

MaidSafe.net Commercial License version 1.1

PARTIES

(1) MaidSafe.next Ltd registered company number SC297540 of 72 Templehill, Troon, Scotland, KA10 6BE; and

(2) [INSERT FULL COMPANY NAME OF CUSTOMER] (registered company number [number]) of [address] (the "Customer").

MaidSafe has agreed to supply and license, and the Customer has agreed to use and pay for, MaidSafe's proprietary software on the terms set out in this agreement.

1 Definitions

In this agreement:

"Affiliate" means in relation to any company, any body corporate which is from time to time a holding company of that company, a subsidiary of that company or a subsidiary of a holding company of that company ("holding company" and "subsidiary" having the meanings attributed to them by s.1159 Companies Act 2006);

"Intellectual Property Rights" means any patents, rights to inventions, copyrights and similar rights, rights in know-how and all other intellectual property rights anywhere in the world for the full term of those rights including all registrations and applications and the right to apply for registrations;

"Licence" shall mean the licence in clause 3 of this agreement;

"Object" form shall mean any form resulting from mechanical transformation or translation of a Source form, including but not limited to compiled object code, generated documentation, and conversions to other media types;

"Software" means the source or binary form of any MaidSafe.net limited developed code; and

"Source" form shall mean software source code.

2 Supply of the Software

MaidSafe will make available to the Customer the Software for download.

3 Licence

3.1 In consideration of, and subject to payment of, the charges payable under this agreement, MaidSafe grants the Customer a perpetual non-exclusive licence to use reproduce, sublicense, and distribute the Software in Source or Object form, in each case in accordance with this clause 3, for the duration of this agreement. This right includes the right to use the Intellectual Property Rights in the Software, including patent rights, and the Customer acknowledges that its use of the Software or any similar software (or any modified version of the Software or any software that is based on or includes any part of the Software) other than in accordance with the terms of this agreement (including the payment of the charges when due) would infringe MaidSafe's Intellectual

Property Rights, including patents rights, and in such cases MaidSafe may terminate this Agreement without prejudice to its rights to claim damages, account of profits and/or injunctive relief.

3.2 Customer may reproduce and distribute copies of the Software in any medium, with or without modifications, and in Source or Object form, provided that Customer meets the following conditions:

- (a) Customer must ensure that any permitted user is required to enter into a written software licence and is not allowed to use the Software (including any modified version of the Software or any software that is based on or includes any part of the Software) in any manner that would not be permitted by this Licence;
- (b) Customer must cause any modified files to carry prominent notices stating that Customer changed the files;
- (c) Customer must retain, in the Source form of any copies of the Software (including any modified version of the Software or any software that is based on or includes any part of the Software) or any part thereof that Customer distributes, all copyright, patent, trademark, and attribution notices from the Source form of the Software; and
- (d) if the Software includes a "NOTICE" text file as part of its distribution, then any copies of the Software (including any modified version of the Software or any software that is based on or includes any part of the Software) or any part that Customer distributes must include a readable copy of the attribution notices contained within such NOTICE file in at least one of the following places:
 - (i) within a NOTICE text file distributed as part of the Software;
 - (ii) within the Source form or documentation, if provided along with the Software; or
 - (iii) within a display generated by the Software, if and wherever such third-party notices normally appear. The contents of the NOTICE file are for informational purposes only and do not modify the Licence.

3.3 Except as expressly permitted otherwise by any term of this agreement, only the Customer is permitted to use the Software. Use by the Customer includes use by the Customer's employees and contractors provided that such use is solely on behalf of the Customer and for the purposes of the Customer's business.

3.4 The Customer may make such backup copies of the Software as are reasonably necessary to support the Customer's use of the Software in accordance with this agreement. MaidSafe will own the Intellectual Property Rights in any such backup copies.

3.5 The Customer may reverse engineer or decompile

the Software but only to the extent allowed under applicable law and on the basis that Customer will request interoperability information from Madsafe.

- 3.6 The Customer will comply with any reasonable instructions which Madsafe gives the Customer relating to the use of the Software (or any modified version of the Software or any software that is based on or includes any part of the Software). The Customer will allow Madsafe access to any premises controlled by the Customer in order to allow Madsafe to check that the Software (or any modified version of the Software or any software that is based on or includes any part of the Software) is being used only as permitted.
- 3.7 This agreement does not grant permission to use the trade names, trademarks, service marks, or product names of the Licensor, except as required for reasonable and customary use in describing the origin of the Software and complying with this agreement.

4 Limited warranty

- 4.1 Madsafe warrants that it will perform its obligations under this agreement with reasonable care and skill.
- 4.2 If the warranty in clause 4.1 is breached, the Customer must tell Madsafe as soon as possible. The Customer must give Madsafe a reasonable time to fix the problem or to re-perform any relevant services. This will be done without any additional charge to the Customer. If Madsafe is able to do this within a reasonable time, Madsafe will have no other obligations or liability in relation to that breach. If Madsafe is unable to do this within a reasonable time or Madsafe does not think that it is a sensible way to deal with the problem, then Madsafe may if it wishes elect to take back the Software and to refund to the Customer all of the money which the Customer has paid to Madsafe under this agreement. Where the problem relates to a portion of the Software and other elements supplied which are capable of use separately without material detriment to the Customer, Madsafe may take back (and refund in respect of) affected portions only.
- 4.3 Apart from the terms set out in this agreement, no conditions, warranties or other terms apply to the Software or its supply or Licence under this agreement. In particular, no implied conditions, warranties or other terms relating to satisfactory quality or fitness for any purpose will apply to anything supplied under this agreement. Madsafe does not warrant or enter into any terms to the effect that the Software:
- (a) will perform any particular function or purpose; or
 - (b) be entirely free from defects or that its operation will be entirely error free.
- 4.4 Madsafe will not be liable for breach of any of the warranties or any other terms in this agreement to the extent that the breach arises from:
- (a) use of the Software other than in accordance with

normal operating procedures or as otherwise notified to the Customer by Madsafe;

- (b) any alterations to the Software made by anyone other than Madsafe or someone authorised by Madsafe;
- (c) any problem with the computer on which the Software is installed, any equipment connected to that computer or any other software which is installed on that computer;
- (d) any abnormal or incorrect operating conditions; or
- (e) use of the Software in combination with any other hardware or software, unless this use has been approved by Madsafe in writing.

5 Limitation of Liability

- 5.1 Neither party's liability:
- (a) for death or personal injury caused by its negligence or the negligence of its employees or agents;
 - (b) for breach of clause 7 (Confidentiality); or
 - (c) for fraudulent misrepresentation,
- is excluded or limited by this agreement, even if any other term of this agreement would otherwise suggest that this might be the case.
- 5.2 Other than as set out in clause 5.1, neither party shall be liable to the other (whether for breach of contract, negligence or for any other reason) for any:
- (a) loss of profits;
 - (b) loss of sales;
 - (c) loss of revenue;
 - (d) loss of any software or data;
 - (e) loss of use of hardware, software or data;
 - (f) indirect, consequential or special loss.
- 5.3 Subject to clauses 5.1 and 5.2, Madsafe's total aggregate liability under this agreement and in relation to anything which Madsafe has done or not done in connection with this agreement (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to:
- (a) an amount equal to 125% of the total amount payable by the Customer under this agreement in the preceding 12 months; or
 - (b) if the amount referred to in (a) cannot be calculated accurately at the time the relevant liability is to be assessed, or if it is less than £5,000, to £5,000

6 Charges

- 6.1 Schedule 1 sets out the licence fees and other charges payable by the Customer under this agreement. The charges are due on the dates (or on the happening of the events) specified in schedule 1.

- 6.2 Maidsafe may invoice the Customer for the charges as soon as they become due. The Customer must pay the invoices within 30 days of receiving them (and if Maidsafe posts them to the Customer, the Customer will be treated as having received them two working days later unless the Customer can show that this was not the case).
- 6.3 Where any charges are based on the Customer's revenues the Customer shall keep all accounts and documents necessary to evidence such revenues and to support any calculation of the relevant revenue share, and shall provide copies to Maidsafe on request. Customer shall allow Maidsafe and its agents to enter into Customer's premises and to have access to all such accounts and documents upon reasonable request. Where Customer's accounts and documents illustrate that Customer has underpaid any charges (or Maidsafe can otherwise demonstrate this) Customer shall immediately pay the balance due to Maidsafe plus Maidsafe's reasonable costs of audit. This clause 6.3 shall survive termination or expiry of this agreement for 6 years.
- 6.4 Maidsafe may charge interest on all sums outstanding beyond the date on which they are due for payment under this agreement. Interest may be charged on that basis from the date payment was due until the date of payment (including after any judgement has been obtained) at the rate of 3% per calendar month or part thereof.
- 6.5 The amounts specified in schedule 1 do not include VAT or any other taxes on supplies and the Customer will pay these to Maidsafe as well as the amounts concerned.

7 Confidentiality

- 7.1 Each party will keep confidential any information which the other supplies to it in connection with this agreement. Confidential information will include the Software and any related documentation; all information marked as being confidential; and any other information which might reasonably be assumed to be confidential. The obligations as to confidentiality in this agreement will not apply to any information which:
- (a) is available to the public other than because of any breach of this agreement;
 - (b) is, when it is supplied, already known to whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;
 - (c) is independently obtained by whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; or
 - (d) is required to be disclosed by law or by any court or tribunal with proper authority to order its disclosure (but only to the extent of such requirements).

8 Term and termination

- 8.1 This agreement will commence on the date set out on

page 1 and will continue indefinitely until terminated in accordance with this clause 8.

- 8.2 Either party may terminate this agreement if:

- (a) the other materially breaches any term of this agreement and it is not possible to remedy that breach or it is possible to remedy that breach, but the other fails to do so within 30 days of being asked to do so; or
- (b) the other suffers any of the following event:
 - (i) a meeting of creditors of that party being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to that party;
 - (ii) a chargeholder, receiver, administrative receiver or other similar party taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of that party;
 - (iii) that party ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
 - (iv) that party or its directors or the holder of a qualifying floating charge or any of its creditors giving notice of their intention to appoint, appointing or making an application to the court for the appointment of, an administrator;
 - (v) a petition being advertised or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of that party; and/or
 - (vi) the happening in relation to that party of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

- 8.3 Maidsafe may terminate this agreement if:

- (a) Customer fails to pay any charges within 60 days of their due date; or
- (b) should the Software become, or in Maidsafe's reasonable opinion is likely to become, the subject of a claim of intellectual property infringement claim.

- 8.4 Apart from any other rights which Maidsafe might have, if the Customer breaches this agreement Maidsafe may suspend performance of any of its obligations or any of the Customer's rights under this agreement until the Customer remedies the breach to the reasonable satisfaction of Maidsafe.

9 Consequences of termination

- 9.1 If this agreement is terminated (regardless of who terminates it and regardless of the reason) the

Customer will immediately on termination:

- (a) cease using the Software (including any modified version of the Software or any software that is based on or includes any part of the Software);
- (b) return all copies of the Software to Maidsafe or (if the copies are on media which is non-removable and forms part of equipment belonging to the Customer) delete all copies in such a way that they cannot be recovered; and
- (c) confirm to Maidsafe in writing that both of the above things have been done.

9.2 Termination of this agreement will not affect any accrued rights or liabilities which either Maidsafe or the Customer may have by the time termination takes effect. Clauses 5, 6 (for unpaid charges), 7 and 9 shall survive termination or expiry of this agreement and any other clause shall survive termination or expiry if expressly stated.

10 Other terms

- 10.1 The Customer may not assign any of the Customer's rights or obligations under this agreement. Maidsafe may assign this agreement or any of Maidsafe's rights or obligations under this agreement to someone else, provided Maidsafe tells the Customer in writing if it does so.
- 10.2 Neither party has any authority to enter into a contract for or on behalf of the other party, to assume a liability on behalf of the other party or to pledge the credit of the other party, unless such authority is expressly granted in writing by the other party. Neither party may act as if it has such authority and must not represent (expressly or by implying it) that it has such authority.
- 10.3 Maidsafe will not be liable to the Customer for any breach of this agreement which arises because of any circumstances which Maidsafe cannot reasonably be expected to control.
- 10.4 All notices and consents relating to this agreement must be in writing. All variations to this agreement must be agreed, set out in writing and signed on behalf of both Maidsafe and the Customer before they take effect.
- 10.5 In this agreement, unless it says otherwise:
 - (a) reference to a person includes a legal person (such as a limited company) as well as a natural person;

- (b) reference to this agreement includes reference to the schedules and appendices and other documents attached to it or incorporated by reference into it (all as amended or added to from time to time);
- (c) reference to "including" in this agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words;
- (d) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation;
- (e) references to clauses or schedules shall be to those in this agreement;
- (f) reference to this agreement shall include reference to it after it has been amended, added to or replaced by a new agreement.

- 10.6 Except to the extent that this agreement expressly says otherwise, nothing in this agreement shall create a partnership between the parties or give the rights of a partner to either party.
- 10.7 Any software supplied or Licenced under this agreement will not be treated as goods within the meaning of the Sale of Goods Act 1979. Firmware will be treated as part of the goods in which it is installed.
- 10.8 This agreement sets out all of the terms that have been agreed between Maidsafe and the Customer in relation to the subjects covered by it. Subject to clause 5.1, no other representations or terms shall apply or form part of this agreement. The Customer acknowledges that it has not been influenced to enter this agreement by anything Maidsafe has said or done or committed to do, except as expressly recorded herein.
- 10.9 No term of this agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.
- 10.10 This agreement is governed by Scottish law. Both Maidsafe and the Customer submit to the exclusive jurisdiction of the Scottish courts in relation to any dispute concerning this agreement but Maidsafe is also entitled to apply to any court worldwide for injunctive and other remedies in order to protect or enforce its Intellectual Property Rights.

SCHEDULE 1

CHARGES

1. Customer shall pay to Maidsafe 1% of Qualifying Revenue.
2. **"Qualifying Revenue"** shall mean any revenue generated directly or indirectly by Customer or any Affiliate of Customer through:
 - (a) use of the Software (including any modified version of the Software or any software that is based on or includes any part of the Software); or
 - (b) the provision of services directly or indirectly to any person using the Software (including any modified version of the Software or any software that is based on or includes any part of the Software),**("Qualifying Activities")** less any VAT charged on such Qualifying Activities.
3. Where any Qualifying Activity is discounted or provided for free (whether through bundling or otherwise) it will be deemed to be provided at market rate and the relevant Qualifying Revenue shall be calculated accordingly.
4. The charges will be payable quarterly in arrears.
5. Within 5 days of the end of each month Customer will provide to Maidsafe a statement setting out the Qualifying Revenue for the month. Maidsafe shall invoice Customer within 5 days of the end of each third month. Where no statement is provided or Maidsafe has cause to believe it to be inaccurate it may invoke its audit rights under this agreement.