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# Software licence agreement

## DATE

[Date]

## PARTIES

1. [[INDIVIDUAL NAME] of [address]] OR [[COMPANY NAME], a company incorporated in [jurisdiction] (registration number [number]) having its registered office at [address]] ("**the Licensor**"); and
2. [[INDIVIDUAL NAME] of [address]] OR [[COMPANY NAME], a company incorporated in [jurisdiction] (registration number [registration number]) having its registered office at [address]] ("**the Licensee**").

## AGREEMENT

### 1. Definitions

- 1.1 In this Agreement[, except to the extent expressly provided otherwise]:

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in [[England]] OR [[jurisdiction]];

"**Business Hours**" means the hours of [09:00 to 17:00] [GMT/BST] OR [[time zone]] on a Business Day;

"**Charges**" means:

- (a) [the charges specified in Part 4 of Schedule 1 (Software Licence Particulars)]; and
- (b) [such charges as may be agreed by the parties in writing from time to time];

[additional list items]

"**Documentation**" means [the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the Licensee];

"**Effective Date**" means [the date of execution of this Agreement];

"**Intellectual Property Rights**" means [all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)];

**"Minimum Term"** means[, in respect of this Agreement, the period of 12 months beginning on the Effective Date];

**"Schedule"** means any schedule attached to the main body of this Agreement;

**"Software"** means the software identified in Part 1 of Schedule 1 (Software Licence Particulars)[ in [object code format]];

**"Software Defect"** means a defect, error or bug in the Software having [an adverse effect] OR [a material adverse effect] on [the appearance, operation, functionality or performance of the Software][, but excluding any defect, error or bug caused by or arising as a result of:

- (a) [any act or omission of the Licensee or any person authorised by the Licensee to use the Software];
- (b) [any use of the Software contrary to the Documentation by the Licensee or any person authorised by the Licensee to use the Software];
- (c) [a failure of the Licensee to perform or observe any of its obligations in this Agreement]; and/or
- (d) [an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification];]

**"Software Specification"** means [the specification for the Software set out in Part 1 of Schedule 1 (Software Licence Particulars) and in the Documentation][, as it may be varied by the written agreement of the parties from time to time]; and

**"Term"** means [the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2].

## **2. Credit**

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## **3. Term**

- 3.1 This Agreement shall come into force upon the Effective Date.
- 3.2 This Agreement shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which this Agreement shall terminate automatically] OR [until *[event]*, upon which this Agreement shall terminate automatically], subject to termination in accordance with Clause 12 or any other provision of this Agreement.

#### **4. Supply of Software**

- 4.1 The Licensors shall make the Software available for download by the Licensee during the whole of the period of [10 Business Days following the Effective Date], and shall provide to the Licensee such assistance in relation to the download of the Software as the Licensee may reasonably request.

**OR**

- 4.1 The Licensors shall deliver [2] copies of the Software to the Licensee [on optical disk] within the period of [10 Business Days following the Effective Date].

**OR**

- 4.1 The Licensee acknowledges that the Licensors supplied [a copy of the Software] to the Licensee before the Effective Date.

#### **5. Licence**

- 5.1 The Licensors hereby grants to the Licensee from [the date of supply of the Software to the Licensee][ until [the end of the Term]] a [worldwide, non-exclusive] licence to:

- (a) [install[[ a single instance] of] the Software];
- (b) [use[[ a single instance] of] the Software[ in accordance with the Documentation]];
- (c) [create, store and maintain up to [5] back-up copies of the Software]; and
- (d) [[fix, patch, improve, integrate, update and upgrade the Software, and create new versions of the Software]],

*[additional list items]*

subject to the limitations and prohibitions set out and referred to in this Clause 5.

- 5.2 The Licensee may not sub-license and must not purport to sub-license any rights granted under Clause 5.1[ without the prior written consent of the Licensors].

**OR**

- 5.2 The Licensee may sub-license the rights granted in Clause 5.1 to [any third party][ for the purposes of [hosting the Software and supporting the Licensee's use of the Software in accordance with this Agreement] only]. Any such sub-license shall automatically terminate upon the termination of the licence in Clause 5.1.

- 5.3 The licence granted by the Licensors to the Licensee in Clause 5.1 is subject to the limitations regarding [the number of installations, the identity of users

and the number of concurrent users] set out in Part 3 of Schedule 1 (Software Licence Particulars).

- 5.4 The Software may only be used by [the officers and employees of the Licensee, and the officers and employees of the Licensee's agents, subcontractors, customers, clients, suppliers and service providers].
- 5.5 Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any licence granted under this Clause 5 shall be subject to the following prohibitions:
- (a) [the Licensee must not [sell, resell, rent, lease, loan, supply, publish, distribute or redistribute] the Software];
  - (b) [the Licensee must not alter, edit or adapt the Software]; and
  - (c) [the Licensee must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software].

*[additional list items]*

- 5.6 The Licensee shall be responsible for the security of copies of the Software supplied to the Licensee under this Agreement[ (or created from such copies)] and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this Agreement.

## **6. No assignment of Intellectual Property Rights**

- 6.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the Licensee, or from the Licensee to the Licensor.

## **7. Charges**

- 7.1 The Licensee shall pay the Charges to the Licensor in accordance with this Agreement.
- 7.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Licensee to the Licensor].
- 7.3 The Licensor may elect to vary [any element of the Charges] by giving to the Licensee not less than [30 days'] written notice of the variation[ expiring on [any anniversary of the date of execution of this Agreement]][, providing that no such variation shall constitute a percentage increase in [the relevant element of the Charges] that exceeds[ [2]% over] the percentage increase, since the date of the most recent variation of [the relevant element of the Charges][ under this Clause 7.3] (or, if no such variation has occurred, since the date of execution of this Agreement), in [the Retail Prices Index (all items) published by the UK Office for National Statistics].]

## **8. Payments**

- 8.1 The Licensor shall issue invoices for the Charges to the Licensee [from time to time during the Term] OR [on or after the invoicing dates set out in Part 4 of Schedule 1 (Software Licence Particulars)] OR *[[dates for invoicing]]*.
- 8.2 The Licensee must pay the Charges to the Licensor within the period of [30 days] following [the issue of an invoice in accordance with this Clause 8] OR [the receipt of an invoice issued in accordance with this Clause 8].
- 8.3 The Licensee must pay the Charges by [debit card, credit card, direct debit or bank transfer] (using such payment details as are notified by the Licensor to the Licensee from time to time).
- 8.4 If the Licensee does not pay any amount properly due to the Licensor under this Agreement, the Licensor may:
- (a) charge the Licensee interest on the overdue amount at the rate of [8% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
  - (b) claim interest and statutory compensation from the Licensee pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

**OR**

- 8.4 If the Licensee does not pay any amount properly due to the Licensor under this Agreement, the Licensor may charge the Licensee interest on the overdue amount at the rate of [2% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month). [The Licensor acknowledges and agrees that it shall have no right to claim interest or statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998, and that its contractual rights under this Clause 8.4 constitute a substantial remedy within the meaning of that Act.]

**9. Warranties**

- 9.1 The Licensor warrants to the Licensee that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 9.2 The Licensor warrants to the Licensee that:
- (a) [the Software as provided will conform in all [material] respects with the Software Specification];
  - (b) [the Software will be supplied free from Software Defects[ and will remain free from Software Defects[ for a period of at least 12 months following the supply of the Software]]];
  - (c) [the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs]; and

- (d) [the Software shall incorporate security features reflecting the requirements of good industry practice].

*[additional list items]*

- 9.3 The Licensor warrants to the Licensee that the Software[, when used by the Licensee in accordance with this Agreement,] will not breach [any laws, statutes or regulations applicable under English law].
- 9.4 The Licensor warrants to the Licensee that the Software, when used by the Licensee in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person [in any jurisdiction and under any applicable law].
- 9.5 If [the Licensor reasonably determines, or any third party alleges, that the use of the Software by the Licensee in accordance with this Agreement infringes any person's Intellectual Property Rights], the Licensor may[ acting reasonably] at its own cost and expense:
  - (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights[, providing that [any such modification must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification]]]; or
  - (b) procure for the Licensee the right to use the Software in accordance with this Agreement.
- 9.6 The Licensee warrants to the Licensor that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 9.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **10. Acknowledgements and warranty limitations**

- 10.1 The Licensee acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.
- 10.2 The Licensee acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be entirely secure.
- 10.3 The Licensee acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software

Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software.

- 10.4 The Licensee acknowledges that the Licensor will not provide any [legal, financial, accountancy or taxation advice] under this Agreement or in relation to the Software; and, except to the extent expressly provided otherwise in this Agreement, the Licensor does not warrant or represent that the Software or the use of the Software by the Licensee will not give rise to any legal liability on the part of the Licensee or any other person.

## **11. Limitations and exclusions of liability**

- 11.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

- 11.2 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this Agreement:

- (a) are subject to Clause 11.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

- 11.3 [Neither party shall be liable to the other party] OR [The Licensor shall not be liable to the Licensee] OR [The Licensee shall not be liable to the Licensor] in respect of any loss of profits or anticipated savings.

- 11.4 [Neither party shall be liable to the other party] OR [The Licensor shall not be liable to the Licensee] OR [The Licensee shall not be liable to the Licensor] in respect of any loss of revenue or income.

- 11.5 [Neither party shall be liable to the other party] OR [The Licensor shall not be liable to the Licensee] OR [The Licensee shall not be liable to the Licensor] in respect of any loss of use or production.

- 11.6 [Neither party shall be liable to the other party] OR [The Licensor shall not be liable to the Licensee] OR [The Licensee shall not be liable to the Licensor] in respect of any loss of business, contracts or opportunities.

- 11.7 [Neither party shall be liable to the other party] OR [The Licensor shall not be liable to the Licensee] OR [The Licensee shall not be liable to the Licensor] in respect of any loss or corruption of any data, database or software.



- 11.8 [Neither party shall be liable to the other party] OR [The Licensor shall not be liable to the Licensee] OR [The Licensee shall not be liable to the Licensor] in respect of any special, indirect or consequential loss or damage.

## **12. Termination**

- 12.1 The Licensor may terminate this Agreement by giving to the Licensee [not less than 30 days'] written notice of termination[, expiring [at the end of any [calendar month]] OR [after the end of the Minimum Term]].

- 12.2 The Licensee may terminate this Agreement by giving to the Licensor [not less than 30 days'] written notice of termination[, expiring [at the end of any [calendar month]] OR [after the end of the Minimum Term]].

- 12.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any [breach] OR [material breach] of this Agreement[, and the breach is not remediable];
- (b) [the other party commits a [breach] OR [material breach] of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of [30 days] following the giving of a written notice to the other party requiring the breach to be remedied]; or
- (c) [the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach)].

- 12.4 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;
  - (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[ (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement)]; or
- (d) [if that other party is an individual:

- (i) that other party becomes incapable of managing his or her own affairs as a result of illness or incapacity; or
  - (ii) that other party is the subject of a bankruptcy petition or order,
- and if that other party dies then this Agreement shall automatically terminate].

12.5 The Licensor may terminate this Agreement immediately by giving written notice to the Licensee if:

- (a) any amount due to be paid by the Licensee to the Licensor under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Licensor has given to the Licensee at least [30 days'] written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 12.5.

### **13. Effects of termination**

13.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 8.2, 8.4, 11, 13, 15 and 16].

13.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.

13.3 For the avoidance of doubt, the licences of the Software in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the Licensee must immediately cease to use the Software upon the termination of this Agreement.

13.4 Within [10 Business Days] following the termination of this Agreement, the Licensee shall:

- (a) return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and
- (b) irrevocably delete from all computer systems in its possession or control all copies of the Software,

and if the Licensor so requests the Licensee shall procure that [a director of the Licensee] certifies to the Licensor, in a written document signed by that person and provided to the Licensor within 5 Business Days following the receipt of the Licensor's request, that the Licensee has fully complied with the requirements of this Clause 13.4.

### **14. Notices**

14.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 14.2):

- (a) [[delivered personally or sent by courier], in which case the notice shall be deemed to be received [upon delivery]]; or
- (b) [sent by [recorded signed-for post], in which case the notice shall be deemed to be received [2 Business Days following posting]],

*[additional list items]*

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

14.2 The parties' contact details for notices under this Clause 14 are as follows:

- (a) in the case of notices sent by the Licensee to the Licensor, *[contact details]*; and
- (b) in the case of notices sent by the Licensor to the Licensee, *[contact details]*.

14.3 The addressee and contact details set out in Clause 14.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 14.

## **15. General**

15.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

15.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

15.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

15.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

15.5 This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

- 15.6 Subject to Clause 11.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 15.7 This Agreement shall be governed by and construed in accordance with [English law].
- 15.8 The courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## **16. Interpretation**

- 16.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 16.2 The Clause headings do not affect the interpretation of this Agreement.
- 16.3 References in this Agreement to "calendar months" are to [the 12 named periods (January, February and so on) into which a year is divided].
- 16.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **EXECUTION**

The parties have indicated their acceptance of this Agreement by executing it below.

**SIGNED BY** *[[individual name]* on [.....], the Licensor] OR *[[individual name]* on [.....], duly authorised for and on behalf of the Licensor]:

.....

**SIGNED BY** *[[individual name]* on [.....], the Licensee] OR *[[individual name]* on [.....], duly authorised for and on behalf of the Licensee]:

.....

## **SCHEDULE 1 (SOFTWARE LICENCE PARTICULARS)**

### **1. Specification of Software**

*[Specify Software]*

### **2. Timetable**

*[Insert timetable]*

### **3. Software licence**

*[Insert software licence details]*

### **4. Financial provisions**

*[Insert financial provisions]*

## **Free software licence agreement: drafting notes**

Software licence agreements (also called, simply, software licences) are legal documents providing that one person or company may use the software of another person or company, along with the particular rules and restrictions around such use.

This is a straightforward example of a software licensing agreement, designed for the granting of licences to businesses. This agreement should not be used for granting licences to consumers - consumer licences need to take special account of consumer protection legislation.

The software licence is a traditional "agreement", starting with parties' names, and ending with an execution block (to contain the signatures of each party) and a schedule for setting out agreement-specific variables.

All or almost all software licence agreements will contain core provisions covering the term of the licence, the scope of the licence, licence charges and payments, limitations of liability in relation to the use of the software, and termination of the licence agreement for cause or convenience, along with standard boilerplate clauses.

Optional provisions that are included here cover the supply of the software, express reservations of intellectual property rights, warranties and warranty limitations, and contractual notices. There are however fewer optional provisions here than in the standard and premium software licence agreements that we supply.

### **DATE**

- Insert the date of execution of the document.

### **PARTIES**

#### **Subsection 1**

- Is the Licensor an individual or a company?
- What is the full name of the individual (including middle names)?
- What is the postal address of the Licensor?
- What is the full company name of the Licensor?
- In which jurisdiction is the Licensor incorporated?
- What is the registration number of the Licensor?
- What is the registered office address of the Licensor?

#### **Subsection 2**

- Is the Licensee an individual or a company?
- What is the full name of the individual (including middle names)?

- What is the postal address of the Licensee?
- What is the full company name of the Licensee?
- In which jurisdiction is the Licensee incorporated?
- What is the registration number of the Licensee?
- What is the registered office address of the Licensee?

## **AGREEMENT**

### **Clause 1: Definitions**

#### **Clause 1.1**

##### *Definition of Business Day*

- The bank and public holidays of which jurisdiction should be excluded from the definition of "Business Day"?

##### *Definition of Business Hours*

- What are business hours for the purposes of this document?

##### *Definition of Charges*

- What charges are payable under this document?

##### *Definition of Documentation*

- How should the software documentation be identified?

##### *Definition of Effective Date*

- When will the contract come into force?

##### *Definition of Minimum Term*

- What minimum term will apply?

##### *Definition of Software*

- Should the form of the software be specified?
- Specify the form of the software.

##### *Definition of Software Defect*

- Will non-material defects count as software defects for the purposes of this definition?
- In what ways may a relevant defect affect the software?
- Should a set of general exclusions from this definition be included?

- What exclusions should apply here?

#### *Definition of Software Specification*

- Define "Software Specification". NB in many cases it will not be appropriate to include a reference to documentation in this definition.
- May the specification for the software be varied by the written agreement of the parties?

#### *Definition of Term*

- Define "Term", the period during which the contract will subsist.

### **Clause 2: Credit**

#### **Clause: Free documents licensing warning**

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

### **Clause 3: Term**

#### **Clause 3.2**

- Is the term of the contract indefinite, or will it come to an end upon some agreed date, or upon the occurrence of a defined event?
- Upon what date will the contract terminate?
- Upon the occurrence of what event will the contract terminate?

### **Clause 4: Supply of Software**

Optional element.

#### **Clause 4.1**

- Within what period must the Licensor make the software available to the Licensee for download?

#### **Clause 4.1**

- How many copies of the software will the Licensor deliver to the Licensee?
- How will the software be delivered?
- Within what period must the software be delivered?

#### **Clause 4.1**

- What exactly did the Licensor supply to the Licensee?

### **Clause 5: Licence**

#### **Clause 5.1**



- When does the licence to use the software commence?
- Will the licence expire at some point?
- What sort of licence is granted?
- When will the licence end?
- What specific rights are granted to the Licensee?
- Will the licence specify how many instances of the software may be installed?
- How many instances of the software may be installed?
- Will the licence specify how many instances of the software may be used?
- Can the use of the software be circumscribed by reference to its documentation?
- How many instances of the software may be used?
- How many back-up copies of the software may be created?
- What types of alteration to the software are permitted?

#### **Clause 5.2**

- Will the Licensee have the option to ask the Licensor for consent to sub-licensing?

#### **Clause 5.2**

- To whom may the software be sub-licensed?
- Is the right to sub-license restricted by reference to purpose?
- Specify the purposes by reference to which sub-licensing is permitted.

#### **Clause 5.3**

Optional element.

- What type(s) of commercial licensing limitations will apply?

#### **Clause 5.4**

Optional element.

- Who may use the software?

#### **Clause 5.5**

There are English/EU law restrictions upon the types of prohibition that may be applied to a software licence. In *UsedSoft GmbH v Oracle International Corp.* (C-128/11), the court ruled that a software vendor could not prevent a perpetual

licensee from selling a "used" licence for software downloaded from the internet. The law in this area is complex and uncertain, and you should consider taking legal advice if resale may be an issue for you.

- What general prohibitions apply to the use of the software?
- Specify the transactional prohibitions applying to the use of the software.

#### **Clause 5.6**

Optional element.

- Include this text only if the Licensee has the right to take copies.

#### **Clause 6: No assignment of Intellectual Property Rights**

Optional element.

#### **Clause 7: Charges**

##### **Clause 7.2**

- Are payment amounts stated inclusive or exclusive of VAT?

##### **Clause 7.3**

Optional element. Will the Licensor be permitted to vary the charges, or any element of the charges, in any circumstances?

- Which elements of the charges may be varied?
- What notice period should apply to the variation of charges?
- Will variations only take effect upon a particular date?
- Should variations be subject to a cap?

#### **Clause 8: Payments**

##### **Clause 8.1**

- When should invoices be issued?
- Specify invoicing dates.

##### **Clause 8.2**

- What is the period for payment of invoices?
- When does the period for payment of an invoice begin to run?

##### **Clause 8.3**

Optional element.

- Using what methods should payments be made?

#### **Clause 8.4**

- What contractual interest rate should apply to late payments?
- *Late Payment of Commercial Debts (Interest) Act 1998* - <https://www.legislation.gov.uk/ukpga/1998/20>

#### **Clause 8.4**

- What interest rate will apply here?
- Consider whether to include this acknowledgement.

#### **Clause 9: Warranties**

Optional element.

##### **Clause 9.1**

Optional element.

##### **Clause 9.2**

Optional element.

- What warranties in relation to the quality of the software will the Licensor give to the Licensee?
- Is this warranty subject to a materiality threshold?
- Will this warranty relate to a specific period?
- For what period will this warranty apply?

##### **Clause 9.3**

Optional element.

- What is the scope of this warranty?

##### **Clause 9.4**

Optional element.

- What is the jurisdictional coverage of the warranty?

##### **Clause 9.5**

Optional element.

- In what circumstances may the Licensor exercise its rights under this provision?
- Should there be an express requirement for the Licensor to act reasonably in relation to the exercise of its rights under this provision?

- Are there any express limitations on this right to modify?
- Specify the limitations on the right to modify.

#### **Clause 9.6**

Optional element.

#### **Clause 10: Acknowledgements and warranty limitations**

Optional element.

##### **Clause 10.1**

Optional element.

##### **Clause 10.2**

Optional element.

##### **Clause 10.3**

Optional element.

##### **Clause 10.4**

Optional element.

- What types of advice should be specified here?

#### **Clause 11: Limitations and exclusions of liability**

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable.

The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in its standard terms and conditions, but will also sometimes intervene where a term has been individually negotiated. The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable. If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should be drafted as an independent term, and be numbered separately from the other provisions. It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into.

Exclusions and limitations of liability in UK contracts are primarily regulated by the Unfair Contract Terms Act 1977 ("UCTA"). Contracts regulated by UCTA cannot exclude or restrict a party's liability for death or personal injury resulting from negligence (Section 2(1), UCTA). Except insofar as the relevant term satisfies the requirements of reasonableness, such contracts cannot exclude or restrict liability: (i) for negligence (which includes a breach of an express or implied contractual

obligation to take reasonable care or exercise reasonable skill) (Section 2(2), UCTA); or (ii) for misrepresentation (Section 3, Misrepresentation Act 1967).

In addition, if a contract is regulated by UCTA, and one of the parties is dealing on the other's written standard terms of business, then except insofar as the relevant contractual term satisfies the requirements of reasonableness the other party cannot: (i) exclude or restrict its liability in respect of a breach of contract; or (ii) claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of it; or (iii) claim to be entitled, in respect of the whole or any part of its contractual obligation, to render no contractual performance at all (see Section 3, UCTA).

UCTA includes various other restrictions, particularly in the case of contracts for the sale of goods and contracts under which possession or ownership of goods passes.

Somewhat different rules apply to limitations of liability in contracts with consumers, and these provisions should not be used in relation to such contracts.

These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

- *Unfair Contract Terms Act 1977 -*  
<https://www.legislation.gov.uk/ukpga/1977/50>

#### **Clause 11.1**

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

#### **Clause 11.3**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

#### **Clause 11.4**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

#### **Clause 11.5**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

#### **Clause 11.6**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

### **Clause 11.7**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

### **Clause 11.8**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

## **Clause 12: Termination**

### **Clause 12.1**

Optional element.

- What notice period will apply?
- Must the notice of termination expire after some particular period, or on some particular day?
- How will the limitation on the expiry of the termination notice period operate?
- Specify the relevant period.

### **Clause 12.2**

- What notice period will apply?
- Must the notice of termination expire after some particular period, or on some particular day?
- How will the limitation on the expiry of the termination notice period operate?
- Specify the relevant period.

### **Clause 12.3**

- In what circumstances may a party terminate for breach?
- Will all breaches, or only material breaches, give rise to a right of termination?
- What is the remediation period here?
- Should each party have a right to terminate if the other party is persistently in breach of contract, even where there has been no material breach?

### **Clause 12.4**

Depending upon the status of the parties, the circumstances of the termination and the applicable law, some of the rights to terminate set out here may be unenforceable.

- Will the winding up of a party as part of a solvent company reorganisation give rise to a right of termination for the other party?

#### **Clause 12.5**

Optional element.

- What notice period applies in the case of termination for non-payment?

#### **Clause 13: Effects of termination**

##### **Clause 13.3**

Optional element.

##### **Clause 13.4**

Optional element.

- Within what period following termination must licensed software copies be returned, destroyed or deleted?
- Who must certify compliance with this provision?

#### **Clause 14: Notices**

Optional element.

##### **Clause 14.2**

- Insert all required addressee, address and contact details for contractual notices sent to the Licensor.
- Insert all required addressee, address and contact details for contractual notices sent to the Licensee.

#### **Clause 15: General**

##### **Clause 15.1**

Optional element.

##### **Clause 15.2**

Optional element.

##### **Clause 15.3**

Optional element.

This is intended to prevent, for example, one party wrongfully claiming that a term of the contract was changed in a telephone call.

#### **Clause 15.4**

Optional element.

#### **Clause 15.5**

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

- *Contracts (Rights of Third Parties) Act 1999 - <https://www.legislation.gov.uk/ukpga/1999/31>*

#### **Clause 15.6**

Optional element.

#### **Clause 15.7**

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

- Which law will govern the document?

#### **Clause 15.8**

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

- The courts of which jurisdiction will have the exclusive right to adjudicate disputes relating to the document (subject to applicable law)?

### **Clause 16: Interpretation**

Should provisions concerning the interpretation of the document be included?

#### **Clause 16.1**

Optional element.

#### **Clause 16.2**

Optional element.

#### **Clause 16.3**

Optional element.

#### **Clause 16.4**



Optional element.

This provision is designed to exclude the application of a rule of interpretation known as the ejusdem generis rule. That rule may affect the interpretation of contractual clauses that list particular examples or instances of some more general idea, by limiting the scope of the general idea by reference to those particular examples or instances.

## **EXECUTION**

### **Subsection: Execution of contract by First Party (individual or company)**

- Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
- What is the full name of the Licensor signatory?
- On what date is the Licensor signing the contract?
- Add the full name of the person who will sign the document on behalf of the Licensor.
- On what date is the contract being signed on behalf of the Licensor?

### **Subsection: Execution of contract by Second Party (individual or company)**

- Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
- What is the full name of the Licensee signatory?
- On what date is the Licensee signing the contract?
- Add the full name of the person who will sign the document on behalf of the Licensee.
- On what date is the contract being signed on behalf of the Licensee?

## **SCHEDULE 1 (SOFTWARE LICENCE PARTICULARS)**

### **Part 1: Specification of Software**

- Specify the software.

### **Part 2: Timetable**

Optional element.

- Insert the timetable for the performance of the parties' obligations.

### **Part 3: Software licence**

Optional element.

- Insert details of the software licence, in particular the commercial limitations on usage (eg number of concurrent users).

#### **Part 4: Financial provisions**

- Insert financial provisions.