

Diamond Key International Pty. Limited

END USER LICENSE AGREEMENT

For Omega 5000 v10.xx

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This Agreement is dated the date that appears in Item 1 of **SCHEDULE 1** annexed hereto (the "Commencement Date")

BETWEEN

DIAMOND KEY INTERNATIONAL PTY. LTD.
(ACN 082 814 168)
of
110 Henderson Road
Rowville, Victoria 3178, Australia

of the one part ("the Licensor")

AND

COMPANY

being the licensee as described in Item 2 of **SCHEDULE 1** of the other part ("the Licensee").

WHEREAS:

- A. The Licensor has developed and/or is the owner of the intellectual property for the creation of Software full details of which are set-out in Item 3 of **SCHEDULE 1** ("the Software").
- B. The Licensee wishes to use the Software
- C. The parties hereto have agreed upon the terms and conditions upon which the Licensee shall be entitled to use the Software which are set-out in this Agreement.

NOW THIS AGREEMENT WITNESSES that the parties hereto have agreed that:-

DEFINITIONS

1.1 The following definitions shall apply to this Agreement:

"*Additional Charge*" means a charge in accordance with the Licensor's standard rates in effect from time to time.

"*Activation Key*" means an electronic key provided by the Licensor to the Licensee for enabling the functionality of the Software for the duration of the Initial Term or any renewal Period.

"*Agreement*" means this agreement and includes the schedules and annexures to the agreement.

"*Business Day*" means Monday to Friday excluding government gazetted public holidays in the State of Victoria;

"*Confidential Information*" means the confidential information of a Party which relates to the subject matter of this Agreement and includes information relating to:

- (a) the design, specification and content of the Software;
- (b) the personnel, policies or business strategies of the Licensor;
- (c) the terms upon which the Software is being supplied and installed pursuant to this Agreement;

“Designated Equipment” means the computer equipment, designated in **SCHEDULE 1** upon which the Software may be used;

“Documentation” means operating manuals and other printed materials referred to in **SCHEDULE 1** including users’ manuals, programming manuals, modification manuals, flow charts, drawings and software listings which are designed to assist or supplement the understanding or application of the Software;

“Initial Term” means the period so specified in **SCHEDULE 1**;

“Intellectual Property Rights” means copyright, trade mark, design, patent semiconductor or circuit layout rights;

“Licensee” includes:

- (i) When an individual, the Licensees legal personal representatives.
- (ii) When several individuals, the licensees jointly and their respective legal personal representatives.
- (iii) When a company or corporation, its successors and assigns.

“Licensee Software” means computer code, modules, programs, data files or rules, including related documentation, owned by or licensed to Licensee and linked, combined or otherwise operated in connection with Software.

“Licensor” includes:

- (i) When an individual, the Licensor’s legal personal representatives.
- (ii) When several individuals, the Licensors jointly and their respective legal personal representatives.
- (iii) When a company or corporation, its successors and assigns.

“Major Release” means a Major Release, as defined in the SPRN.

“Party” means either the Licensor or the Licensee as the context dictates.

“Period” is defined in clause 4.2.

“Software” shall also include in addition to those items referred to in Item 3 of **SCHEDULE 1** all Updates of the Software licensed as provided by the Licensor from time to time.

“Software Maintenance Fee” shall also include in addition to those items referred to in Item 3 of **SCHEDULE 1** all Updates of the Software licensed as provided by the Licensor from time to time.

“SPRN” means the Licensor document ‘Software Products Release Numbering’ (doc id/DOC-DSS-000016) and any amendments to or updates of this document made by DKI from time to time. A copy of the current SPRN is available from DKI on request.

“Update” means any Patch Release, Minor Release or Intermediate Release as defined in the SPRN. For the avoidance of doubt a Major Release is not an Update. Updates are only in respect of functionality the subject of an Activation Key.

“Vendors” are the vendors set out in **SCHEDULE 1**.

“Vendors Additional Terms” are set out in **SCHEDULE 1**.

Words expressed in the singular include the plural and vice versa.

Words expressed in one gender include the other genders, as is appropriate in the context.

The reference to “person” includes a corporation.

2. ACKNOWLEDGEMENT

- 2.1 The Licensee acknowledges by installing the Software or by permitting the Software to be installed by a third party it accepts the terms and conditions of this Agreement.

3. DELIVERY AND INSTALLATION

- 3.1 The Licensor shall deliver the Software and an Activation Key, for the Initial Term, to the Licensee. At the election of the Licensee the Licensor shall install and commission the Software in accordance with the terms of any order for such installation and commissioning services agreed between the parties and issued by the Licensee.
- 3.2 The Licensee shall give the Licensor such reasonable assistance, including the provision of personnel and facilities, as the Licensor reasonably considers necessary to ensure satisfactory installation of the Software. The Licensee shall ensure the Licensor is granted all reasonable access, including necessary security clearances, for the purposes of complying with sub-clause 3.1.
- 3.3 If, in the opinion of the Licensor, the costs associated with the installation of the Software are greater than the Licensor could have reasonably contemplated on execution of this Agreement and are greater than the costs which would normally be associated with an installation project for the Software having the same or similar scope, the Licensor may make an Additional Charge.

4. SOFTWARE LICENSE

- 4.1 The Licensor grants to the Licensee a non-exclusive, non-transferable License to use the Software for the Initial Term.
- 4.2 At the sole discretion of the Licensor, the License may be renewed for a term or terms (each such term being defined by the “Period” as amended in **SCHEDULE 1** at the time the renewal is granted) subsequent to the Initial Term. The Licensee shall provide at least ninety (90) days notice in writing prior to the expiry of the Initial term or any subsequent term if it wishes to renew the License pursuant to this clause.
- 4.3 A License renewal fee shall be payable in accordance with **SCHEDULE 1** in the event the License is extended pursuant to this clause.
- 4.4 Subject to sub-clauses 4.2 and 4.3, the Licensor will provide an Activation Key to the Licensee for each Period.

5. LICENSE CONDITIONS

- 5.1 The Licensee shall only be permitted by this Agreement to use the Software for the purposes and in accordance with the normal operating procedures specified by the Licensor in writing from time to time and no other.
- 5.2 The Software may only be used pursuant to this Agreement:

- (a) by the Licensee, and
 - (b) at the Site.
- 5.3 Unless specified to the contrary in **SCHEDULE 1** the Software may not be used on equipment other than Designated Equipment save that at the sole risk of the Licensee it may be used on alternative equipment if:
 - (a) the Designated Equipment is temporarily inoperable due to malfunction, maintenance or change of installation site or
 - (b) the Licensor has otherwise given its consent in writing to such alternate use.
- 5.4 For the purpose of using the Software on the Designated Equipment the Licensee may install the Software on a hard disk or other storage device or install and use the Software on a file server for use on a network for the purposes of:
 - (a) permanent installation onto hard disks or other storage devices, or
 - (b) use of the Software over such network
- 5.5 The Licensee shall not copy, alter, modify or reproduce the Software except to the extent otherwise authorized by this Agreement.
- 5.6 Except to the extent specified to the contrary in this Agreement, the Licensor is under no obligation under this Agreement to provide Updates or Major Releases or enhancements to the Software.
- 5.7 In addition to any other remedies available to the Licensor under this Agreement or otherwise, any unauthorized use, alteration, modification, reproduction, publication, disclosure or transfer of the Software will entitle the Licensor to any available equitable remedy against the Licensee.
- 5.8 Except to the extent specified to the contrary in this Agreement, the Licensor will not be obliged to support the Software, whether by providing advice, training, error-correction, modifications, Updates, Major Releases or enhancements or otherwise.
- 5.9 Licensee is prohibited from publishing any results or benchmark tests run on the Software.
- 5.10 Licensor uses third party software from Vendors to enable operation of the Software License. Licensee agrees that Software is subject to Vendors Additional Terms and if any, Licensee agrees to be bound by and will abide by all such Vendors Additional Terms.

6. SOFTWARE ACTIVATION

- 6.1 The Software requires an Activation Key to function and operate.
- 6.2 The Licensor will provide an Activation Key to the Licensee in accordance with clauses 3.1 and 4.4 of this Agreement.
- 6.3 The Licensee must not copy, alter, modify, reproduce or attempt to produce an Activation Key.
- 6.4 The Activation Key enables use of the Software during the Initial Term and any renewed Period only. The Software will be rendered inoperable upon:
 - 6.4.1 the expiry of the Initial Term, if this Agreement is not renewed;

- 6.4.2 the expiry of any renewed Period, if this Agreement is not further renewed;
- 6.4.3 termination of this Agreement under clause 18.

7. DOCUMENTATION

- 7.1 The Documentation is licensed to the Licensee for the duration of the Agreement.
- 7.2 The Licensor shall provide the Licensee with such number of copies of the Documentation as are specified in **SCHEDULE 1**.
- 7.3 The Licensee acknowledges that the Documentation contains sufficient information for the adequate use of the Software, except to the extent the Licensor has notified the Licensee of any omission or deficiency or of any variation which it considers necessary for the proper use of the Software.

8. COPYRIGHT AND TRADEMARK RESTRICTIONS

- 8.1 The Licensee acknowledges as follows:
 - 8.1.1 The Software is owned by the Licensor and its structure, organization and code are the valuable trade secrets of the Licensor;
 - 8.1.2 The Software also is protected by Australian Copyright Law and International Treaty provisions;
 - 8.1.3 There is no transfer of title or ownership to the Licensee of the Software or the Documentation or any modifications, Updates or Major Releases of the Software.
 - 8.1.4 This Agreement does not grant any intellectual property rights in the Software, including but not limited to any printed or other matter (electronically stored or otherwise) whatsoever, howsoever or at all.
- 8.2 All trademarks and patents of the Licensor are the exclusive property of the Licensor and are protected by Trademark Law and International Treaty provisions. This Agreement gives absolutely no rights to the Licensee to the trademarks and patents of the Licensor.

9. RESTRICTIONS

- 9.1 Copying
 - 9.1.1 Subject to sub-clause 9.1 the Licensee shall not copy or reproduce the Software or Documentation by any means or in any form without the Licensor's prior written consent.
 - 9.1.2 The Licensee may make one copy of the Software for the purpose of backup and security. The Licensee shall acknowledge such copy as the property of the Licensor. The terms of this Agreement, with the necessary modifications, apply to the said copy.
 - 9.1.3 The Licensee shall ensure any copy of the Software made pursuant to this Agreement bears notice of the Licensor's ownership of copyright and a notice stipulating that the Software contains information confidential to the Licensor. The

Licensee shall comply with any directions of the Licensor as to the form and content of such notices.

- 9.1.4 If requested by the Licensor, the Licensee shall issue a notice in a form approved by the Licensor to all employees and other authorized users of the Software under its direction and control, advising such persons of the Licensee's obligations under this clause and also advising of the possible civil and criminal consequences of a breach of this clause.

9.2 Modifications

- 9.2.1 The Licensee shall not modify or alter the Software or merge all or any part of the Software with any other software without the Licensor's written permission.

- 9.2.2 If the Software is modified or altered by the Licensor, or by the Licensee with the permission of the Licensor pursuant to sub-clause 9.2.1:

- (a) the costs associated with the modifications or alterations or the costs arising out of the investigation of the effects of proposed modifications or alterations will be borne solely by the Licensee, and
- (b) the Licensee will fully indemnify the Licensor against all liability which may be incurred by the Licensor if such modifications or alterations infringe any Intellectual Property Rights of a third person or otherwise cause the Licensor to suffer loss, damages or expense.

- 9.2.3 The Software as modified or altered remains the property of the Licensor in all respects, whether modified by the Licensee, the Licensor or a third party and whether or not authorized pursuant to this Agreement. Specifically, the Licensee shall if necessary assign the Licensor all Intellectual Property Rights arising out of any modifications to the Software.

- 9.2.4 This Agreement shall apply to the Software as modified or altered.

- 9.2.5 The Licensee shall execute such documents and perform such other acts as are necessary in order to give effect to sub-clause 9.2.3.

9.3 Reverse Engineering

- 9.3.1 The Licensee shall not reverse assemble or reverse compile or directly or indirectly allow a third party to reverse assemble or reverse compile the whole or any part of the Software.

10. LIMITATIONS

- 10.1 **Standard and Non-Standard Applications.** Licensor Software is designed for the industrial process control and/or data capture, data transfer and information recording associated with bulk liquids (and in particular bulk hydrocarbon liquids) handling and/or custody transfer in terminal and similar facilities. This use of the Software constitutes the standard application ("Standard Application") of the Software and any other application shall be deemed non-standard. Licensee will not use Software for non-standard

applications without Licensor's prior consent, which will require additional contractual safeguards. If Licensee uses Software in a non-standard application, it will be solely liable for the use and will defend, indemnify and hold Licensor harmless from all loss, damage, expense or liability in connection with that use.

- 10.2 **Aggregate Liability.** LICENSOR WILL NOT BE LIABLE FOR DAMAGES IN EXCESS OF THE AMOUNTS PAID TO IT FOR THE SOFTWARE THAT IS THE SUBJECT OF A CLAIM. THIS LIMITATION WILL (1) APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, AND (2) NOT APPLY TO INDEMNITY UNDER CLAUSE 10 OR TO LIABILITY FOR PROPERTY DAMAGE, DEATH OR PERSONAL INJURY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR.
- 10.3 **Damages.** NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, FOR LOST REVENUES, PROFITS OR SAVINGS, OR FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.
- 10.4 **Time to Bring Claim.** ANY ACTION AGAINST LICENSOR MUST BE BROUGHT WITHIN 12 MONTHS AFTER THE CAUSE OF ACTION FIRST ARISES.

11. INFRINGEMENT INDEMNITY

11.1 Indemnification by Licensor.

- 11.1.1 Licensor will defend Licensee against any claims, and indemnify Licensee against any judgments, directly or indirectly resulting from a claimed infringement or violation of any Australian copyright, patent or other intellectual property right with respect to the Software. Licensor will have no liability for any such claims or judgments based on (a) the actions of Licensee, its employees or agents, (b) use of a version, modification or adaptation of Software, if the infringement would have been avoided by the use of a then-current unaltered release of Software, or (c) use of a combination of Software with any computer software or data not included in Software when delivered to Licensee by Licensor.
- 11.1.2 On receiving notice of a claimed infringement, Licensor may (a) settle on terms that permit continued use of the Software, (b) discontinue distribution of the Software that is the cause of the claim, (c) modify the Software to be non-infringing, or (d) if the foregoing remedies are not reasonably available, grant Licensee a credit for the depreciated value of the relevant portion of Software (based on a 60 month life) and accept its return.
- 11.1.3 **THIS SECTION PROVIDES LICENSEE'S SOLE AND EXCLUSIVE REMEDY AGAINST LICENSOR FOR INFRINGEMENT OF PATENTS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

- 11.2 **Indemnification by Licensee.** Licensee will defend Licensor and its Vendors against any claims, and indemnify Licensor and its Vendors against any judgments, directly or indirectly resulting from any claimed infringement or violation of any copyright, patent or other intellectual property right with respect to Software to the extent that Licensee Software or any of the acts described in clause 11.1.1 is the cause of the claimed infringement or violation.
- 11.3 **Cooperation by Indemnified Party.** Notwithstanding the above, an indemnifying party is under no obligation to defend or indemnify another party unless:
- 11.3.1 The indemnifying party has been promptly notified of the claim or suit and furnished with a copy of each pleading, communication, notice and other action relating to the claim or suit.
 - 11.3.2 The indemnified party permits the indemnifying party, at the indemnifying party's expense, to assume sole authority to conduct the trial or settlement of the claim or suit and any negotiations related to it.
 - 11.3.3 The indemnified party promptly provides information and assistance reasonably requested by the indemnifying party in connection with the claim or suit.

12. LICENSE FEE

- 12.1 The License Fee payable by the Licensee is included in the Omega system purchase price charged by the Licensor.
- 12.2 The Licensee shall pay the License Fee at the rate and in the manner described in **SCHEDULE 1**.
- 12.3 If the Licensee disputes the whole or any portion of the amount claimed in an invoice submitted by the Licensor, the Licensee shall pay the portion of the amount stated in the invoice which is not in dispute and shall notify the Licensor in writing (within seven (7) days of receipt of the invoice) of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount of the invoice in dispute ought to have properly been paid at the time of the first invoice, then the Licensee shall pay the amount finally resolved together with interest on that amount in accordance with the terms of payment set out in this Agreement.
- 12.4 The Licensee shall pay the Licensor interest on any amount due and not paid by the Licensee within the time required by this Agreement and the rate of interest specified in **SCHEDULE 1**.
- 12.5 The License Fees are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with supply and installation of the Software. Without limiting the foregoing, the Licensee shall be liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of the goods and services which are the subject of this Agreement

13. SOFTWARE MAINTENANCE AND SUPPORT

- 13.1 Upon execution of this Agreement Licensee shall pay Licensor at annual anniversary of the this Agreement the Software Maintenance Fee.
- 13.2 Payment of the Software Maintenance Fee entitles the Licensee to those services defined in **SCHEDULE 1 – 12 Software Maintenance Fee**.
- 13.3 The Software Maintenance Fee may be purchased with a support contract via separate agreement between Licensee and Licensor.

14. GOVERNING LAW & JURISDICTION

- 14.1 This Agreement shall be governed by the laws of the State of Victoria and the Commonwealth of Australia for the construction and enforcement of this Agreement.
- 14.2 Any dispute between the parties to this Agreement shall be heard in the State of Victoria, Australia.

15. ENTIRE AGREEMENT

- 15.1 This is the whole of the Agreement between the parties and supersedes all prior communications and understandings and shall enure to the benefit of and be binding upon the parties and their successors. This Agreement may only be altered or modified in writing signed by an authorized officer of each of the parties.

16. READING DOWN

- 16.1 If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

17. PROHIBITED CONDUCT

- 17.1 The Licensee shall not do any act matter or thing to breach either any term or condition of this Agreement or any laws of any country in which the Licensee is domiciled and which apply to the Software.

18. TERMINATION

- 18.1 Where the Licensee has also entered into an Omega System Support Agreement with the Licensor and has failed to make payment to the Licensor of all monies as and when due and payable under that agreement or is in breach of that agreement, then Licensor shall be entitled to immediately terminate this Agreement and the Licensee shall not be permitted to use the Software which is the subject of this Agreement at all.
- 18.2 If the Licensee breaches any of the provisions of this Agreement then the Licensor shall be immediately entitled to terminate this Agreement and the Licensee shall not be permitted to use the Software which is the subject of this Agreement at all.

19. UPON TERMINATION

- 19.1 Immediately upon termination of this Agreement the Licensee shall return to the Licensor all the Software whether it be stored on electronic data format, or

hard copy (paper) and all Documentation and other material provided to the Licensee by the Licensor for the operation and use of the Software.

20. COUNTERPARTS

- 20.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all said counterparts shall constitute but one and the same agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

21. SERVICE OF NOTICES

- 21.1 Any notice, document or demand ("notice") under this Agreement may be served in accordance with this clause.
- 21.2 The notice shall be in writing, signed by the party giving it or by that party's solicitor.
- 21.3 The notice shall be served on the other party or on that party's solicitor
- 21.4 Particulars for the service of notices are upon the parties addresses as contained herein.
- 21.5 Either party may advise the other party of an additional or an altered address for the service of notices, in writing from time to time.
- 21.6 A notice may be served:
- (a) By delivering it to the party or to the party's solicitor and leaving it with the party, the solicitor or some other person accepting the notice on behalf of either of them.
 - (b) By sending it by pre-paid post, correctly addressed, to the party's address.
 - (c) By transmitting it on a Business day by facsimile to the party's solicitor's facsimile receiving facility.
- 21.7 Time of service
- A notice is considered to have been served:
- (a) At the time of delivery.
 - (b) On the third Business day after the day on which it is posted, the first Business day being the day of posting.
 - (c) On the Business day on which the notice is received by the recipient's facsimile receiving facility.

22. DETERMINATION OF DISPUTES

- 22.1 The parties agree that subject to Clause 21.5, they must attempt to settle any disputes in relation to this Agreement by negotiation before resorting to external dispute resolution mechanisms. Each party must bear its own costs in attempting to settle a dispute under this Clause 19.1.
- 22.2 If a dispute is not settled by the parties in accordance with Clause 19.1 within one (1) month after the date on which the dispute was notified by one party to the other, then either party may refer the dispute to the Australian Commercial Disputes Centre ("ACDC") for mediation in accordance with that body's rules prior to referral to another external dispute resolution mechanism, including a court.

- 22.3 If a dispute, which has been referred to the ACDC for mediation under Clause 19.2, is not settled within thirty (30) days (or such other period as agreed between the parties) after the referral date, the dispute may be submitted to another external dispute resolution mechanism, including a court.
- 22.4 Notwithstanding the existence of any dispute, each party must continue to perform its obligations under this Agreement, subject always to its rights of termination under this Agreement.
- 22.5 A party may commence court proceedings in relation to any dispute arising under this Agreement at any time, where that party seeks urgent interlocutory relief.

23. CONFIDENTIALITY

- 23.1 A Party shall not, without the prior written approval of the other Party disclose the other Party's Confidential Information.
- 23.2 A Party shall not be in breach of sub-clause 1 of this clause in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- 23.3 Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information.
- 23.4 Notwithstanding any other provision of this clause, the Licensor may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants.
- 23.5 This clause shall survive the termination of this Agreement.

24. ASSIGNMENT AND NOVATION

- 24.1 The benefit of this Agreement shall not be assigned by the Licensee without the Licensor's written consent.
- 24.2 The Licensor may consent to the assignment or novation of this Agreement by the Licensee subject to such conditions as it chooses to impose.

25. VARIATION

- 25.1 The provisions of this Agreement shall not be varied except by agreement in writing signed by the Parties.
- 25.2 If either Party wishes to vary the Agreement, the proposing Party shall submit a copy of the proposed variations to the other Party (the "Receiving Party"), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejection of the proposal.
- 25.3 If the Receiving Party accepts the variations, the Agreement shall be deemed to be so amended from the date of the acceptance.
- 25.4 If the Receiving Party rejects the proposed variations, each Party shall perform the Agreement in accordance with the unvaried terms.

26. SEVERABILITY

- 26.1 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

Signed for and on behalf of the Licensor by)

)

.....)

In the presence of)

)

.....)

Signed for and on behalf of the Licensee by)

)

.....)

In the presence of)

)

.....)

SCHEDULE 1

1. Commencement Date: Date of first use by Company
2. The Licensee: Company
3. The Software: As listed by Qty. below

DKI Part Number	Description	QTY
	Omega 5000 Software	
SOF-OM5-000092	Depot Omega 5000 License up to 6 metering points	
SOF-OM5-000093	Small Omega 5000 License Up to 12 metering points	
SOF-OM5-000094	Medium Omega 5000 License up to 24 metering Points	
SOF-OM5-000095	Large Omega 5000 License up to 36 metering points	
SOF-DBS-000006	Bay License - Fee per Bay	
SOF-DBS-000008	Oracle Database Standard Edition 2 or subsequent released versions	1
	Increase Omega 5000 Meter Points	
SOF-OM5-000001	Deport to Small - 6 to 12 Metering Points	
SOF-OM5-000002	Small to Medium - 13 to 24 Metering Points	
SOF-OM5-000003	Medium to Large - 25 to 36 Metering Points	
SOF-OM5-000050	1 x Additional Meter Point License beyond 36	
TBA	Single Meter Point up to max 4 point before next Core version Existing is Small Omega License with 12 meterings e.g. 13th Metering, 14th metering, 15th Metering, 16th metering Existing is Medium Omega License with 24th meterings e.g. 25th Metering, 26th Metering, 27th Metering, 28th Metering	
TBA	Additional Meter Points: 17th to 24th - Medium Omega	
TBA	Additional Meter Points: 29th to 36th - Large Omega	
	Omega 5000 Optional Features	
SOF-OM5-000011	BayView - Depot	
TBA	BayView – Small	
TBA	BayView – Medium	
TBA	BayView - Large	
SOF-OM5-000013	Nomination Bays	
SOF-OM5-000023	SiteView	
SOF-OM5-000024	TankView - Depot	
TBA	TankView – Small	
TBA	TankView - Medium	
TBA	TankView - Large	
SOF-OM5-000025	Driver Self Schedule	
SOF-OM5-000026	Manual Close Out	
SOF-OM5-000060	Extended Stock Management (per Site)	
SOF-OM5-000083	Auditing Reports	
SOF-OM5-000086	Bay Bill of Lading (bBOL) - licensed per Bay	
SOF-OM5-000087	Custom Transportation Documents	
	Omega 5000 Optional Interfaces	
SOF-DBS-000009	Bay Interface: FlexLinc-BC Interface	
SOF-DBS-000010	Bay Interface: AccuLoad III direct Interface	

DKI Part Number	Description	QTY
SOF-DBS-000006	Bay Interface: AccuLoad-BLC Interface	
SOF-OM5-0000xx	Interface - Host -	
SOF-OM5-0000xx	Interface - ATG	
SOF-OM5-0000xx	Interface – Weight Bridge	
SOF-OM5-000045	Interface - SCADA	

4. Designated Equipment Server upon which Omega 5000 is operational
5. The Initial Term: x years
6. The Period: x Years
7. License Fee: may / may not be in a Support Agreement
8. Site: Site where the Omega 5000 system is installed
9. Vendors: Oracle Corporation Australia Pty. Ltd

10. Vendors Additional Terms

- (1) Licensee agrees to limit the use of the Software to the Licensee.
- (2) Licensee agrees to restrict use of Vendors programs to the scope of the Software and to the internal business operations of the Licensee. Licensee may permit agents or contractors (including, without limitation, outsourcers) customers and suppliers to use the Software on the Licensee's behalf for the Licensee's internal business operations as described above, subject to the terms of the Licensor License Agreement. The Licensee shall be responsible for its agent's, contractor's, outsourcer's, customer's and supplier's use of the Software and compliance with the Agreement.
- (3) Vendor or its licensor retains all ownership and intellectual property rights to Vendors programs.
- (4) Prohibit (a) the transfer of the Software except for temporary transfer in the event of computer malfunction if the application package embeds the Software in a physical device and (b) the Licensee from assigning, giving, or transferring the programs and/or any services ordered or an interest in them to another individual or entity (in the event the Licensee grants a security interest in the programs and/or any services, the secured party has no right to use or transfer the programs and/or any services).
- (5) Vendor prohibits (a) use of Vendors programs for rental, timesharing, subscription service, hosting, or outsourcing; (b) the removal or modification of any program markings or any notice of Vendor or its licensors' proprietary rights; (c) the Licensee from making the programs available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Vendor program license); and (d) title to the Vendors programs from passing to the Licensee or any other party.
- (6) prohibit the reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs) and prohibit duplication of the programs except for a sufficient number of copies of each program for the end user's licensed use and one copy of each program media.
- (7) Vendor disclaims, to the extent permitted by applicable law, Vendor's liability for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Vendors programs.
- (8) at termination of Agreement the Licensee shall discontinue use and destroy or return all copies of the Vendors programs and documentation upon request.
- (9) prohibit publication of any results of benchmark tests run on the programs.
- (10) the Licensee shall comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Vendors programs, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.

(11) the Vendors programs are subject to a restricted license and can only be used in conjunction with the licensed Software and that the Licensee is not permitted to modify the Software.

(12) Vendor will not perform any obligations or incur any liability not previously agreed in the Agreement.

(13) permit audit by Licensor of Licensee's use of the programs, for the Licensee to provide reasonable assistance and access to information in the course of such audit and permit Licensor to report the audit results to Vendor or to assign Licensor right to audit the Licensee's use of the programs to Vendor. Where audit right is assigned to Vendor, Vendor shall not be responsible for any of your or the Licensee costs incurred in cooperating with the audit.

(14) to the extent permitted by applicable law, designate Vendor as a third party beneficiary of the Agreement.

(15) Vendor programs may include source code that Vendor may provide as part of its standard shipment of such Vendor programs. The source code shall be governed by the terms of the Agreement.

(16) third party technology that may be appropriate or necessary for use with some Vendor programs is specified in the application package documentation or as otherwise notified and that such third party technology is licensed to the Licensee only for use with the Software under the terms of the third party license agreement specified in the application package documentation or as otherwise notified and not under the terms of the Agreement.

11. Document Qty.

- a. DOC-MNU-000085 – Omega 5000 User Manual – 1 off
- b. DOC-MNU-000086 Omega 5000 Standard Reports Manual – 1 off

12. Interest rate applying to amounts due under this Agreement but remaining unpaid:

ANZ Bank Reference Rate plus 2%

13. License Renewal Fee – the license renewal fee shall be in accordance with the Licensor's published license fee schedule as current at the time the Initial Term or each successive Period ends.

In no case however shall the license renewal fee be less than the license fee or license renewal fee applicable to the Initial Term or Period that shall have previously expired, escalated at annual rests (falling on each anniversary of the inception of the Initial Term or Period) during the Initial Term or Period by the "All Groups, Weighted Average 8 Capital Cities" Australian Consumer Price Index as published by the Australian Bureau of Statistics.

The CPI index to be used at each annual rest will be the CPI as it applies from the corresponding quarter of the previous year where the corresponding quarter is the quarter ended preceding the anniversary of the expiry of the Initial Term or Period.

The following calculation is an example only and is presented for the avoidance of doubt. It is not intended as specific to the Agreement of which this Schedule forms part.

Initial Term: 2 years

License Fee at commencement of Initial Term or Period (nominally
1 May 2004 for purpose of this example only) immediately
preceding renewal period: A\$2,000-00

Australian "All Groups CPI"

- % change from the corresponding quarter of the previous year,
at 31 March 2005 2.40%
- % change from the corresponding quarter of the previous year,

at 31 March 2006

3.00%

**License Renewal Fee, applicable for renewal Period commencing from
1 May 2006 will be no less than:**

$$\bullet \quad \$2,000 \times 1.024 \times 1.030 \qquad \qquad \qquad = \qquad \textbf{A\$2,109-44}$$

14. Software Maintenance Fee: If an executed Support Agreement includes, an annual License Update per year per site will include Enhancements to Licensed functionality (provided via annual Update)
- Analysis, Rectification, Testing of critical operational bugs. If applicable, remote installation of any Update critical to site operations as recommended by DKI.
- Software Release Notes
- Omega 5000 User Manual – DOC-MNU-000085
- Standard Reports Manual – DOC-MNU-000086