

DATED _____

(1) << >>

(2) << >>

RECIPROCAL SOFTWARE LICENCE AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

- (1) <<Name of Software Owner>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> (“the Software Owner”) and
- (2) <<Name of Developer>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> (“the Developer”)

WHEREAS:

- (1) By a Joint Software Development Agreement dated <<insert date>> between the Software Owner and the Developer (the “Development Agreement”), the Parties developed certain software programs (the “Software”) using existing software owned by the Software Owner (the “Source Software”) and the copyrights of each of the Parties were preserved and/or shared under the terms of Clause <<insert clause number>> of the Development Agreement.
- (2) By a Distribution Agreement entered into between the Software Owner and the Developer dated <<insert date>> (the “Distribution Agreement”) the Developer was granted the right to distribute the Software as set out in the Distribution Agreement.
- (3) The Software Owner and the Developer now wish to develop their own respective markets using the Source Software and the Software including all modifications, variations and enhancements made thereto, collectively referred to as the “Licensed Programs”, which requires the grant from each Party to the other of the right to use the other Party's proprietary rights in the Licensed Programs.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Business Day”	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in <<insert location>>;
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“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such); and
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“Intellectual Property Rights”

1.2 Unless the context otherwise requires:

1.2.1 “writing”, and any other form of communication effected by any similar means;

1.2.2 a statute or a provision of law as amended or re-enacted;

1.2.3 “this Agreement” is the Agreement and each of the Schedules as amended or re-enacted;

1.2.4 a Schedule is a schedule to this Agreement;

1.2.5 a Clause or paragraph is a Clause or paragraph of this Agreement (other than the Schedules);

1.2.6 a “Party” or the “Parties” means the Party or Parties to this Agreement.

1.3 The headings used in this Agreement shall have no effect upon the interpretation of the provisions of this Agreement.

1.4 Words imparting the singular shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations and other legal entities.

2. Reciprocal Grant

The Software Owner grants to the Developer the non-exclusive right to reproduce, enhance, vary, modify, and create derivative works of the Licensed Programs owned by the Software Owner, in whole or in part, subject to the provisions of Clauses 4 and 5 of this Agreement.

rights in any patents, trade marks, registered designs, or other intellectual property rights to apply for any of those rights, and company names, logos and e-mail addresses, and service marks, and know-how, rights in

in writing, or by any other means, in relation to a right in intellectual property.

of a similar effect or nature as those in (a) and (b) which now or hereafter exist, and

of past infringements of any of the rights in intellectual property.

in this Agreement to:

includes a reference to any form of facsimile transmission or other electronic communication.

reference to that statute or provision as amended or re-enacted at the relevant time;

Agreement and each of the Schedules as amended or re-enacted at the relevant time;

and

Clause of this Agreement (other than the relevant Schedule).

to this Agreement.

reference only and shall have no effect upon the interpretation of the provisions of this Agreement.

the plural and vice versa.

order.

Developer grants to the Software Owner the non-exclusive right to reproduce, enhance, vary, modify, and create derivative works of the Licensed Programs owned by the Developer, in whole or in part, subject to the provisions of

3. **Source Code, Object Code and Data**

For the purposes of Clause 2, each Party shall immediately on a date mutually agreed in writing exchange source codes, object codes and all data (written or otherwise) properly and commercially exploit the

of this Agreement or its exchange source codes, by the receiving Party to Clause 2.

4. **Intellectual Property and Proprietary Information**

4.1 The Intellectual Property (including the source and object code) together with any related documentation are and shall remain the property of the Software Owner. This Agreement shall affect the ownership of Intellectual Property.

Proprietary information in the source and object code documentation are and shall remain the property of the Software Owner. This Agreement shall affect the ownership of Intellectual Property.

4.2 Each Party agrees to acknowledge the Intellectual Property Rights interest of the other in the Licensed Programs and on the Licensed Programs.

Property Rights interest of the other in the Licensed Programs and on the Licensed Programs.

4.3 Each Party shall notify the other if they become aware of any unauthorised use of the Licensed Programs belonging to the other Party.

if they become aware of any unauthorised use of the Licensed Programs belonging to the other Party.

4.4 The Software Owner will indemnify the Developer on demand against all costs, claims, demands, expenses of or in connection with any infringement of the Intellectual Property Rights of any third party.

on demand against all costs, claims, demands, expenses of or in connection with any infringement of the Intellectual Property Rights of any third party.

4.4.1 The Developer shall indemnify the Software Owner in writing of any allegations of infringement and shall not make any admissions without the prior written consent of the Software Owner.

Software Owner in writing of any allegations of infringement and shall not make any admissions without the prior written consent of the Software Owner.

4.4.2 The Developer, at the request and expense, shall allow the Software Owner to settle all negotiations and litigation resulting from the infringement of the Intellectual Property Rights of the Software Owner taking over such costs within 30 Business Days after being notified of the infringement. The Software Owner shall diligently pursue the claim; and

request and expense, shall allow the Software Owner to settle all negotiations and litigation resulting from the infringement of the Intellectual Property Rights of the Software Owner taking over such costs within 30 Business Days after being notified of the infringement. The Software Owner shall diligently pursue the claim; and

4.4.3 The Developer shall indemnify the Software Owner, afford all reasonable assistance in the defence of any claims or litigation, and shall be reimbursed by the Software Owner for all expenses incurred in doing so.

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4.5 The Developer will indemnify the Software Owner on demand against all costs, claims, demands, expenses of or in connection with any infringement of the Intellectual Property Rights of any third party.

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- over such conduct within 30 Business Days after being notified of the claim and the Developer diligently pursues the settlement of any such claim.
- 4.5.3 The Software Owner shall, at the request of the Developer, afford all reasonable assistance to the Developer in connection with or litigation, and shall be reimbursed by the Developer for all expenses incurred in doing so.
- 4.6 If either Party's use or potential use of the Licensed Programs or any part thereof in accordance with the terms of this Agreement is found by a court of competent jurisdiction to constitute an infringement of the other Party's Intellectual Property Rights, then the relevant Party shall:
- 4.6.1 Procure for the other Party the right to continue using and possessing the Licensed Programs or any part thereof for the term of the License.
- 4.6.2 Modify or replace the Licensed Programs without detracting from the functionality of the Licensed Programs, so as to avoid the infringement.
- 4.7 If the remedies set out in sub-Clause 4.6 are not, in the opinion of the Parties, reasonably available, then either Party may, at the request of the other the respective parts of the Licensed Programs or any part thereof, subject of the Intellectual Property claim whereupon the Licensed Programs or any part thereof shall immediately terminate.
5. **Confidentiality**
- 5.1 Each Party undertakes that it shall keep confidential all Confidential Information disclosed to it by sub-Clause 5.2 or as authorised in writing by the other Party, at all times during the continuance of this Agreement and for a period of [30] years] after its termination:
- 5.1.1 keep confidential all Confidential Information;
- 5.1.2 not disclose any Confidential Information to any other party;
- 5.1.3 not use any Confidential Information for any purpose other than as contemplated by and for the purposes of this Agreement;
- 5.1.4 not make any copies of Confidential Information or part with possession of Confidential Information;
- 5.1.5 ensure that none of its employees, agents, sub-contractors or advisers shall be aware of Confidential Information, or be a breach of the provisions of sub-Clauses 5.1.1 to 5.1.4 above.
- 5.2 Either Party may:
- 5.2.1 disclose any Confidential Information to:
- 5.2.1.1 any sub-contractor of the disclosing Party;
- 5.2.1.2 any governmental body or regulatory body; or
- 5.2.1.3 any employee, agent, sub-contractor or adviser of the disclosing Party or of any of the bodies mentioned in sub-Clauses 5.2.1.1 to 5.2.1.3 above;
- provided that the disclosure is necessary for the purposes contemplated by this Agreement (including the provision of the Services), or as required by law, and the disclosing Party shall first inform the person, body or entity to whom the Confidential Information is to be disclosed that the Confidential Information is confidential and that it is being disclosed to them under the provisions of this Agreement.

Information is confidential if it is information of such body under such body) obtaining confidentiality undertaking should be as nearly as possible keep the Confidentiality for the purposes for which the

the disclosure is to any employee or officer of any the other Party a written question. Such undertaking terms of this Clause 5, to and to use it only for the

5.2.2 use any Confidentiality to any other person, to the or at any time after the fault of that Party. It not disclose any part knowledge.

purpose, or disclose it to any the date of this Agreement, public knowledge through no disclosure, that Party must information which is not public

5.3 The provisions of this Clause terms, notwithstanding the t

in accordance with their ment for any reason.

6. Liability

6.1 Whilst both Parties agree to their respective obligations to the other for any loss or damage arising from this Agreement.

in their performance of either shall be liable to the Party arising from this

6.2 Nothing in this Agreement shall limit or personal injury arising or damage arising out of fraud

er Party's liability for death or any harm, loss or

7. Force Majeure

7.1 No Party to this Agreement shall be liable for failure to perform their obligations where such failure is beyond the reasonable control of the Party limited to: power failure, internet failure, industrial action, civil unrest, fire, flood, storms, terrorism, acts of war, governmental action or any other cause beyond the control of the Party in question.

ure or delay in performing obligations from any cause that is causes include, but are not failure, industrial action, civil terrorism, acts of war, and the control of the Party

7.2 [In the event that a Party to this Agreement fails to perform their obligations hereunder as a result of force majeure for a continuous period of <<insert period>>, the other Party may terminate this Agreement by written notice at the end of the

to perform their obligations continuous period of <<insert period>>, the other Party may terminate this Agreement by

8. Term and Termination

8.1 This Agreement shall commence on the Commencement Date and shall continue for a Term of <<insert period>> from that date, subject to the provisions of this Clause 8.

Commencement Date>> from that date, subject to the

8.2 Either Party shall have the right to terminate this Agreement by giving not less than <<insert period>> written notice prior to the expiry of the term specified in sub-Clause 8.1 or any other period for which this Agreement has been extended (the "Termination Period") to extend this Agreement for a further period

ing not less than <<insert period>> prior to the expiry of the term specified in sub-Clause 8.1 or any other period for which this Agreement has been extended (the "Termination Period") to extend this

8.3 Either Party may terminate this Agreement by giving written notice to the other not less than <<insert notice period>> weeks after the date of such notice, provided that such termination shall not be effective until the end of the <<insert minimum term of agreement>> month period commencing on or at any time after the date of such notice.

8.4 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:

8.4.1 the other Party complies with any of the provisions of this Agreement and, if any of the provisions of remedy, fails to remedy it within <<insert period>> after being given written notice giving full particulars and requiring it to be remedied;

8.4.2 an encumbrancer to the extent that the other Party is a company, a receiver or liquidator of the property or assets of that other Party;

8.4.3 the other Party make [REDACTED] agreement with its creditors or, being a company, by [REDACTED] administration order (within the meaning of the Insolvency Act 1986).

8.4.4 the other Party, being a company, has a bankruptcy order made against it or, being a partnership, is being wound up into liquidation (except for the purposes of bona fide reconstruction) and in such a manner that the company or partnership effectively agrees to be bound by or assume the obligations of the other Party under this Agreement);

8.4.5 anything analogous occurring under the law of any jurisdiction occurs in _____;

8.4.6 that other Party ceases [REDACTED], to carry on business; or

8.4.7 control of that other person or connected persons not having any party on the date of this Agreement. For the purposes of Clause 8, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1125 of the Income Tax Act 2010.

8.5 For the purposes of sub-Clause 8.4, the Party in breach shall be considered capable of remedy if the Party in breach is able to remedy the breach of the provision in question in all respects.

8.6 The rights to terminate the [REDACTED] this Clause 8 shall not prejudice any other right or [REDACTED] in respect of the breach concerned (if any) or any other [REDACTED]

9. Effects of Termination

Upon the termination of this Agreement,

9.1 the licence and rights granted by the Licensor shall immediately terminate;

9.2 all Clauses which, either expressly or impliedly, relate to the period after the expiry or termination of the Contract shall remain in full force and effect;

9.3 termination shall not affect or limit the damages or other remedy which the terminating Party may be entitled to in the event giving rise to the termination or any other right or remedy which any Party may have in respect of any claim or agreement which existed at or before the date of termination.

- 9.4 subject as provided in this Agreement, in respect of any accrued rights neither Party shall be liable to the other; and
- 9.5 each Party shall (except to the extent of Confidential Information in Clause 5) immediately cease to use, either directly or indirectly, Confidential Information and all other property of the other Party limited to the proprietary information set out in Clause 5, and shall promptly return the same to the other Party.
10. **No Waiver**
- No failure or delay by either Party in exercising its rights under this Agreement shall be deemed to be a waiver of the rights of either Party of a breach of any provision of this Agreement or a waiver of any subsequent breach of the same or any other provision of this Agreement.
11. **Further Assurance**
- Each Party shall execute and do all such acts and execute all documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.
12. **Costs**
- Subject to any provisions to the contrary, each Party shall pay its own costs of and incidental to the negotiation, execution and carrying into effect of this Agreement.
13. **Set-Off**
- Either Party shall be entitled to set-off any sums received in respect of any claim against the other Party from payments due or to be received by or for the other Party under this Agreement or any other agreement.
14. **Assignment**
- This Agreement is personal to the Parties and neither Party may assign, mortgage, charge (otherwise than by floating charge), or otherwise delegate any of its rights hereunder, or sub-contract any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
15. **Time**
- 15.1 [The Parties agree that all time periods specified in this Agreement shall be of the essence of this Agreement.]
- OR
- 15.2 [The Parties agree that the time periods specified in this Agreement are for guidance only and are not to be varied by mutual agreement.]

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16. **Relationship of the Parties**

Nothing in this Agreement shall constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

17. **Non-Solicitation**

17.1 Neither Party shall, for the term of the Agreement and for a period of <<insert period>> after its termination, solicit or contract the services of any person who is or was employed by the other Party at any time in relation to this Agreement without the express written consent of that Party].

17.2 Neither Party shall, for the term of the Agreement and for a period of <<insert period>> after its termination, induce or attempt to induce any customer or client of the other Party to do business with the other Party without the express written consent of that Party].

18. **Third Party Rights**

18.1 [No part of this Agreement is intended to confer any rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.]

OR

18.2 [The Parties acknowledge that the Agreement is intended to benefit and shall so benefit <<insert name(s) of the party / parties>> for the purposes of the Contracts (Rights of Third Parties) Act 1999 and, subject thereto, the Parties confirm that the Agreement shall not confer any rights on any other third parties under this Agreement.]

18.3 Subject to this Clause 17 the Agreement shall continue to be binding on the transferee, successors and assigns of the Parties as required.

19. **Notices**

19.1 All notices under this Agreement shall be deemed duly given if signed by, or on behalf of, the Party giving the notice.

19.2 Notices shall be deemed to be given if:

19.2.1 when delivered, if delivered by hand or by registered mail, during business hours of the recipient; or

19.2.2 when sent, if transmitted by e-mail and a successful transmission report is received; or

19.2.3 on the fifth business day after the date of posting, if mailed by national ordinary mail, postage paid.

19.2.4 on the tenth business day after the date of receipt, if mailed by airmail, postage prepaid.

In each case notices shall be sent to the most recent address, e-mail address, or facsimile number of the Party.

20. Entire Agreement

20.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and shall be binding on the Parties and except by an instrument in writing signed by the duly authorized representatives of the Parties.

20.2 Each Party acknowledges that it enters into this Agreement, it does not rely on any representation, warranty or other terms provided in this Agreement except as expressly stated herein. The Agreement shall be binding on the Parties to the fullest extent permitted by law.

21. Counterparts

This Agreement may be entered into by the Parties to it on separate counterparts, and each counterpart shall be an original, but all the counterparts when taken together shall constitute one and the same instrument.

22. Severance

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, such provision(s) shall be deemed severed from the remainder of this Agreement and the remainder of this Agreement shall be valid and enforceable.

23. Dispute Resolution

23.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiation by their duly authorized representatives who have the authority to settle such disputes.

23.2 [If negotiations under subsection 23.1 fail, the Parties shall attempt to resolve the dispute within <<insert period>> of receipt of the written notice of dispute through an agreed Alternative Dispute Resolution ("ADR") process.]

23.3 [If the ADR procedure under subsection 23.2 fails to resolve the matter within <<insert period>> of the written notice of dispute, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.]

23.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitration rules, the Rules of the International Chamber of Commerce may, upon giving written notice to the President or Deputy President for the time being of the International Chamber of Arbitrators for

- the appointment of an arbitrator for any decision on rules that may be required.]
- 23.5 Nothing in this Clause 22 shall prevent a Party or its affiliates from applying to a court for interim relief.
- 23.6 The Parties hereby agree that the arbitration shall be the final method of dispute resolution under this Agreement and shall be final and binding on both Parties.
24. **Law and Jurisdiction**
- 24.1 This Agreement (including any amendments and variations) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 24.2 Subject to the provisions of this Clause 24, any controversy, proceedings or claim between the Parties arising out of or associated therewith shall fall within the jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been signed the day and year first before written

SIGNED by
<<Name and Title of person signing for the Software Owner's Name>>
for and on behalf of <<Software Owner's Name>>

In the presence of
<<Name & Address of Witness>>

SIGNED by
<<Name and Title of person signing for the Developer's Name>>
for and on behalf of <<Developer's Name>>

In the presence of
<<Name & Address of Witness>>