SOFTWARE LICENCE AGREEMENT

between

Party 1	Party 2
A company incorporated in [*country*] under company number XXX	A company incorporated in [*country*] under company number XXX
"Party1"	**"Party2"**
[*address*]	[*address*]

Content and Page Numbers

Background

Party1 wishes to license Party2 and its affiliates to use certain software, and Party2 wishes to use this software in the business of its group.

The parties now agree:

1. Key Terms

Licensed Software	[*name of software application being licensed*]
Installation Cap	[*number*] copies of the Licensed Software

Start Date	[*date*]
Initial Period	[*number*] years
Renewal Period	[*number*] years
Deadline for giving notice of non-renewal	45 days before next Renewal Period

Test End Date	[*date*]
Deadline for giving notice to end the test	[*date*]

Initial Fee	GBP [*amount*] + VAT
Invoice Payment Period	[*number*] days from the date of each invoice
Deadline for giving notice of new fee for next Renewal Period	60 days before next Renewal Period

Liability Cap	GBP [*amount*]

Notices (email)	For Party1: [*email address*] For Party2: [*email address*]
Notices (post)	For Party1: the address on front page of this agreement For Party2: the address on front page of this agreement

Open Source Software	[*name of OSS*]	[*link to terms for OSS*]
	[*name of OSS*]	[*link to terms for OSS*]
	[*name of OSS*]	[*link to terms for OSS*]

2. Entire Agreement

2.1 This agreement is the entire understanding between the parties regarding the licensing of the Licensed Software.

2.2 Regarding statements made by a party or its representatives (whether before this agreement was signed or in this agreement):

(a) the other party acknowledges it is not relying on those statements;

(b) the other party waives all claims for innocent or negligent misrepresentation;

(c) the sole remedies for any inaccuracy are those available for breach of contract.

2.3 All terms, including conditions and warranties, implied by law are excluded from this agreement other than where the law prohibits exclusion.

3. Duration and Renewal

3.1 The Licensed Rights start on the Start Date and continue in force for the Test Period and the Initial Period. The Licensed Rights then continually renew for further Renewal Periods unless either party sends written notice of non-renewal to the other party at least 45 days before the start of the next Renewal Period.

3.2 Where written notice of non-renewal is sent under clause 3.1, this agreement will terminate immediately before the start of the next Renewal Period.

4. Delivery and Installation

4.1 By the Start Date, Party1 shall provide Party2 with:

(a) a copy of the Licensed Software in object code;

(b) details of the system requirements for the Licensed Software; and

(c) installation instructions.

4.2 From the Start Date, the Licensee Group and IT Suppliers may install the Licensed Software in the IT Environment.

5. Licence

5.1 From the Start Date, Party1 grants the Licensee Group a non-exclusive licence to use the Licensed Software in their business. This licence includes the Licensee Group using the Licensed Software in their business to provide services to third parties, but excludes the Licensee Group providing the Licensed Software as a service to third parties.

5.2 From the Start Date, Party1 grants IT Suppliers a non-exclusive licence to use the Licensed Software but only to provide IT Services to one or more of the Licensee Group.

5.3 None of the Licensee Group and IT Suppliers may grant sub-licences of the Licensed Rights.

6. Restrictions

6.1 Party2 shall, and shall make sure that:

(a) the Licensee Group and IT Suppliers do not install or use the Licensed Software other than as allowed by clauses 4.2, 5.1, and 5.2;

(b) the Licensee Group provides no one with access to the Licensed Software other than IT Suppliers and other members of the Licensee Group;

(c) IT Suppliers provide no one with access to the Licensed Software other than the Licensee Group and other IT Suppliers;

(d) the Licensee Group and IT Suppliers do not decompile or reverse engineer the Licensed Software other than as permitted by law;

(e)   Licensee Group and IT Suppliers do not remove or obscure copyright notices in the Licensed Software.

6.2   Party2 shall make sure that where a third party stops being an IT Supplier or an Affiliate of Party2, the relevant third party promptly stops using the Licensed Software and deletes all copies of the Licensed Software in its possession or control.

6.3   Party2 will be liable to Party1 for breaches of clauses 6.1 and 6.2 by the Licensee Group or IT Suppliers.

7.   Installation Cap

7.1   Party2 shall make sure the number of copies of the Licensed Software installed in the IT Environment does not exceed the Installation Cap. The following do not count towards the Installation Cap:

(a)   copies of the Licensed Software used to provide backup, disaster recovery, or business continuity arrangements for the Licensee Group only;

(b)   temporary copies of the Licensed Software made by the Licensed Software in its ordinary operation.

8.   Open Source Software

8.1   This agreement does not apply to Open Source Software provided as part of the Licensed Software.

8.2   The parties acknowledge that each Open Source Software application is subject to the terms on which it is provided by the relevant licensor.

9.   Fees

9.1   Party1 shall not charge Party2 for using the Licensed Software under this agreement during the Test Period.

9.2   If Party2 does not terminate this agreement on or before the date identified in clause 1 as the 'deadline for giving notice to end the test', then after that date Party1 may issue Party2 with an invoice for the Initial Fee for the Initial Period.

9.3   On or after the 30th day before each Renewal Period under clause 3.1, Party1 may issue Party2 with an invoice for the Renewal Fee for that Renewal Period.

9.4   Where Party1 issues an invoice under this clause 9, Party1 shall send the invoice to Party2 by email on the date the invoice is issued.

9.5   Party2 shall pay each invoice issued under clauses 9.2 and 9.3 by the end of the Invoice Payment Period.

9.6   For Party1 to charge a fee for the next Renewal Period that differs from the amount charged pro rata for the current period, Party1 must notify to Party2 the amount of the new fee no less than 60 days before the next Renewal Period. If Party1 does not notify a change to Party2 by this deadline, the fee for the next Renewal Period will be the same amount charged pro rata for the current period.

9.7   Party2 shall pay all sums due under this agreement with no set-off or withholding. Where applicable law requires Party2 to withhold tax from an amount due under this agreement, it shall:

(a)   notify to Party1 details of the withholding obligation;

(b)   use reasonable efforts to obtain an exemption from the withholding obligation;

(c)   do all things reasonably necessary to enable Party1 to recover all the tax withheld.

9.8 Regarding money not paid by Party2 to Party1 by its due date under this agreement, Party1 may charge Party2 interest on the amount outstanding at an annual rate of five percentage points above the Bank of England official bank rate for each day that elapses after the due date until payment.

9.9 Party1 may assign to a third party its right to receive payment under this agreement by notifying to Party2 details of the right being assigned and the identity of the third party.

10. Updates

10.1 Within 30 days of the customer-release by Party1 of a new version of the Licensed Software, Party1 shall provide Party2 with:

(a) a copy of the new version in object code;

(b) details of any new system requirements for the new version; and

(c) installation instructions.

10.2 Party1 is not required to produce new versions of the Licensed Software, and Party2 is not required to install new versions of the Licensed Software.

10.3 A new version of the Licensed Software received under clause 10.1 will not count towards the Installation Cap until it is installed in the IT Environment.

11. Defects

11.1 The remedies in clauses 11.2 to 11.4 are Party2's sole remedies for the Licensed Software not operating to the Specification, and are only available if the IT Environment meets the system requirements notified to Party2.

11.2 Party2 may terminate this agreement by giving written notice of termination to Party1 where all these conditions are satisfied:

(a) the latest version of the Licensed Software provided by Party1 (whether under clauses 4.1, 10.1, or 14.3(e)) does not operate to the Specification in a material respect;

(b) Party2 notifies to Party1 written details of the failure within 14 days of installation in the IT Environment;

(c) Party1 either does not provide a repair or replacement of the Licensed Software within 21 days of receiving Party2's written details of the failure or Party1 provides a repair or replacement within the 21 day deadline but the repaired or replaced Licensed Software also fails to operate to the Specification in a material respect.

11.3 If Party2 terminates this agreement under clause 11.2 and the original failure concerns Licensed Software provided under clause 4.1, Party1 shall return the Initial Fee paid by Party2.

11.4 If Party2 terminates this agreement under clause 11.2 and the original failure concerns Licensed Software provided under clauses 10.1 or 14.3(e), Party1 shall return the part of the Initial Fee or Renewal Fee paid by Party2 that applies to the unused period after the date termination takes effect.

12. Rights in the Licensed Software

12.1 Party2 acknowledges that:

(a) Party1 (and its licensors) are the owners of the intellectual property in the Licensed Software;

(b) Party2 has no rights in the Licensed Software other than under this agreement.

13. Warranties

13.1 Immediately before Party1 provides a version of the Licensed Software to Party2 (whether under clauses 4.1, 10.1, 11.2(c), or 14.3(e)), Party1 shall state these facts are accurate:

(a) the licence granted to Party2 under this agreement does not conflict with any other right granted by Party1 to anyone else;

(b) so far as the directors of Party1 are aware (without requiring those individuals to have made enquiries to identify issues unknown to them), using this version under this agreement does not infringe the rights of any third party;

(c) this version is free from viruses and other malware.

14. Indemnity

14.1 Regarding each Indemnified Claim, Party1 shall pay Party2 the Legal Costs within 30 days of each settlement being made or each court order becoming final.

14.2 Clause 14.1:

(a) is not subject to the cap in clause 15.2 or the time limit in clause 15.4;

(b) survives the termination of this agreement.

14.3 Where Party2 becomes aware of an Indemnified Claim, it shall (and shall make sure each member of the Licensee Group shall):

(a) promptly notify the details to Party1, including details of all later developments;

(b) give Party1 sole conduct of the defence and settlement of the Indemnified Claim (at Party1's own expense);

(c) not make any admission regarding the Indemnified Claim without the written consent of Party1;

(d) promptly provide all documentation and information in its possession or control (including access to the relevant staff of the Licensee Group) as Party1 may reasonably require in conducting the defence and settlement of the Indemnified Claim;

(e) promptly replace the Licensed Software installed in the IT Environment with a new version if this is provided by Party1 to stop a continuing infringement.

14.4 If Party1 cannot settle an Indemnified Claim on terms acceptable to Party1, then Party1 may terminate this agreement by giving written notice of termination to Party2. If Party1 terminates under this clause 14.4, Party1 shall return the part of the Fee or Renewal Fee paid by Party2 that applies to the unused period after the date termination takes effect.

14.5 The indemnity in this clause 14 is Party2's sole remedy for costs, damages, losses, and liabilities arising from Indemnified Claims.

14.6 In this clause 14:

"**Indemnified Claim**" means a claim, including a threatened claim, by a third party against one or more members of the Licensee Group for infringement of intellectual property where the infringement arises from the Licensee Group using the Licensed Software under this agreement.

"**Legal Costs**" means the damages and legal costs payable by members of the Licensee Group under:

(a) each settlement of an Indemnified Claim;

(b) each court order regarding an Indemnified Claim where that court order is not subject to appeal and can no longer be appealed.

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15. Liability

15.1 Nothing in this clause 15 applies to:

(a) negligence that results in death or personal injury;

(b) fraud or fraudulent misrepresentation;

(c) repudiatory breach.

15.2 Party1's total liability to the Licensee Group and IT Suppliers for all their Claims is limited to the Liability Cap.

15.3 Party1 is not liable to the Licensee Group and IT Suppliers for their:

(a) costs, damages, and losses where these would be avoided by the Licensee Group and IT Suppliers having the anti-virus systems normally expected of a reasonable business in the position of the Licensee Group and IT Suppliers;

(b) costs, damages, and losses where these would be avoided by the Licensee Group and IT Suppliers having the backup systems normally expected of a reasonable business in the position of the Licensee Group and IT Suppliers;

(c) costs, damages, and losses where these are due to special circumstances of the Licensee Group or IT Suppliers (even if those circumstances are known to Party1);

(d) wasted costs;

(e) loss of goodwill or reputation;

(f) liabilities to third parties (other than under clause 14).

15.4 The time limit for the Licensee Group or IT Suppliers bringing an action for a Claim is reduced to one year.

15.5 In this clause 15:

"**Claim**" means:

(a) a claim regarding this agreement; or

(b) a claim for costs, damages, losses, or liabilities incurred due to the Licensed Software,

whether the claim is for breach of contract, tort (including negligence), debt, or misrepresentation.

16. Test Period

16.1 Party2 may terminate this agreement on the Test End Date.

16.2 To exercise its right of termination under clause 16.1, Party2 must send to Party1 by email and by post on or before the date identified in clause 1 as the 'deadline for giving notice to end the test' a written notice of termination. This agreement will then terminate at the end of the Test End Date.

17. Termination

17.1 Party1 may terminate this agreement where one or more of the following occur:

(a) Party2 breaches this agreement and either (i) the consequences of the breach cannot be remedied, or (ii) the consequences can be remedied but Party2 fails to remedy the breach to the satisfaction of Party1 (acting reasonably) within 14 days of being sent a written notice to do so;

(b) an IT Supplier or a member of the Licensee Group does something that would entitle Party1 to terminate under clause 17.1(a) if the act and any failure to remedy the act were by Party2;

(c) Party2 fails to pay by its due date an invoice issued under clause 9.

17.2 To exercise its right of termination under clause 17.1, Party1 must send a written notice of termination to Party2 by email and by post giving a date of termination that is 7 days or more after the sending date. This agreement will then terminate at the end of the termination date specified in the written notice.

18. Consequences of Termination

18.1 On termination of this agreement, Party2 shall (and shall make sure the Licensee Group and IT Suppliers shall) promptly:

(a) stop using the Licensed Software;

(b) delete all copies of the Licensed Software in their possession or control.

18.2 Party2 waives any right to return of any of the Fee or Renewal Fee following termination of this agreement, other where a return is payable under clauses 11 or 16.2.

18.3 Subject to clause 18.2, termination of this agreement affects no rights of the parties accrued before termination.

19. Third Party Rights

19.1 Subject to clauses 19.2 and 19.3, this agreement is not enforceable by anyone other than the parties to this agreement and their allowed assignees.

19.2 Affiliates and former Affiliates of Party2 may enforce clause 5.1 (for the periods it applies to them), but enforcement will be subject to clauses 6 and 15.

19.3 IT Suppliers and former IT Suppliers may enforce clause 5.2 (for the periods it applies to them), but enforcement will be subject to clauses 6 and 15.

19.4 The consent of IT Suppliers and Affiliates of Party2 (including former IT Suppliers and former Affiliates) is not required to amend or terminate this agreement, including to amend or remove clauses 5.1 and 5.2.

20. Miscellaneous

20.1 An assignment of this agreement, or of rights or obligations under this agreement, will be void unless made with the written consent of the other party or made by Party1 under clause 9.9.

20.2 In its marketing, Party1 may identify Party2 as a customer. If Party2 provides Party1 with its brand guidelines, Party1 shall follow those guidelines when referring to Party2.

20.3 A remedy provided to a party by this agreement does not exclude other remedies unless the remedy is stated to be a sole remedy.

21. Law and Jurisdiction

21.1 The laws of England and Wales apply to this agreement.

21.2 The courts of England have exclusive jurisdiction to settle every dispute regarding this agreement.

SIGNED by each party (or their authorised representatives).

For and on behalf of
PARTY 1

_____
signature

_____
print name

_____
company title

_____
date

For and on behalf of
PARTY 2

_____
signature

_____
print name

_____
company title

_____
date

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Schedule 1   Specification

[*description of the features of the Licensed Software*]

1. In this agreement, these terms have these meanings:

   "**Affiliates**" means an entity that at a given time directly or indirectly controls, is controlled by, or is under common control with another entity, with control having the meaning in Section 1124 Corporation Tax Act 2010.

   "**Claim**" has the meaning in clause 15.5.

   "**Indemnified Claim**" has the meaning in clause 14.6.

   "**IT Environment**" means (1) the computer systems of the Licensee Group, and (2) the computer systems of IT Suppliers but only to the extent these systems are used to provide IT Services to one or more of the Licensee Group.

   "**IT Services**" means hosting services, backup services, disaster recovery services, and business continuity services.

   "**IT Suppliers**" means third parties providing IT Services to one or more of the Licensee Group (and, where appropriate to the context, means each third party).

   "**Legal Costs**" has the meaning in clause 14.6.

   "**Licensed Rights**" means the rights licensed by Party1 under clauses 4.2, 5.1, and 5.2.

   "**Licensee Group**" means Party2 and its Affiliates (and, where appropriate to the context, means each of them).

   "**Renewal Fee**" means the fee for the next Renewal Period (as set under clause 9.6).

   "**Specification**" means the specification in Schedule 1.

   "**Test Period**" means the period from the Start Date to the Test End Date.

2. In this agreement, these terms have the meaning in clause 1 of this agreement:

   Initial Fee

   Initial Period

   Installation Cap

   Invoice Payment Period

   Liability Cap

   Licensed Software

   Open Source Software

   Renewal Period

   Start Date

   Test End Date.