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BETA SOFTWARE AGREEMENT

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THIS AGREEMENT is made the

BETWEEN:

- (1) <<Name of the Developer>> incorporated in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> (“the Developer”);
- (2) <<Name of the Tester>> a natural person residing in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> (“the Tester”).

WHEREAS:

- (1) The Developer is creating a software product (“the Software”), has completed initial testing and development of the Software.
- (2) The Tester has agreed to test the Software for the Developer, subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

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

“Beta Test Period” means the period during which the Software will be tested by the Tester, as defined in Clause 5 of this Agreement;

“Confidential Information” means information relating to the Software and its development, [and] reports [and data] which are confidential in nature [and] are not to be disclosed to any third party without the prior written consent of the Developer;

“Employee” means any person who is employed by the Tester unless specifically stated otherwise;

“Licence” means the licence granted by the Developer to the Tester, as defined in Clause 3 of this Agreement;

“Output Data” means the data or other output produced by the front end of the Software;

“Premises” means the business premises located at <<Address>>

1.2 Unless the context otherwise requires, any reference in this Agreement to:

1.2.1 “writing”, and any reference to any document, includes a reference to any communication, whether in writing or otherwise, by any means, including electronic or facsimile transmission or any other means of communication;

1.2.2 a statute or regulation is a reference to that statute or regulation as amended or in force at the relevant time;

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1.2.3 "this Agreement and each of the Schedules a

...this Agreement and each of the ...nted at the relevant time;

1.2.4 a Schedule i

...ement;

1.2.5 a Clause or (other than and

...ce to a Clause of this Agreement ...agraph of the relevant Schedule;

1.2.6 a "Party" or t

...parties to this Agreement.

1.3 The headings used no effect upon the i

...r convenience only and shall have ...ement.

1.4 Words imparting the

...clude the plural and vice versa.

1.5 References to any g

...other gender.

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2. **Nature of the Agreement**

2.1 The Developer requ by users that wou employment.

...oftware in a business environment ...a product in the course of their

2.2 The Tester has ag Employees that w employment.

...he Software at their Premises by ...a product in the course of their

2.3 The Tester shall as skills, qualifications content and quality for the collection of

...] Employees with the appropriate ...st and evaluate the functionality, ...all put in place suitable measures ...ata from those Employees.

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3. **Licence and Use of Softw**

3.1 The Developer gra Software subject t described herein.

...on-exclusive licence to use the ...tions of this Agreement and as

3.2 The Tester shall use

...purposes only.

3.3 The Tester shall no the Software in any

...en consent of the Developer, use ...ises.

3.4 The Tester shall no without the prior wri

...the software or installation media ...oper.

3.5 The Licence shall n materials of the De to in writing by the D

...to any other software, programs or ...oftware unless specifically agreed

3.6 The Tester acknow accordance with the otherwise.

...sed to use the Software only in ...this Agreement and not further or

3.7 The Tester shall no Developer's rights,

...mit any act which may affect the ...ware.

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4. **Disclaimer of Warranties**

- 4.1 The Software is provided as a beta test and is released solely for the purposes of testing. The Developer acknowledges that the Software is not a finished product and is provided "as is".
- 4.2 The Developer makes no warranty that the Software is suitable for use in a particular environment or that it will produce accurate data which will be usable for the Tester's business.
- 4.3 The Tester acknowledges that the use of the Software may lead to data loss or other damage to the Tester's systems or the data held thereon.
- 4.4 The Tester acknowledges that the use of the Software is at its own risk.
- 4.5 The Developer shall not be liable for any direct, indirect, consequential or incidental loss or damage, including loss of profits, arising from or relating to the Software or its use.
- 4.6 [Nothing in this Agreement shall limit the Developer's liability for death or personal injury arising from negligence.]

5. **Beta Test Period**

- 5.1 [The Beta Test Period shall commence on <<insert date>> or until <<insert date>> and continue until <<insert date>> in accordance with Clause 9.]
OR
[The Beta Test Period shall commence on <<insert date>> and continue for a period of <<insert period>> from <<insert date>> until terminated in accordance with Clause 9.]
- 5.2 The Beta Test Period shall be as set out in sub-Clause 5.1 as the Parties shall agree.
- 5.3 [At the end of the Beta Test Period the Software shall automatically cease to be available for use.]
- 5.4 At the end of the Beta Test Period the Tester shall remove all copies of the Software from its control and shall return the Software to the Developer:
 - 5.4.1 All copies of the Software on any physical media;
 - 5.4.2 All documents, reports or other information developed by the Developer or created by the Tester in connection with the Software (including any documentation is freely available to the Tester in connection with the beta test); and
 - 5.4.3 All reports and other information generated by the Developer or the Tester in connection with the Software.
- 5.5 At the end of the Beta Test Period the Tester may [not] retain any and all Output Data produced during the Beta Test Period.

6. **Software Updates**

- 6.1 The Developer may, during the Beta Test Period release updates for the Software. If the Tester wishes such updates to form part of the testing, the Tester shall be notified of their availability and the Tester shall be sent physical media containing the updates.

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- 6.2 All required updates shall be provided to the Tester as soon as is reasonably possible following notification.
- 6.3 Reports produced under this clause shall include the time and date of installation of any updates.

7. Reports and Feedback

- 7.1 Throughout the Beta Test Period the Tester shall obtain daily feedback from all Employees assigned to the Beta Test and shall use such feedback to improve the Software in the format set out in Schedule 1 of this Agreement.
- 7.2 Reports should provide details of the Tester's performance including details of any errors, anomalies, bugs, shortcomings or similar faults. General feedback including compliments and suggestions (both positive and negative) should also be included.
- 7.3 [Where error reports are produced by the Software the Tester should ensure that such files are sent to the Developer.]
- 7.4 If the Software subsequently updates automatically the Tester should ensure that all computers on which the Software is tested are connected to the internet.
- 7.5 If such reports and feedback are received automatically, the Tester shall take appropriate steps to ensure that such information is manually sent to the Developer.]
- 7.6 The Developer may require direct contact with the Tester and Employees assigned to the Beta Test and Employees using email. The Developer may contact the Tester or Employees and such contact may require meetings to discuss the Software and testing.

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8. Confidentiality and Non-Disclosure

- 8.1 The Tester undertakes to keep confidential and not disclose any information provided by sub-Clause 8.2 or as otherwise provided at all times during the Beta Test Period and [for <<insert>>] after the conclusion:
 - 8.1.1 keep confidential any information;
 - 8.1.2 not disclose any information to any other party;
 - 8.1.3 not use any information for any purpose other than as contemplated by the terms of this Agreement;
 - 8.1.4 not make any information available in any way or part with possession of any Confidential Information;
 - 8.1.5 ensure that any subcontractors, officers, employees, agents or advisers do not disclose any Confidential Information by the Tester, would be a breach of this Agreement in violation of 8.1.4 above.
- 8.2 The Tester may:
 - 8.2.1 disclose Confidential Information to:
 - 8.2.1.1 any court of law;
 - 8.2.1.2 any government authority or regulatory body; or

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8.2.1.3 any of the
person

ers or any of the aforementioned

to such extent as
this Agreement
Tester first
Information
such body
authorised
submitting to
question, as
the Confidential
purposes for

for the purposes contemplated by
w, and in each case subject to the
n question that the Confidential
pt where the disclosure is to any
b-Clause 8.2.1.2 above or any
(any such body) obtaining and
n undertaking from the person in
the terms of this Clause, to keep
ential and to use it only for the
made; and

8.2.2 use any Confidential
other person
or at any time
fault of the
disclose any
knowledge.

any purpose, or disclose it to any
it is at the date of this Agreement,
nes, public knowledge through no
n doing so the Tester does not
al Information which is not public

8.3 Prior to the commencement
written undertakings
of this Clause 8 in
herein.

Software the Tester shall obtain
ees to comply with the provisions
st as binding as those contained

8.4 The provisions of the
terms, notwithstanding
reason.

be in force in accordance with their
expiry of this Agreement for any

9. Termination

9.1 The Developer shall
the Beta Test Period

this Agreement prior to the end of
ster:

9.1.1 has committed
breach is committed
immediately
breach within

of this Agreement, unless such
which case the right to terminate
e Tester has failed to remedy the
notice to do so; or

9.1.2 goes into business
for the purpose
amalgamation
any part of it

ther voluntary or compulsory (save
e corporate reconstruction or
ointed in respect of the whole or

9.2 Any and all obligations
continue beyond the
shall survive termination

either expressly or by their nature
on or expiration of this Agreement

9.3 The provisions of
termination under the

5.5 shall apply in the event of

10. Notices

10.1 All notices under this

writing.

10.2 Notices shall be deemed

given:

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10.2.1 when delivered by a registered messenger or other messenger (including registered messenger) outside business hours of the recipient; or

10.2.2 when sent, if by registered mail and a successful transmission report or return receipt is received;

10.2.3 on the fifth business day following mailing, if mailed by national ordinary mail;

10.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case address, telephone number, facsimile number or e-mail address, or

registered messenger (including registered messenger) outside business hours of the recipient; or

mail and a successful transmission report or return receipt is received;

g mailing, if mailed by national

g mailing, if mailed by airmail,

ent address, e-mail address, or

11. Relationship of Parties

Nothing in this Agreement shall be deemed to create a partnership, joint venture, relationship of principal and agent, or any other relationship between the Developer and the Tester.

deemed to create, a partnership, the relationship of principal and agent, or any other relationship between the Developer and the Tester.

12. Assignment

The Tester may not assign or otherwise transfer to any third party the benefit of this Agreement.

or in any other manner make over the benefit of this Agreement.

13. Severance

The Parties agree that, if any provision of this Agreement is found to be unenforceable, the remainder of this Agreement shall nevertheless remain enforceable.

or more of the provisions of this Agreement are found to be unenforceable, that / those provisions shall nevertheless remain enforceable. The remainder of this Agreement shall nevertheless remain enforceable.

14. Entire Agreement

14.1 This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. No oral or written agreement, understanding or arrangement shall be binding on the Parties for any representative purpose unless it is in writing and signed by both of the Parties.

constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. No oral or written agreement, understanding or arrangement shall be binding on the Parties for any representative purpose unless it is in writing and signed by both of the Parties.

14.2 Unless otherwise provided in this Agreement, this Agreement may be amended or modified only by a written instrument signed by both of the Parties.

Whenever in this Agreement, this Agreement may be amended or modified only by a written instrument signed by both of the Parties.

15. Law and Jurisdiction

15.1 This Agreement (including all matters and obligations arising therefrom or associated with it) shall be governed by, and construed in accordance with, the law of the State of California.

all matters and obligations arising therefrom or associated with it) shall be governed by, and construed in accordance with, the law of the State of California.

15.2 Any dispute, controversy or claim between the Parties relating to this Agreement (including all matters and obligations arising therefrom or associated with it) shall be referred to and resolved by arbitration.

claim between the Parties relating to this Agreement (including all matters and obligations arising therefrom or associated with it) shall be referred to and resolved by arbitration.

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therefrom or associated with the jurisdiction of the courts of England and Wales

within the jurisdiction of the courts

IN WITNESS WHEREOF this Agreement has been executed and signed before written

executed the day and year first

SIGNED by

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

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

SIGNED by

<<Name and Title of person signing for and on behalf of <<Tester's Name>>>

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

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Beta Testing Report

<<Insert Details>>

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