

**HET SOFTWARE LIMITED**

**STANDARD LICENCE AGREEMENT**

Rook Tree Barn  
Withersfield Road  
Great Wratting  
Suffolk CB9 7HD

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<http://www.hetsoftware.co.uk>

**THIS SOFTWARE LICENCE is made BETWEEN**

1. **HET SOFTWARE LIMITED** (registered number 2855856) whose registered office is Rook Tree Barn, Withersfield Road, Great Wratting, Suffolk, CB9 7HD ("**HET**") and
2. The company, firm, individual or undertaking named as the Customer in the Schedule ("**Customer**").

**RECITAL:**

HET has agreed to grant the Customer a non-exclusive non-transferable licence to use the computer software programs and associated documentation listed in the Schedule upon the terms and conditions of this Agreement and HET's Standard Terms and Conditions of Business. In the event of a conflict between this Agreement and HET's Standard Terms and Conditions of Business, this Agreement shall prevail.

**OPERATIVE TERMS:**

**1 Definitions**

1.1 In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

"**Activation Key**" means a series of digits, which is required to activate the Licensed Software;

"**Authorised User**" means any user for whom a Licence Fee has been paid, as set out in the Schedule;

"**Delivery Date**" means the date upon which the Licensed Software and the Documentation is delivered to the Customer by HET;

"**Documentation**" means the instruction manuals technical literature user guides and other information (identified in the Schedule) and associated with the Licensed Software supplied by HET to the Customer whether in electronic form or otherwise;

"**Licence Fee**" means the fee for the licence set out in the attached Schedule;

"**Licensed Software**" means the software program in object code form specified in the Schedule;

"**Support**" means providing support for the Licensed Software through answering technical and operational questions relating to the performance of the Licensed Software;

"**Support Fee**" means the fee payable for support as set out in the Schedule subject to any increase under clause 3.2.

"**Software Subscription**" means HET has agreed to licence the software and provide support for a monthly fee per user for a minimum contract period.

**2 Licence**

2.1 In consideration of the payment by the Customer of the Licence Fee HET hereby grants to the Customer a non-exclusive non-transferable licence to use the Licensed Software and the Documentation for the number of Authorised Users set out in the Schedule.

2.2 Each site using the Licensed Software must be licensed regardless of where the database resides.

2.3 Where a Software Subscription contract is agreed the Customer may not reduce the number of licensed users. HET agrees that the number of licensed users may be increased by payment of the increased monthly subscription.

2.4 HET reserves the right to charge the Customer interest in respect of late payment of any sum due under this Agreement at the rate of 3 per cent per month or part of a month on sums outstanding from the due date until payment in full.

2.5 HET shall deliver to the Customer one copy of the Licensed Software for each site on which the Customer is licensed to use the Licensed Software, and the cost of such delivery shall be included in the License Fee.

2.6 The Customer shall be entitled to make copies of the Documentation for the purpose of instruction of the Authorised Users in the use of the Licensed Software.

2.7 HET shall provide the Customer with an Activation Key in respect of the Licensed Software. It is the responsibility of the Customer to:

2.7.1 ensure that the Activation Key is entered into the appropriate data entry form in the Licensed Software;

2.7.2 obtain and enter any subsequent Activation Key in sufficient time to ensure that continuity of operation of the Licensed Software is ensured. The Customer should allow at least 2 working days for delivery of a new Activation Key by HET following receipt by HET of the Customer's request for a new Activation Key and any payment due.

### **3 Support**

3.1 Unless specifically agreed otherwise in writing the Customer shall pay for, and HET shall provide, Support for the Licensed Software in accordance with this Agreement.

3.2 The Customer shall pay the Support Fee on the date set out in the Schedule, and annually thereafter until the expiry of the licence granted under clause 2.1 above. HET may increase the Support Fee to a sum being 110 percent of the Support Fee charged the previous year.

3.3 HET may at its sole discretion provide additional functionality in return for an increase in annual support charges that exceed 110 percent of the Support Fee charged in the previous year.

3.4 HET shall provide Support through a telephone help line open at the following times:

0900 - 1700 Monday to Friday excluding Bank and Public Holidays.

In all cases, Bank and Public Holidays will mean in the local country where the software is licensed. HET will use its reasonable endeavours to respond to help line enquiries received within Working Hours in less than four hours.

3.5 HET reserves the right to withhold Support where:

3.5.1 the individual using the Licensed Software has not received a minimum of three days training approved by HET; or

3.5.2 HET believes that further training is required for the proper and effective use of the Licensed Software by the Customer and HET gives the Customer thirty days notice of this requirement.

3.6 HET shall have no obligation to visit the premises of the Customer to provide Support. If visits are agreed by HET, the Customer shall be responsible for the fees and expenses of HET in relation to such visits.

3.7 HET shall not be obliged to provide Support for any computer hardware or software which has not been supplied by HET.

3.8 Where new versions of the Licensed Software and Documentation are issued, the Support shall continue to be governed by this Agreement.

### **4 Property and Confidentiality in the Licensed Software and Documentation**

4.1 The Licensed Software and the Documentation contain confidential and proprietary information of HET and all copyright trade marks and other intellectual property rights in the Licensed Software and the Documentation are the exclusive property of HET. No title to or rights of ownership, copyright or other intellectual property in the Licensed Software or Documentation is transferred to the Customer (other than the licence rights expressly granted by this Agreement).

4.2 The Customer shall not:

4.2.1 (save as provided in clause 2.6 and clause 5) copy the whole or any part of the Licensed Software or the Documentation;

4.2.2 modify, merge, interface or combine the whole or any part of the Licensed Software or the Documentation with any other software or documentation otherwise than with the prior written consent of HET;

4.2.3 assign, transfer, distribute, sell, lease, rent, sub-licence, charge or otherwise deal in or encumber the Licensed Software or the Documentation nor use on behalf of or make available the same to any third party; or

4.2.4 adapt, translate, reverse engineer, de-compile or disassemble the whole or any part of the Licensed Software.

4.3 The Customer will indemnify HET against any loss or damage incurred by HET as a result of the failure of the Customer to comply with any of its obligations under this Agreement. The Customer will give all reasonable assistance to HET in proceeding against any person to whom the Customer has disclosed the Licensed Software or the Documentation or any part thereof and shall promptly notify HET if it becomes aware of any breach of confidentiality or infringement of any of HET's rights in the Licensed Software or the Documentation (whether actual or threatened) by any person (whether authorised or otherwise) or of any unauthorised use of the Licensed Software or the Documentation by any person. The provisions of this clause 4 will survive termination of this Agreement for any reason.

## **5 Copying of the Licensed Software and Documentation**

5.1 The Customer shall be entitled to make one back-up copy of the Licensed Software for security purposes only. Any such copy shall in all respects be subject to the terms and conditions of this Agreement and shall be deemed to form part of the Licensed Software.

## **6 Warranty**

6.1 Subject to the provisions of clauses 6.4 and 7, HET warrants that:

6.1.1 it has the right power and authority to licence the Licensed Software and the Documentation upon the terms and conditions of this Agreement;

6.1.2 the Licensed Software and Documentation will at the Delivery Date conform to its specifications existing at the date hereof; and

6.1.3 the Licensed Software will be free from material defects in the medium upon which it is recorded under normal use and service for a period of 90 days from the Delivery Date provided that HET's entire liability and the Customer's sole remedy for breach of this warranty shall be the replacement of any defective medium covered under this warranty.

6.2 The Customer shall give notice to HET as soon as possible upon becoming aware of any breach of warranty.

6.3 Subject to clause 6.4, HET shall have the right to remedy or procure that any third party remedies any breach of the warranty set out in clause 6.1.2 by replacement of the Licensed Software and/or Documentation with a new copy or copies at HET's discretion.

6.4 HET shall have no liability to remedy a breach of warranty where such breach arises as a result of:

6.4.1 any repair adjustment alteration or modification of the Licensed Software or the Documentation by any person other than HET;

6.4.2 any use of the Licensed Software other than substantially in accordance with the Documentation;

6.4.3 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by HET;

6.4.4 the use of the Licensed Software on or with programs not supplied by or approved in writing by HET;

6.4.5 failure of the Customer to request or correctly enter the Activation Key.

6.5 Without prejudice to the foregoing clauses, whilst HET will use its reasonable endeavours to ensure that the Licensed Software is error free and meets the Customer's requirements, HET does not warrant:

6.5.1 that the use of the Licensed Software will meet the Customer's data processing requirements; and

6.5.2 that the operation of the Licensed Software will be uninterrupted, error-free or free from defects in material design and workmanship.

6.6 Except as expressly set out in this Agreement and HET's Standard Terms and Conditions of Business, all conditions, warranties, terms and undertakings, express or implied, whether by statute, common law, trade practice, custom, course of dealing or otherwise (including without limitation as to quality, performance or fitness or suitability for purpose) in respect of the Licensed Software and Documentation are hereby excluded to the fullest extent permissible by law.

## **7 Limitation of liability**

7.1 The following provisions set out HET's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer its agents, employees and sub-contractors in respect of:

7.1.1 any breach of its contractual obligations arising under this Agreement; and

7.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.

7.2 HET's liability to the Customer under Part I of the Unfair Contract Terms Act 1977 or for death or injury resulting from the negligence of HET or that of its employees or agents and for any loss or damage resulting from fraudulent misrepresentation shall not be limited.

7.3 HET shall be liable to the Customer in respect of direct damage to the physical property of the Customer resulting from the negligence of HET, its employees or agents up to a limit of one hundred thousand pounds (£100,000) in respect of any one event or series of connected events.

7.4 In all other cases HET's liability to the Customer will not exceed the aggregate of the Licence Fee and Support Fee paid by the Customer.

7.5 HET shall in no circumstances be liable to the Customer in respect of any loss of profits, goodwill or any type of special indirect or consequential loss (including business interruption, loss of business information or data and loss or damage suffered by the Customer as a result of any action brought by a third party) even if such loss was reasonably foreseeable or HET had been advised at any time of the possibility of the Customer incurring the same.

7.6 Subject to clause 7.2 above, HET shall not be liable for any loss or damage whatsoever which results directly or indirectly from the Customer's failure to allow adequate time to request, receive and enter any Activation Key in relation to the Licensed Software.

7.7 Nothing in this clause 7 shall confer any right or remedy upon the Customer to which it would not otherwise be entitled.

## **8 Intellectual property rights indemnity**

8.1 In the event of any claim being brought against the Customer that the normal use or possession of the Software or the Documentation in accordance with this Agreement infringes the copyright of a third party ("**Intellectual Property Infringement**"), HET hereby indemnifies and will keep indemnified the Customer against any damages that are awarded to be paid to any such third party in respect of a claim and any losses, costs (including all legal fees) and expenses incurred by or on behalf of the Customer provided that the Customer shall:

8.1.1 give notice to HET of the Intellectual Property Infringement forthwith upon becoming aware of the same;

8.1.2 give HET the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and shall not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of HET; and

8.1.3 act in accordance with the reasonable instructions of HET and give to HET such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.

8.2 HET shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach of the Customer's obligations under this Agreement or from the use of the Licensed Software and/or Documentation in combination with any equipment or software not approved in writing by HET.

8.3 In the event of an Intellectual Property Infringement, (provided that the Customer has complied with the provisions of clause 8), HET shall be entitled at its own expense and option either to:

8.3.1 procure the right for the Customer to continue using the Licensed Software and Documentation; or

8.3.2 make such alterations, modifications or adjustments to the Licensed Software and Documentation so that they become non-infringing without incurring a material diminution in performance or function; or

8.3.3 replace the Licensed Software and Documentation with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function, and the foregoing states the entire liability of HET to the Customer in respect of any Intellectual Property Infringement. All other rights or remedies of the Customer whether in contract, tort or otherwise are hereby excluded.

8.4 The provisions of clauses 8.1 and 8.3 shall not apply and the Customer shall indemnify HET against all liabilities, costs and expenses which HET may incur as a result of any claim attributable to the use or possession by the Customer of the Licensed Software and Documentation other than in accordance with the provisions of this Agreement.

## **9 Duration of agreement**

9.1 This Agreement shall commence on the date on which it is entered into by HET and the licence granted to the Customer under clause 2.1 shall commence on the Delivery Date, and this Agreement and the said licence shall continue until terminated in accordance with clause 10.

## **10 Termination**

10.1 This Agreement and the licence contained therein may be terminated:

10.1.1 forthwith by HET if the Customer fails to pay any sum due hereunder by the due date therefore;

10.1.2 forthwith by HET if the Customer commits any breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;

10.1.3 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or administrator or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or if either party, being an individual or partnership, shall

become bankrupt or enter into a voluntary arrangement or make any other assignment for the benefit of or a composition with creditors;

10.1.4 by the Customer giving 30 days written notice of termination to HET.

10.2 The expiry or any termination of this Agreement howsoever occasioned shall:

10.2.1 be without prejudice to any other rights or remedies HET may be entitled to hereunder or at law;

10.2.2 not affect any accrued rights or liabilities of HET nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination; and

10.2.3 not entitle the Customer to repayment of any sums paid by it to HET under this Agreement and the Customer shall continue to be obliged to pay any and all sums due under the terms of this Agreement without reduction or rebate.

10.3 Within 7 days of the termination of this Agreement (however and by whomsoever occasioned) the Customer shall, at HET's option, either return to HET or destroy all copies of the Licensed Software and the Documentation in its possession and a duly authorised officer of the Customer shall certify in writing to HET that the Customer has complied with such obligation.

## **11 Force Majeure**

11.1 HET shall not be liable for any delay in or for failure to perform obligations if that delay or failure is caused by circumstances beyond the control of HET including, without limitation, fires, strikes, insurrection, riots, embargoes, inability to obtain supplies, refusal or revocation of licence or regulations of any civil or military authority.

## **12 Waiver**

12.1 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## **13 Notices and amendment**

13.1 Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post or by facsimile (such facsimile notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile) upon the expiration of 12 hours after dispatch.

13.2 Any amendment to the Schedule to this Agreement by HET shall be validly made if sent by facsimile to the Customer at least 24 hours before such amendment is due to take effect.

## **14 Contracts (Rights of Third Parties) Act 1999**

14.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and nothing in this Agreement shall confer or purport to confer on or operate to give any third party any benefit or any right to enforce any term of this Agreement except as expressly provided in this Agreement.

## **15 Entire agreement**

15.1 This Agreement and HET's Standard Terms and Conditions of Business shall constitute the entire agreement and understanding of the parties and supersedes any previous agreements or understandings between the parties relating to the subject matter of this Agreement. Therefore HET shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this Agreement other than those representations agreements statements or undertakings confirmed by a

duly authorised representative of HET in writing and expressly incorporated or referred to in this Agreement.

15.2 The Customer accepts that the Licensed Software and the Documentation were not designed and produced to its individual requirements and that it was responsible for their selection.

**16 Assignment and sub-licensing**

16.1 The Customer shall not be entitled to assign this Agreement nor any of its rights or obligations hereunder nor sub-licence the use (in whole or in part) of the Licensed Software or the Documentation.

16.2 HET shall be entitled to assign and/or subcontract this Agreement or any of its rights or obligations hereunder at any time.

**17 Law**

This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the exclusive jurisdiction of the English courts.