



# Stretch Software License Terms & Conditions

**IMPORTANT: DO NOT INSTALL OR USE STRETCH PRODUCTS UNTIL YOU (THE "CUSTOMER") HAVE READ AND AGREED TO THE TERMS OF THIS AGREEMENT.**

BY DOWNLOADING, INSTALLING OR OTHERWISE USING STRETCH PRODUCTS, CUSTOMER ACKNOWLEDGES AND AGREES THAT USE OF ALL STRETCH PRODUCTS IS SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. ANY SUCH USE WILL CONSTITUTE CUSTOMER'S ACCEPTANCE AND RESULT IN A BINDING AND LEGALLY ENFORCEABLE AGREEMENT BETWEEN THE CUSTOMER AND STRETCH DANMARK ApS ("STRETCH"). IF YOU ACCEPT THESE TERMS ON BEHALF OF ANY CORPORATION, PARTNERSHIP OR OTHER ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT AND SUCH ENTITY IS DEEMED THE CUSTOMER HEREUNDER.

## 1. DEFINITIONS

When used in this Agreement, the following terms shall have the respective meanings indicated, such meanings to be applicable to both the singular and plural forms of the terms defined:

"**Acceptance**" of Software means downloading, installing, or otherwise using Stretch Products.

"**Agreement**" includes this agreement and associated Order Form.

"**Delivery Date**" is the date on which Licensor ships the Software to Licensee.

"**Documentation**" means the user, system, and installation documentation for the Software.

"**Error**" means a material failure of the Software to function in conformity with the Specifications.

"**License**" means the license granted by Licensor to Licensee to use the Software and Documentation in accordance with the terms and conditions of this Agreement.

"**Licensed Copies**" means the number of copies of the Software and Documentation being licensed to the Licensee.

"**Price**" means the License Fees Licensee shall pay as specified in Order Form.

"**Rider**" refers to any riders attached to this Agreement, or any subsequently prepared document which the parties agree in writing to be considered a Rider.

"**Software**" means the computer programs specified in Order Form in machine-readable, object code form, and any computer programs delivered to Licensee in machine-readable, object code form as Maintenance Releases and Product Releases.

"**Specifications**" means Licensor's current published Product Release Definitions.

"**Target Date**" means the date set forth by which parties anticipate delivery of the Software.

"**Warranty Period**" means 90 days from the date of Acceptance.

## **2. SOFTWARE LICENSE**

### **2.1 License**

Licensor grants Licensee a non-exclusive, non-transferable license to (1) use the Software and Documentation solely for its internal operations, and (2) permitted solely for the terms in and in the quantities specified in the ordering document.

### **2.2 Distribution**

Except as explicitly provided herein, Licensee shall not: (1) make available nor distribute all or part of the Software or Documentation to any third party by assignment, sublicense, or by any other means; (2) copy, adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the Software or Documentation; or (3) use the Software to operate in or as a time-sharing, outsourcing, or service bureau environment, or in any way allow third party access to the Software.

## **3. INSTALLATION AND ACCEPTANCE**

Licensor shall use reasonable efforts to deliver the Licensed Copies of the Software and Documentation to the Licensee on or about the Target Date. Licensee's Acceptance of the Software shall occur at the earlier of Licensee's operational use of the Software, or the expiration of 30 days from the Delivery Date without the provision of notice by Licensee to Licensor of any Error(s). If Licensee provides notice to Licensor of any Error(s) and Licensor verifies the alleged Error(s), the Software shall be accepted upon Licensor's correction of such Error(s).

## **4. PROPRIETARY RIGHTS**

Licensee acknowledges and agrees that the copyright, patent, trade secret, and all other intellectual property rights of whatever nature in the Software, Documentation and Specifications are and shall remain the property of Licensor, and nothing in this Agreement should be construed as transferring any aspects of such rights to Licensee or any third party.

## **5. CONFIDENTIALITY**

### **5.1 Confidential Information**

"Confidential Information", shall mean the Software, Documentation, Specifications, and terms and conditions of this Agreement. Licensee acknowledges the confidential and proprietary nature of the Confidential Information and agrees that it shall not reveal or disclose any Confidential Information for any purpose to any other person, firm, corporation, or other entity, other than Licensee's employees with a need to know such Confidential Information to perform employment responsibilities consistent with Licensee's rights under this Agreement. Licensee shall safeguard and protect the Confidential Information from theft, piracy, or unauthorized access in a manner at least consistent with the protections Licensee uses to protect its own most confidential information. Licensee shall inform its employees of their obligations under this Agreement, and shall take such steps as may be reasonable in the circumstances, or as may be reasonably requested by Licensor, to prevent any unauthorized disclosure, copying or use of the Confidential Information. Licensee acknowledges and agrees that in the event of the Licensee's breach of this Agreement, Licensor will suffer irreparable injuries not compensated by money damages and therefore shall not have an adequate remedy at law. Accordingly, Licensor shall be entitled to a preliminary and final injunction without the necessity of posting any bond or undertaking in connection therewith to prevent any further breach of these confidentiality obligations or further unauthorized use of Confidential Information. This remedy is separate and apart from any other remedy Licensor may have.

## 5.2 Unauthorized Disclosure

Licensee shall notify Licensor immediately upon discovery of any prohibited use or disclosure of the Confidential Information, or any other breach of these confidentiality obligations by Licensee, and shall fully cooperate with Licensor to help Licensor regain possession of the Confidential Information and prevent the further prohibited use or disclosure of the Confidential Information.

## 6. WARRANTY

### 6.1 Operation

Licensor represents to Licensee that: (1) during the Warranty Period, the Software shall operate without any Errors; and (2) upon notification to Licensor during the Warranty Period of any Errors, Licensor will, during its normal business hours and at no cost to Licensee, use reasonable efforts to correct such Errors which are reproducible and verifiable by Licensor, excluding any Errors caused by uses of the Software which were not in accordance with the Specifications.

### 6.2 Correction

In the event that Licensee notifies Licensor of an Error during the Warranty Period, Licensor's sole liability, and Licensee's sole remedy, will be Licensor's use of reasonable efforts to correct such Errors or, in Licensor's sole discretion, to refund the portion of the prepaid Price applicable to the portion of the Software which is defective.

### 6.3 Warranty Disclaimer

THE PARTIES AGREE THAT THE SOFTWARE'S FAILURE TO PERFORM IN ACCORDANCE WITH THE SPECIFICATIONS SHALL NOT BE CONSIDERED A FAILURE OF THE ESSENTIAL PURPOSE OF THE REMEDIES CONTAINED HEREIN. EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE ENTIRE RISK OF THE SOFTWARE'S QUALITY AND PERFORMANCE IS WITH LICENSEE.

## 7. INDEMNITY

### 7.1 Indemnification

Stretch shall defend, indemnify and hold Customer harmless from any damages and costs awarded against Customer as a result of a third party claim that the Software, as delivered by Stretch, infringes upon any third party copyright, trademark or a patent ("IP Claim"). Customer shall defend, indemnify and hold Stretch harmless against any third party claim, demand, suit or proceeding made or brought against. Indemnification is subject to; (1) Licensor is given prompt notice of the claim; (2) Licensor is given immediate and complete control over the defense and/or settlement of the claim, and Licensee fully cooperates with Licensor in such defense and/or settlement; (3) Licensee does not prejudice in any manner Licensor's conduct of such claim; and (4) the alleged infringement is not based upon the use of the Software in a manner prohibited under this Agreement, in a manner for which the Software was not designed, or in a manner not in accordance with the Specifications.

### 7.2 Altered Version

Licensor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered version of the Software if infringement would have been avoided by the use of a current or unaltered version of the Software which Licensor made available to Licensee; or (b) the combination, operation or use of the Software with software, hardware, or other materials not furnished by Licensor.

### **8.3 Liability**

The foregoing states Licensor's entire obligation and liability with respect to the infringement of any property right.

### **8.4 Infringement**

Licensee hereby indemnifies Licensor against any claim for (1) alleged infringement of any registered copyright or patent, arising out of the use of the Software by Licensee in any manner prohibited by this Agreement and (2) any claim related to or arising out of a financial transaction brought by any third party based on the use of the Software.

## **8. LIMITATION OF LIABILITY**

### **8.1 Limitation**

LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF LICENSOR TO LICENSEE FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE LESSER OF THE AMOUNT PAID TO LICENSOR BY LICENSEE UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY APPLICABLE LAWS. THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES SET FORTH IN THIS AGREEMENT.

### **8.2 Force Majeure**

Neither party shall be under any liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation industrial disputes of whatever nature, power loss, telecommunications failure, acts of God, or any other cause beyond its reasonable control.

## **9. TERM AND TERMINATION**

### **9.1 Term**

This Agreement shall become effective as of the date the Parties execute an Order Form and shall remain in effect until terminated (1) as set forth in 9.3, or (2) automatically upon expiration of all rights to use any Stretch Products pursuant to one or more Order Forms.

### **9.2 Renewal**

Unless otherwise indicated on an Order Form, subscriptions shall automatically renew for successive annual terms unless either Party provides prior written notice of non-renewal to the other Party at least ninety (90) days prior to the end of the then-current subscription period. Subscriptions may not be cancelled in whole or in part during any subscription period. Subscription fees are subject to increase based upon prevailing rates at the time of renewal.

### **9.3 Breach**

Licensor may terminate this Agreement and the License, without prejudice to any other remedy Licensor may have, immediately without further obligation to Licensee, in the event of (1) any breach by Licensee of Sections 2, 4, or 5 of this Agreement which cannot be remedied within seventy-two (72) hours of Licensor's notice to Licensee of the breach and

Licensor's intent to terminate the License; (2) any material breach of Sections other than those set forth above which cannot be remedied within 20 days of Licensor's notice to Licensee of the breach and Licensor's intent to terminate the License; or (3) Licensee's making an assignment for the benefit of its creditors, the filing under any voluntary bankruptcy or insolvency law.

#### **9.4 Remedy**

Licensee may terminate the License, without prejudice to any other remedy Licensee may have, in the event of any material breach of this Agreement which is not remedied within 20 days of Licensee's notice to Licensor of the breach and Licensee's intent to terminate the License. Termination shall not relieve Licensee's obligation to pay all amounts which are due and payable or which Licensee has agreed to pay.

#### **9.5 Cessation of Use**

Upon termination of this Agreement, Licensee shall cease using the Software and Documentation and promptly return all copies of the Software, Documentation, and all other Confidential Information in its possession or control. Licensee shall delete all copies of such materials residing in- on- or off- line computer memory, and destroy all copies of such materials which also incorporate Licensee's Confidential Information. Licensor shall be entitled to enter the Location(s) to repossess and remove the Software, Documentation, and any other Confidential Information. Licensee shall, within 30 days from the effective date of the termination, certify in writing by an officer or director of the party that all copies of the Software and Documentation have been returned, deleted and destroyed.

### **10. HEADINGS**

The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

### **11. VALIDITY**

If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected.

### **12. BINDING AGREEMENT**

This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Licensee may not assign its rights or obligations under this Agreement without the prior written consent of Licensor.

### **13. NO WAIVER**

Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy.

### **14. GOVERNING LAW**

The Governing Law shall be the laws of Sweden; and any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce in Stockholm. The Parties hereby expressly and irrevocably submit to the exclusive jurisdiction of such courts or arbitral bodies for the purpose of any such suit, action or proceeding. Notwithstanding anything to the contrary in this Agreement, either Party may at any time seek injunctive or interlocutory relief in a court of competent jurisdiction in order to protect any urgent interest of such Party, including, but not limited to, the confidentiality and use restrictions of this Agreement. TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW, CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL REGARDING DISPUTES RELATED TO THIS AGREEMENT.

### **15. NOTICE**

Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under this Agreement shall be delivered to the address set forth in this Agreement. Notice shall be deemed to have been received by any party, and shall be effective, (i) on the day given, if personally delivered or if sent by confirmed facsimile transmission, receipt verified or (ii) on the third day after which such notice is deposited, if mailed by certified, first class, postage prepaid, return receipt requested mail.

**16. PUBLICITY**

Customer hereby grants Stretch the right to list Customer as a customer of Stretch along with other customers in marketing materials such as the Stretch web site, and customer-facing presentations.

**17. ATTORNEYS' FEES**

Licensee shall be responsible for Licensor's reasonable attorneys' fees associated with the enforcement of the terms of this Agreement or the collection of any amounts due under this Agreement.

**18. SURVIVAL**

Sections 4, 5, 7, 8, and 10 shall survive the termination of this Agreement for any reason.