

Tinytag Explorer Licence Agreement

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE

This Software Licence Agreement (the "Agreement") is a legal agreement between you, individually, or if you are authorised to acquire the Software on behalf of your company or organization, the entity for whose benefit you act (in either case "You"), and Gemini Data Loggers (UK) Ltd. ("Gemini").

ACCEPTANCE PROCEDURE

By indicating your acceptance by clicking on the appropriate button below, or by installing, activating or using the Software You are agreeing to be bound by the terms of this Agreement.

REJECTION PROCEDURE

If you do not understand or accept these terms, or your local regulations prohibit "after sale" Licence agreements or limited disclaimers, You have no right to use the Software and You must cease and desist using the Software immediately.

1. DEFINITIONS

"Authorised Users" means any of Your employees, consultants or independent contractors and any other person You authorise to use or to whom You otherwise make available the Software.

"Data Loggers" means the data logging devices manufactured by or on behalf of Gemini.

"Location" means the physical location or site of the hardware upon which the Software is installed.

"Software" means the Gemini proprietary software product(s) hereby provided to You known as Tinytag Explorer for use in conjunction with Data Loggers purchased by You.

"Third Party Software" means software applications and data libraries proprietary to third parties which are provided to You along with the Software but which are Licenced to You under a separate agreement by the manufacturer or distributor of the Third Party Software such applications include: Graphviz (<http://www.graphviz.org/>) and various data libraries which are provided under the Common Public Licence Version 1.0. and Intel Open Source Licence respectively.

2. RIGHT TO USE SOFTWARE

This Agreement hereby grants You a personal, revocable, non-exclusive, nontransferable Licence to install and use the Software at the Location for Your own internal or personal purposes in conjunction with the Data Loggers which You have purchased and have a right to use. You may make and use as many copies of the Software as are reasonably necessary to utilise Your Data Loggers provided they are all used by You at the same Location but, except to the extent that Gemini is expressly precluded by law from prohibiting these activities, You may not otherwise print, copy, reproduce, modify or in any other manner duplicate the Software in whole or in part.

Whilst Gemini does provide, at its discretion, a limited telephone helpdesk and updating service in respect of the Software, this Licence does not imply any rights to telephone assistance, future upgrades or updates of the Software or the ability to access applications other than those residing on the Data Loggers when the Software was originally acquired by You.

3. THIRD PARTY SOFTWARE

As part of the capability of the Software Gemini makes available the Third Party Software but on Your understanding, acknowledgement and agreement that the Third Party Software is not under the control of Gemini, is in no way endorsed by Gemini and Gemini is not responsible for its performance or non performance.

Your attention is drawn to the terms and conditions of the Third Party Software a copy of which can be obtained from the following websites:

<http://www.intel.com/technology/computing/lfm/Licence.htm>

<http://www.opensource.org/Licences/cpl1.0.php>

<http://www.graphviz.org>

4. INTELLECTUAL PROPERTY

All rights in the Software are and shall remain vested in Gemini. Neither You nor Your Authorised Users shall acquire any intellectual property or other proprietary rights by virtue of this Agreement, including patents, designs, trademarks, copyright, database rights or rights in any confidential information or tradesecrets, in or relating to the Software or any part thereof.

5. CONFIDENTIALITY

You agree to maintain the Software in strict confidence and not to disclose or provide access thereto to any person except to Your Authorised Users to exercise the Licence rights conferred hereby. You do not have the right to obtain or use any source code of the Software except to the extent that Gemini is expressly precluded by law from prohibiting these activities, You agree that You or Your Authorised Users will not alter, modify, adapt, create derivative works, translate, deface, decompile, disassemble or reverse engineer the Software, or attempt to do so or permit, acquiesce, authorise or encourage any other party to do the same.

6. TERM

This Agreement shall be effective upon You agreeing to be bound by the terms of this Agreement and shall end upon expiry or termination of this Agreement in accordance with the following provisions:

Upon You ceasing to be authorised to use the relevant Data Logger; or

Upon You breaching any of the terms of this Agreement.

Upon termination or expiry of this Agreement, howsoever caused, You will immediately discontinue all use of the Software and destroy and/or permanently delete all copies of the Software in Your possession.

7. LIMITED WARRANTY

You acknowledge and agree that You are relying on your own skill and judgement when you acquired the licence to use the Software accordingly Gemini makes no representations as to the suitability of the Software for Your use under any specific conditions. Without prejudice to the generality of the foregoing You understand that the Software has not been designed : (i) for use in life support and/or life monitoring systems and/or devices or articles intended for surgical implant into the body; or (ii) to monitor or control environments or systems where failure or malfunction could lead directly to death or personal injury or severe physical or environmental damage (together known as "High Risk Use") and You agree to indemnify Gemini and keep Gemini indemnified from and against all loss and damage or liability whether criminal or civil and legal costs and fees incurred due to such High Risk Use. Gemini specifically disclaims any express or implied warranty of fitness for High Risk Use and strongly recommends that You insure against all loss or damage which You may suffer as a result of the failure of the Software to operate in a High Risk Use situation.

If during the twelve (12) month period following delivery of the Software to You (the "Warranty Period"), the Software is not capable of performing the functions described in the published specifications for the Software, Gemini will at its option either make reasonable efforts to correct or provide You with a workaround for such problem or provide You with a refund for the one time fees paid by You for the Software provided the Software is returned within the Warranty Period together with proof of purchase.

The foregoing is Gemini's only obligation and is Your exclusive remedy for any defects, errors, or problems You may experience related to the Software and all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the Software and the performance by Gemini of its obligations hereunder, are hereby excluded to the fullest extent permitted by law.

8. LIMITATION OF LIABILITY

In no event will Gemini be liable to You for any indirect, special, consequential, incidental, exemplary or punitive damages even if Gemini has been advised of the possibility of such damages. In particular and without limiting the generality of the foregoing, Gemini accepts no liability for any programs or data made, transmitted or stored with the Software nor the costs of recovering or replacing such programs or data, loss of business profits or revenues, business interruption, downtime costs or any loss caused by the Third Party Software.

In no event will the aggregate liability of Gemini hereunder exceed the amount paid by You for the Software but nothing in this clause limits Gemini's liability to You in the event of death or personal injury to the extent resulting directly from the negligence of Gemini.

If You are using a version of the Software which allows You to recalibrate a Data Logger's manufacturer's settings You accept that, without prejudice to the general limitations and exclusions of liability set out in this clause, Gemini shall have no liability for any inaccurate Data Logger readings caused by such recalibration.

9. ENTIRE AGREEMENT

The provisions of this Agreement constitute the entire agreement between the parties in relation to the Software and supersedes all communications, negotiations, representations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of this Agreement. Notwithstanding the foregoing, You acknowledge that there are other legal agreements between us concerning Your use of the Data Loggers and in the event of

any conflict or inconsistency between any clause of this Agreement and the terms and conditions of such other agreements as relate to a Data Logger, the former shall prevail to the extent of the conflict or inconsistency as relates to the Software.

10. FORCE MAJEURE

Neither party shall be liable for delay in performing obligations or for failure to perform obligations if the delay or failure results from any of the following: Act of God, governmental act, act of terrorism, fire, war, explosion, accident, industrial dispute, impossibility of obtaining materials, computer breakdown or any other such circumstances beyond the party's reasonable control.

11. GENERAL

Any notice or other document given by either party to the other under this Agreement shall be in writing and sent to the address of the recipient set out in this Agreement (or in Your case the billing address supplied by You). Any such notice may be delivered personally, by electronic mail (sent to the e-mail address supplied on request) or by first class pre-paid mail or facsimile transmission to the facsimile number of the recipient as supplied then confirmed by post within 24 hours and shall be deemed to have been served if personally, when delivered, if by first class mail, three working days after mailing, if by recorded delivery first class pre-paid mail, when signed for by the recipient and if by facsimile transmission or electronic mail the first working day after transmission.

No relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this Agreement or the granting of time by either party to the other shall prejudice, affect or restrict the rights and powers of that said party hereunder nor shall any waiver by either party of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof.

No amendment or other variation to this Agreement shall be effective unless it is in writing, is dated, and is signed by or on behalf of each of the parties.

No person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement without the express prior agreement in writing of the parties.

The text of this Agreement is written in the English Language and any difficulties or uncertainties in interpretation arising shall be solved by reference to the English text and each party shall be responsible for its own costs incurred in making any translations of this Agreement.

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the non-exclusive jurisdiction of the English courts.

In connection with this Agreement, both parties shall comply with the Data Protection Act 1998 and all associated legislation and codes of practice. To the extent that either party qualifies as a data processor under the Data Protection Act 1998 (the "Data Processor"), in relation to any personal data processed in connection with this Agreement, the Data Processor shall comply with the obligations placed on the Data Processor by the seventh data protection principle ("the Seventh Principle") set out in the Data Protection Act 1998, namely: to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Data Processor

by the Seventh Principle; only to process personal data with the written consent of the data subject.

If any provision of this Agreement or any part of any such provision is held to be invalid or unenforceable, such provision or part (as the case may be) shall be ineffective only to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable or otherwise prejudicing or affecting the remainder of such provision or any other provision of this Agreement.