) you comply with any special conditions as specified in the Order Form.
- (b) Kakadu Company authorises you to sublicense to your subcontractors the rights referred to in paragraph (a) solely for your benefit, provided that:
 - (i) the subcontractor's use of the Software is limited to your direct beneficial purposes only; and
 - (ii) you remain responsible for ensuring that any such subcontractor complies with the terms of this Agreement as they relate to the use of the Software (on the same basis as applied to you, subject to the limitations described in this clause 7.2(b)); and
 - (iii) the subcontractor's use of the Software does not increase your rights under this Agreement; and
 - (iv) you remain liable for all acts and omissions of your subcontractors.
- (c) During the Licence Term, Kakadu Company will provide you with updates and upgrades to the Software as they generally become available from time to time.

7.3 Licence Term

- (a) The Licence Term will commence on the Commencement Date and will continue for 3 years, unless the licence or Agreement is terminated earlier in accordance with this Agreement (the **Initial Term**).
- (b) The Initial Term may be extended for further periods of 12 months each (**Extended Term**) if:
 - (i) you provide Kakadu Company with at least 30 days written notice before the end of the then current Licence Term; and
 - (ii) you provide Kakadu Company any information in relation to your organisation and your use of the Software, as reasonably requested by Kakadu Company; and
 - (iii) the parties agree to a renewal fee that will apply to the Extended Term, and you pay that renewal fee within 30 days of the end of the then current Licence Term.
- (c) If any of the events described in clause 7.3(b) do not occur (for example, if the parties fail to agree on a renewal fee) then the Initial Term will not be extended unless otherwise agreed by Kakadu Company and your SDK Commercial Licence will expire at the end of the Initial Term.

7.4 Consequences of termination or expiry

- (a) Subject to clause 7.4(b), upon termination or expiry of this Agreement or the Licence Term, you (and any subcontractor of yours) must cease use of the Software and Applications for any purpose and must destroy any copies and components of the Software.
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 7.2 prior to the date the Agreement or Licence Term is terminated or expires.

7.5 Fees

- (a) Unless otherwise specified in the Order Form, the Licence Fee for each year of the Initial Term is the single payment as specified in the Order Form, due on or before the Commencement Date and then each year on the anniversary of the Commencement Date.
- (b) Any renewal fee will be agreed between the parties, having regard to the information you provide to Kakadu Company under clause 7.3(b)(iii).

8 Speedpack Evaluation Licence

8.1 Applicability

- (a) The Speedpack Evaluation Licence is only intended for an individual or organisation who currently holds either an SDK Public Service Licence or an SDK Commercial Licence with Kakadu Company.
- (b) The Speedpack Evaluation Licence is intended for an individual or organisation wishing to evaluate the Software with a view of procuring a Speedpack Commercial Licence.

8.2 Grant of Licence

- (a) Kakadu Company grants you during the Licence Term a non-exclusive, non-transferable, worldwide and revocable licence to install and use the Software and to use the Software to develop Applications, for evaluation purposes only, provided that:
 - (i) you currently hold either an SDK Public Service Licence or an SDK Commercial Licence with Kakadu Company ; and
 - (ii) any use of the Software is confined to your internal use and non-commercial purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications); and
 - (iii) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
 - (iv) any Applications developed by you or otherwise enabled by your use of the Software may not be used to conduct business or distributed to any third party. Any such distribution may require the purchase of an alternative licence as separately agreed between the parties; and

- (v) you comply with any special conditions as specified in the Order Form.
- (b) Unless the parties agree otherwise, you will not be entitled to any updates or upgrades to the Software.

8.3 Licence Term

The Licence Term will commence on the Commencement Date, and the Speedpack Evaluation Licence will terminate on the earlier of:

- (a) 6 months from the Commencement Date; and
- (b) the date this Agreement is terminated under clause 11.

8.4 Consequences of termination or expiry

Unless you have entered into Speedpack Commercial Licence during the Licence Term, upon termination or expiry of the Agreement or the Licence Term, you must cease all use of the Software and Applications for any purpose and destroy any copies and components of the Software, Applications and derivative works of the Software.

8.5 Fees

Unless otherwise specified in the Order Form, the Licence Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.

9 Speedpack Commercial Licence

9.1 Applicability

- (a) The Speedpack Commercial Licence is only intended for commercial organisations, individuals and entities who currently hold either an SDK Public Service Licence or an SDK Commercial Licence with Kakadu Company.
- (b) The Speedpack Commercial Licence is intended for commercial organisations, individuals and entities using the Software for commercial purposes.

9.2 Grant of Licence

- (a) Kakadu Company grants you during the Licence Term a non-exclusive, non-transferable, worldwide and revocable licence to install and use the Software and to use the Software to develop Applications for your internal business and commercial purposes, provided that:
 - (i) you currently hold either an SDK Public Service Licence or an SDK Commercial Licence with Kakadu Company ; and
 - (ii) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
 - (iii) you comply with any special conditions as specified in the Order Form.
- (b) Kakadu Company authorises you to sublicense to your subcontractors the rights referred to in paragraph (a) solely for your benefit, provided that:

- (i) the subcontractor's use of the Software is limited to your direct beneficial purposes only; and
 - (ii) you remain responsible for ensuring that any such subcontractor complies with the terms of this Agreement as they relate to the use of the Software (on the same basis as applied to you, subject to the limitations described in this clause 9.2(b); and
 - (iii) the subcontractor's use of the Software does not increase your rights under this Agreement; and
 - (iv) you remain liable for all acts and omissions of your subcontractors.
- (c) During the Licence Term, Kakadu Company will provide you with updates and upgrades to the Software as they generally become available from time to time.

9.3 Licence Term

- (a) The Licence Term will commence on the Commencement Date and will continue for one year, unless the licence or Agreement is terminated earlier in accordance with this Agreement (the **Initial Term**).
- (b) The Initial Term may be extended for further periods of 12 months each (**Extended Term**) if:
 - (i) you provide Kakadu Company with at least 30 days' written notice before the end of the then current Licence Term; and
 - (ii) you provide Kakadu Company any information in relation to your organisation and your use of the Software, as reasonably requested by Kakadu Company; and
 - (iii) the parties agree to a renewal fee that will apply to the Extended Term, and you pay that renewal fee within 30 days' of the end of the then current Licence Term.
- (c) If any of the events described in clause 9.3(b) do not occur (for example, if the parties fail to agree on a renewal fee) then the Initial Term will not be extended unless otherwise agreed by Kakadu Company and your Commercial Licence will expire at the end of the Initial Term.

9.4 Consequences of termination or expiry

- (a) Subject to clause 9.4(b), upon termination or expiry of this Agreement or the Licence Term, you (and any subcontractor of yours) must cease use of the Software and Applications for any purpose and must destroy any copies and components of the Software.
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 9.2 prior to the date the Agreement or Licence Term is terminated or expires.

9.5 Fees

- (a) Unless otherwise specified in the Order Form, the Licence Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.

- (b) Any renewal fee will be agreed between the parties, having regard to the information you provide to Kakadu Company under clause 9.3(b)(ii).

Part C General Terms of All Licence Types

10 Acknowledgement

- (a) By installing or using the Software, you will be deemed to have:
 - (i) read and fully understood the terms of this Agreement;
 - (ii) agreed to be bound by the terms of this Agreement; and
 - (iii) understood that this Agreement is a legal agreement between you and Kakadu Company and can be enforced accordingly.
 - (b) You acknowledge that, notwithstanding Kakadu Company providing you any updates or upgrades to the Software pursuant to clauses 5.2(b), 6.2(d), 7.2(c) or 9.2(c), Kakadu Company is under no obligation to provide you with any support or maintenance services, advice or training in relation to the Software under this Agreement.
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11 Term and termination

- (a) This Agreement will continue until the end of the applicable Licence Term or the date this Agreement is terminated in accordance with the terms of this Agreement (whichever occurs first).
 - (b) Without limiting any other termination right set out in this Agreement (including under Part B), Kakadu Company may terminate this Agreement effective immediately by giving written notice to you, if:
 - (i) you breach a material provision of this Agreement and such breach is not remedied within 30 days from when you receive a notice of such breach;
 - (ii) you breach a provision of this Agreement where that breach is not capable of remedy (at Kakadu Company's sole discretion); or
 - (iii) you fail to pay any amount due under this Agreement within 30 days of receiving notice from Kakadu Company that such payment has not been paid.
 - (c) For clarity, a breach of a material provision of this Agreement includes (without limitation) a breach of any clause under Part A, clause 12 or clause 13 .
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12 Use of the Software

12.1 Restrictions

Except to the extent expressly permitted under Part A of this Agreement (as Part A applies to you) or in your Order Form:

- (a) you must not reverse engineer, decompile or disassemble the Software or any part of the Software, other than as expressly permitted under this Agreement;
- (b) you must not sub-license, transfer or assign any Licence Types or rights granted to you under this Agreement to any other person or entity;

- (c) you must not permit a third party to use the Software or disclose or provide the Software to a third party directly or indirectly;
- (d) you must not copy, modify, enhance or adapt the Software; and
- (e) you must not use or permit the use of the Software to provide any form of bureau service or similar activities.

12.2 Protecting the Software

You must:

- (a) protect the Software from misuse, damage, destruction or any unauthorised use;
- (b) supervise and control the use of the Software in accordance with the terms of this Agreement;
- (c) hold the Software in strict confidence at all times;
- (d) ensure that all Applications and Software retain all copyright and propriety notices from the Software; and
- (e) if requested by Kakadu Company, issue a notice in a form approved by Kakadu Company to all authorised users of the Software advising them of your obligations under this Agreement and requiring those authorised users to take any steps necessary to enable you to comply with those obligations.

12.3 Export Control

Notwithstanding any grant of a worldwide licence to you under this Agreement, you must:

- (a) comply with any applicable export control laws that are in force from time to time, and any local export control laws in the jurisdiction in which your Software is used (including in any Applications); and
- (b) ensure that the Software is not used in a way that directly or indirectly results in you or Kakadu Company being in breach of any export control laws that are in force from time to time; and
- (c) are not, nor associated with an OFAC (Office of Foreign Assets Control) sanctioned country as specified by the US Department of the Treasury.

12.4 Third Party Licensees

You may distribute a copy of the Software to a third party that:

- (a) already holds a licence for an equivalent or lower version of the Software licenced under this Agreement; and
- (b) provides you with documentary evidence of clause 12.4(a).

13 Request for information

- (a) From time to time during the Licence Term at Kakadu Company's reasonable request, you must provide to Kakadu Company information relating to your use of

the Software and your organisation (if applicable). Such information may include (if applicable):

- (i) information relating to your organisation (such as the number of employees, turnover, changes in nature of organisation's activities etc);
 - (ii) information regarding your intended and existing use of the Software, including as to Applications developed or otherwise derived from the Software (including number of users of the Software and Applications); and
 - (iii) information to verify that the Software is being used in accordance with this Agreement and the Licence Type granted to you is appropriate.
- (b) You must ensure that the information provided to Kakadu Company as contemplated by clause 13(a) above, is at times, accurate and not misleading.

14 Payment terms

14.1 Fees

- (a) Subject to clause 14.1(c), you must pay to Kakadu Company the Licence Fee.
- (b) A payment which is required to be made under this Agreement must be in cash or by bank cheque or in other immediately available funds and in United States Dollars, unless otherwise specified in the Order Form.
- (c) Kakadu Company will not provide any invoices to you for the amounts you pay under this Agreement unless you specifically request Kakadu Company to do so.
- (d) The Licence Fee and method and timing of payment of such fees will be specified in the Order Form.

14.2 Taxes

- (a) Subject to clauses 14.2(b) and 14.2(c), you must pay all Taxes in connection with the grant of licence under this Agreement
- (b) Where GST is imposed on a taxable supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.
- (c) If one party is required to indemnify or reimburse another party (**Payee**) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 14.2(b) if the amount payable is consideration for a taxable supply.

15 Warranties

15.1 No warranty

To the extent permitted by law, Kakadu Company does not warrant (and excludes any warranty or other term) that:

- (a) the Software is free from defects or errors or that all Software defects will be corrected;
- (b) performance of the Software will be uninterrupted;
- (c) the Software will meet your requirements or be fit for any particular purpose;
- (d) the functions contained in the Software will operate in combinations you select; or
- (e) the results obtained from the Software will be in accordance your expectations.

15.2 Mutual representations and warranties

Each party warrants and represents to the other that as at the Commencement Date:

- (a) it has full power and capacity to enter into and perform its obligations under this Agreement;
- (b) all necessary action has been take to authorise its execution, delivery and performance of this Agreement in accordance with its terms;
- (c) this Agreement constitutes its legal, valid and binding obligations and this Agreement is enforceable in accordance with its terms; and
- (d) the execution, delivery and performance of this Agreement by the party does not and will not violate, breach, or result in the contravention of:
 - (i) any law, resolution or authorisation; or
 - (ii) if applicable, its constitution.

15.3 No reliance

You warrant that you have not relied on any representation made by Kakadu Company, its employees, agents or contractors which is not expressly stated in this Agreement.

16 Limitation of liability

- (a) All express or implied guarantees, warranties, representations, or other terms and conditions relating to this Agreement or its subject matter, not contained in this Agreement, are excluded from this Agreement to the maximum extent permitted by law.
- (b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- (c) If any guarantee, warranty, term or condition is implied or imposed in relation to this Agreement under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a **Non-Excludable Provision**), and Kakadu Company is able to limit your remedy for a breach of the Non-Excludable Provision, then the liability of Kakadu Company for breach of the Non-Excludable Provision is limited to one or more of the following at Kakadu Company's option in the case of the Software:

- (i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
 - (ii) in the case of services, the resupply of services, or the payment of the cost of having the services resupplied.
- (d) Subject to Kakadu Company's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, the maximum aggregate liability of Kakadu Company for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the Licence Fees paid by you under this Agreement. In calculating Kakadu Company's aggregate liability under this clause, the parties must include any amounts paid or the value of the Software replaced, repaired or supplied by Kakadu Company for a breach of any Non-Excludable Provision.
- (e) Subject to Kakadu Company's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Kakadu Company is not liable for, and no measure of damages will, under any circumstances, include:
 - (i) special, indirect, consequential, incidental or punitive damages; or
 - (ii) damages for loss of profits, revenue, goodwill, anticipated savings or loss or corruption of data,whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

17 Miscellaneous Terms

17.1 Ownership of Intellectual Property Rights

Kakadu Company retains ownership of all Intellectual Property Rights in the Software, and no rights are granted to you in the Software other than as set out in this Agreement.

17.2 Publicity

You must not use the name, trade names or trademarks of Kakadu Company, Kakadu, or any affiliates of Kakadu Company in any advertising, promotional literature or any other material, whether in written, electronic, or other form, distributed to any third party, except in the format prescribed and approved by Kakadu Company, and then solely for purposes of identifying the Software.

17.3 Entire Agreement

- (a) This Agreement comprises the entire agreement between the parties in relation to its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- (b) No variation of this Agreement is effective unless made in writing and signed by each party.

17.4 Assignment, novation and other dealings

You may not assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of Kakadu Company.

17.5 Governing law

This Agreement is governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.

17.6 Third party rights

Each party who executes this Agreement does so solely in its own legal capacity and not as agent or trustee for or a partner of any other person, and only those persons who execute this Agreement have a right or benefit under it.

17.7 Relationship of the parties

Except as expressly provided in this Agreement, nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust, and neither party has authority to bind the other party.

17.8 Waiver

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

17.9 Interpretation and Dictionary

In this Agreement, unless otherwise stated:

Agreement means the provisions and documents as set out in clause 2.

Application means compiled code generated using the Software or part thereof.

Commencement Date means the date the Software has been Delivered to you.

Compiled Code means any compiled code distributed by Kakadu Company with the Software.

Deliver means to make available the Software to you by electronic means (such as via download, electronic mail or otherwise over the internet) or by way of a tangible media version (such as a CD or DVD) (at our discretion).

GST means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth of Australia).

Intellectual Property Rights means all industrial and intellectual property rights of whatever nature anywhere in the world conferred under statute, common law or equity and includes rights in respect of or in connection with copyright, inventions (including patents), trade marks, service marks, business names, trade names, domain names, design rights, confidential information, trade secrets and know-how and similar industrial, commercial and intellectual property rights, whether or not registered or registrable, and includes the right to apply for or renew the registration of such rights.

Licence Fee means:

- (a) for the SDK Evaluation Licence, the licence fee described in clause 4.5, in your Order Form and as otherwise agreed by the parties in writing;
- (b) for the SDK Single Named User Licence, the licence fee described in clause 5.5, in your Order Form and as otherwise agreed by the parties in writing;
- (c) for the SDK Public Service Licence, the licence fee and any renewal fee described in clause 6.5, your Order Form and as otherwise agreed by the parties in writing;
- (d) for the SDK Commercial Licence, the licence fee and any renewal fee described in clause 7.5, your Order Form and as otherwise agreed by the parties in writing;
- (e) for the Speedpack Evaluation Licence, the licence fee described in clause 8.5, in your Order Form and as otherwise agreed by the parties in writing; or
- (f) for the Speedpack Commercial Licence, the licence fee and any renewal fee described in clause 9.5, your Order Form and as otherwise agreed by the parties in writing.

Licence Term means:

- (a) for the SDK Evaluation Licence, the licence term specified in clause 4.3;
- (b) for the SDK Single Named User Licence, the licence term specified in clause 5.3;
- (c) for the SDK Public Service Licence, the Initial Term and any Extended Term(s) specified in clause 6.3; or
- (d) for the SDK Commercial Licence, the Initial Term and any Extended Term(s) specified in clause 7.3;
- (e) for the Speedpack Evaluation Licence, the licence term specified in clause 8.3;
- (f) for the Speedpack Commercial Licence, the Initial Term and any Extended Term(s) specified in clause 9.3.

Licence Type has the meaning given to it in clause 3.

Order Form means the (electronic or hard copy) Kakadu Company order form issued to you and used to order the Software. The Order Form will set out, amongst other things, the Licence Type and Licence Fee applicable to you.

Software means:

- (a) **For the SDK Evaluation Licence, the SDK Single Named User Licence, the SDK Public Service Licence, and the SDK Commercial Licence:**

Kakadu software source code as specified in the Order Form (including any intermediate compiled form of the source code, such as dynamically or statically linked libraries, which allow the functionality of the source code to be reproduced in Applications). If Kakadu Company provides you with any updates or upgrades to the Kakadu source code under clauses 5.2(b), 6.2(d) or 7.2(c), then 'Software' includes such updates and upgrades.

(b) **For the Speedpack Evaluation Licence and the Speedpack Commercial Licence:**

Kakadu software source code as specified in the Order Form (including any intermediate compiled form of the source code, such as dynamically or statically linked libraries, which allow the functionality of the source code to be reproduced in Applications). If Kakadu Company provides you with any updates or upgrades to the Kakadu source code under clause 9.2(c), then 'Software' includes such updates and upgrades.

Taxes means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.