

## Spider 1000 + Spider 2000 PURCHASE AND LICENSE AGREEMENT TERMS AND CONDITIONS

1. **General Provisions.** These terms and conditions (this “Agreement”) govern all orders from Spider 360’s customer (“Buyer”) to Spider 360 for, and sales and the grant of related licenses by Spider 360 to Buyer of, the Spider 360 product referred to as the “Spider 1000” or “Spider 2000” and its software (the “Product”). With respect to the Products, the terms and conditions of this Agreement shall (i) supersede any conflicting or additional terms contained in any advertisement, quotation, purchase order, confirmation, acknowledgment or other document or communication heretofore or hereafter between Buyer and Spider 360, and (ii) apply whether or not Spider 360 or Buyer or both specifically reference this Agreement in any document concerning any order for or sale of the Products, unless Spider 360 and Buyer expressly otherwise agree in a writing signed and delivered by each of them to the other which specifically references this Agreement by date and describes which terms and conditions of this Agreement are excepted and superseded. Spider 360’s acceptance of any order by Buyer for a Product is expressly conditioned upon the applicability of this Agreement. All orders are subject to Spider 360’s approval, including approval of credit terms. EXCEPT TO THE EXTENT LICENSED IN SECTION 2 BELOW, BUYER IS NOT ACQUIRING FROM SPIDER 360 ANY OWNERSHIP OR OTHER RIGHTS IN AND TO ANY OF THE SOFTWARE OR OTHER INTELLECTUAL PROPERTY USED TO OPERATE, OR COMPRISING ANY PART OF, THE PRODUCTS. Unless otherwise specified by Spider 360, payment is due 30 days from the date of Spider 360’s invoice. Shipments shall be F.O.B. Loves park, Illinois, and at the risk of Buyer after delivery to the carrier. Spider 360 will make all reasonable efforts to meet any shipment schedule specified in Buyer’s purchase orders, but shall not be liable for failure to do so. In addition, Spider 360 shall not be liable for any damage to or loss of the Products or any delay in or failure to ship, deliver, service, repair or replace the Products arising from any circumstances beyond Spider 360’s control. The Products are sold for installation and interconnection by Buyer or its customers and Spider 360 shall have no obligation in connection therewith.

2. **License Provisions.** Subject to the terms and conditions of this Agreement, Spider 360 grants Buyer a non-exclusive license (referred to in this Agreement as the “License”) to use the operating game software supplied as part of the Products (“Game Software”). Spider 360 is either (i) the owner of all rights in and to the Game Software, including, but not limited to, copyrights and trade secret rights, or (ii) a licensee of certain components of the Game Software and is authorized to include such components in the Products. This Agreement does not convey to Buyer ownership of any of the software in the Product and Spider 360 or Spider 360’s licensors retain all title and ownership in such software and any modifications, updates or enhancements thereof. The Game Software shall only be used on a single Product at one time. Buyer shall not transfer or distribute the Game Software or the License to others, except that Buyer may transfer to only the customer purchasing or using the Product a sublicense for that Product only to use the Game Software embedded in the Product on the terms and conditions set forth herein. Except to the extent provided in the next sentence, neither Buyer nor its customers nor any subsequent transferees shall have any right to copy, reproduce, distribute, transmit, remove, download, decompile, reverse engineer or modify the Game Software, nor the right to remove, obstruct or alter copyright, patent, trademark and software license notices on or accompanying the Product or its Game Software. The owner and licensee of the Product shall have the right to copy for installation into the Product and to install into the Product updated Game Software that may be distributed to such owner and licensee from time to time by Spider 360. Neither the Products nor any of its Game Software shall be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction. Except to the extent expressly permitted under this Section 2, any attempt to sublicense, assign or transfer any of the rights, duties or obligations hereunder is void. In the case of the United States Government or an agency thereof as licensee, the following additional terms and notices apply:

Restricted Computer Software, as defined in the Rights in Data-General clause at Federal Acquisition Regulations 52.227\_14; and as applicable,

### RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227\_7013.

Spider 360 may without notice or demand terminate the right to use the Game Software (or any part thereof) and may also disable use of the Game Software (or any part thereof) if Buyer or its customer or any subsequent transferee or other user of the Product breaches any of the terms and conditions of this Agreement or any other agreement between Spider 360 and any other owner/licensee of the Product in question (including without limitation any agreement governing or relating to any of the advertising programs referred to in Section 3 below). Upon termination of this License for any reason, Buyer or its customer or any subsequent transferee shall immediately delete the Game Software from the Product and return to Spider 360 any form of the Game Software which is capable of being returned. All restrictions regarding use of and protecting Spider 360’s rights in the software in the Product survive termination of Buyer’s or any subsequent owner’s or user’s right to use the Game Software. Spider 360 shall at all times while the Products are in use have and be granted access to the Product (whether electronically, including by modem or any other electronic data transmission and reception connector which comprises a part of each Product, or otherwise), at reasonable times and upon reasonable intervals, for the purposes of inspecting the Product, collecting usage information (including without limitation its location) and exercising and protecting Spider 360’s rights in connection with the provisions set forth in this Section 2. Buyer shall not, and shall not permit any subsequent owner or user to, obscure, attach or remove any notice, informational plate or sticker affixed by Spider 360 to the Product or which Spider 360 creates to appear on any screen display of the Product. Buyer shall cause its customers and all subsequent transferees (if any) to be bound by the provisions of this Section 2 and Sections 3, 4 and 5 of this Agreement for the benefit of Spider 360 (Spider 360 shall be a third party beneficiary with the right of enforcement).

3. **Future Advertising.** Neither Buyer nor any other person or entity is as a result of Buyer’s purchase of the Product acquiring any license or other rights in and to the software (if any) in the Product which enables or may enable the Product to display advertising. Spider 360 may (but is not hereby obligated to do so) enter into arrangements with the owner/ licensee of a Product pursuant to which the Product may display advertisements; provided, that in the event any such arrangements are made, then (i) any such license to use the software in the Product for any purpose other than game operation shall be terminable at will by Spider 360 and Sections 2, 4, 5 and 6 of this Agreement shall apply with respect to that

license (and for such purpose, the phrase "Game Software" as used in this Agreement shall also refer to the software of the Product to the extent used in connection with advertising displayed by the Product), and ii) Spider 360 shall not be liable to Buyer for, and Buyer shall indemnify and hold Spider 360 harmless against and shall upon request defend Spider 360 against, any claims, losses, damages, costs or expenses arising out of or in connection with any such advertising, including without limitation claims for infringement of copyright, trade name, trademark or service mark, and defamation claims.

4. **Warranty.** Subject to the terms and conditions of this Section 4, for the applicable Warranty Period (as hereinafter defined), Spider 360 will repair or replace at its plant in Loves park, Illinois, any of the following parts of the Product which Spider 360 determines is defective in manufacture or workmanship under normal use and service: the Electronic Package; the darthead assembly (consisting of the spider, segments and matrix); and the cabinet and components of the cabinet. "Electronic Package" means only (i) the power supply chassis and the parts mounted directly thereon, (ii) the main computer printed circuit board, (iii) to the extent installed by Spider 360, the modem (if any), and the light dimmer board. The "Warranty Period" starts on the date of purchase and means (i) one year with respect to the Electronic Package, (ii) one year for the monitor, (iii) one year with respect to the darthead assembly, and (iv) one year with respect to the cabinet and cabinet components. The Product will not be defective if it substantially fulfills the performance specifications. This warranty shall not apply to any of the Products or parts thereof repaired or altered by anyone but Spider 360, operated or installed contrary to instructions or contrary to this Agreement, or subjected to abuse, misuse, accident or improper environment. This warranty applies only for the benefit of the original purchaser of the Product and is not transferable. For this warranty to apply, Buyer must (i) give Spider 360 written notice of any warranted defect within 10 days after discovery and, in any event, not later than the date on which this warranty expires, and (ii) deliver the Product into Spider 360's possession within 15 days following the date on which the warranty claim notice is given to Spider 360. Any Product which is the subject of a warranty claim must be shipped to Spider 360 freight prepaid. Prior to repair or replacement, Spider 360 shall have the right to examine the part at Spider 360's plant in Loves Park, Illinois. If Spider 360 determines that this warranty is inapplicable, Spider 360 will notify Buyer, and labor and parts furnished at Buyer's request shall be paid for by Buyer at Spider 360's then current rates and prices. Spider 360 neither assumes nor authorizes anyone to assume for it any obligation or liability in connection with the Product which is not expressly provided for under this Agreement. Spider 360's liability under this warranty shall be limited to repairing or replacing warranted Products and the expense of the lowest transportation costs for return to Buyer or, if the Product in question cannot be repaired or replaced by Spider 360, to the return of the purchase price paid for the defective or nonconforming warranted Product in question; provided, that Buyer shall first return to Spider 360, and Spider 360 shall have the right to thereafter retain as its own property, those Products for which a refund of the purchase price is to be made. Notwithstanding anything to the contrary in this Section 4, Spider 360 does not warrant that the operation of the Game Software will be uninterrupted or error-free. THE WARRANTY SET OUT IN THIS SECTION 4 IS THE ONLY WARRANTY APPLICABLE TO THE ORDER OR THE PRODUCTS. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

5. **Limitation of Liability.** NEITHER SPIDER 360 NOR ITS DEALER OR REPRESENTATIVE, IF ANY, SHALL BE LIABLE, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE, OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PURELY PECUNIARY DAMAGES OR FOR LOSS OF DATA OR FOR COSTS OF REMOVAL OR SHIPMENT. UNDER NO CIRCUMSTANCES SHALL SPIDER 360'S LIABILITY OR BUYER'S REMEDY FOR DAMAGES AGAINST SPIDER 360 EXCEED THE AMOUNT OF THE PURCHASE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH CLAIM IS MADE. IN THE EVENT THAT SPIDER 360'S WARRANTY, IF ANY, OR ANY OTHER OBLIGATION OF SPIDER 360 APPLICABLE TO THE PRODUCTS FAILS OF ITS ESSENTIAL PURPOSE, BUYER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO RETURN OF OR CREDIT FOR SO MUCH OF THE PURCHASE PRICE AS IS APPLICABLE TO THE PRODUCTS WHICH ARE NONCONFORMING OR DEFECTIVE, PROVIDED SUCH PRODUCTS ARE RETURNED TO SPIDER 360 F.O.B. SPIDER 360'S PLANT IN LOVES PARK, ILLINOIS, U.S.A. NO ACTION ARISING OUT OF THE ORDER OR PERTAINING TO THE PRODUCTS IN QUESTION MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE DATE OF SHIPMENT, OR, IN THE CASE OF WARRANTY CLAIMS, WITHIN ONE YEAR AFTER THE CLAIM WAS OR SHOULD HAVE BEEN DISCOVERED, BUT IN NO EVENT MORE THAN TWO YEARS AFTER PURCHASE. BUYER'S REMEDIES PROVIDED IN THIS AGREEMENT ARE ITS SOLE AND EXCLUSIVE REMEDIES.

6. **Other Provisions.** Upon Buyer's failure to pay or otherwise perform in accordance with this Agreement or any order governed by this Agreement, all amounts owing to Spider 360 by Buyer under the order in question and any other order or obligation of Buyer to Spider 360 shall, at Spider 360's option and without notice, become immediately due and payable. Any payment not received by Spider 360 on its due date shall be subject to a late charge of 1.5% per month until paid, unless applicable law limits this charge, in which event, the applicable late charge shall be the maximum monthly charge permitted by applicable law. Buyer shall pay Spider 360 all attorneys' and paralegal fees and all court costs and out-of-pocket disbursements incurred by Spider 360 to effect collection. Spider 360's rights and Buyer's obligations under Sections 2, 3, 4, 5 and this Section 6 of this Agreement shall survive any termination of this Agreement. This Agreement is made in and it and all matters pertaining to the Products shall be governed by the internal laws (without reference to the conflicts of laws principles thereof) of the State of Illinois. The invalidity of any term contained in this Agreement shall not affect any other of the terms of this Agreement. The failure of any party to enforce or declare a default or breach with respect to any particular term or condition of this Agreement or any purchase order governed by this Agreement shall not be considered a waiver of that party's right to enforce or declare a default or breach with respect to any other term or condition or, on a subsequent occasion, with respect to that particular term or condition. Spider 2000 v1 --12/3/01

