

# Software Supply and Licence Terms

## 1. Definitions and interpretation

- 1.1 This agreement uses some terms with special meanings. These terms are set out in schedule 1 to this agreement. Schedule 1 also sets out some rules to be used in interpreting this agreement.

## 2. What this agreement is about

- 2.1 This is a software supply and licence agreement between APT and Customer. It covers the supply and licence of software by APT to Customer from time to time and the use by Customer of such software.
- 2.2 The software to be supplied and licensed by APT to Customer will be referred to in this agreement as "**Software**".
- 2.3 This agreement contains general terms relating to the supply and licence of Software by APT to Customer from time to time. Before APT provides any such Software, APT and Customer will in each case first agree in relation to such Software:
- (a) exactly what Software is to be supplied;
  - (b) licence fees and other charges payable;
  - (c) any other relevant details.

In each case all of this information will be included in a document in the form set out in schedule 2 to this agreement (which will be referred to as the "Licence Form") and will be agreed and signed on behalf of APT and Customer.

- 2.4 If a Licence Form conflicts with the provisions of this agreement, then the provisions of that Licence Form will take precedence in relation to the Software to be supplied in accordance with that Licence Form.
- 2.5 Each Licence Form will form a separate contract (a "**Contract**") between Customer and APT on the terms contained in the Licence Form and in this agreement. Each Contract will be separately terminable by either party in accordance with clause 12.

## 3. Use of the Software

- 3.1 The Software may only be used by Customer in certain ways and these are explained below (under the heading "**What Customer is allowed to do with the Software**"). There are also some things that Customer is **not** allowed to do with the Software and these are also explained below (under the heading "**What Customer is not allowed to do with the Software**").
- 3.2 Customer's rights under this agreement or any Contract:
- (a) are non-exclusive (and APT is allowed to grant similar rights to anyone else); and
  - (b) will continue for the period specified in clause 12.1 or until this agreement or the relevant Contract is terminated.

#### **4. The Software covered by the agreement**

- 4.1 The software being supplied and licensed under this agreement is the machine-operable versions of the software listed in the Licence Form, including where applicable any relevant file input or other software templates (and references to the "**Software**" in this agreement are **only** to this software).
- 4.2 This agreement applies to:
- (a) the Software listed in the Licence Form; and
  - (b) any updated versions or additional copies of the Software which APT may supply to Customer (whether the updated or versions or additional copies are supplied under this agreement or under any other relevant agreement, such as one for support and maintenance of the Software).
- 4.3 This agreement does not cover the source code versions of the Software or allow Customer to have or to use such versions.

#### **5. Supply of the Software**

- 5.1 APT will supply Customer with the number of copies of the Software listed in the Licence Form.
- 5.2 Unless Licence Form says that APT will be responsible for installing the Software, this will be Customer's responsibility (although in that case APT will provide instructions for installing the Software at the same time as delivering the Software). If the customer is responsible for installing the Software and the Licence Form says that remote installation assistance is to be provided, or remote installation assistance is otherwise requested by Customer, APT will provide Customer with telephone assistance with installing the Software. The charges for installation of the Software (if applicable) are set out in the Licence Form. The charges for remote installation assistance (if applicable) are set out in the Licence Form or, if no such charges are set out in the Licence Form, are APT's then current charges for remote installation assistance.
- 5.3 BACS may require certain tests to be carried out before any Software can be used to process BACS payments. APT will use its reasonable efforts to assist Customer in carrying out such tests but, unless APT agrees otherwise, will not be responsible for carrying out any such tests. APT will not be responsible for any failure by Customer to carry out or provide suitable data in relation to any tests required by BACS before any Software can be used to process BACS payments.
- 5.4 If the Licence Form says that APT is to train Customer's staff in the use of the Software then it will do so. The training will be in a form reasonably determined by APT and, unless APT agrees otherwise, will be given at Customer's premises immediately following installation of the Software or, if the Software is not being installed by APT, at such other time as may be reasonably determined by APT and notified to Customer. Customer will be responsible for all costs and expenses incurred by Customer or its staff in relation to the training. The charges for the training (if applicable) are set out in the Licence Form

#### **6. What Customer is allowed to do with the Software**

- 6.1 Customer may install copies of the Software on the number of computers specified in the Licence Form. **Unless the Licence Form says Customer can use the Software on a network** (in which case the way in which Customer may use it is set out below):
- (a) Customer may **only** use the Software on the number of computers allowed by the Licence Form; and
  - (b) only one person at a time may use the Software on each computer.
- 6.2 If the Licence Form says that Customer may use the Software on a network, then:
- (a) Customer may install copies of the Software on the number of network servers specified in the Licence Form;
  - (b) Customer may have as many people using the Software at any one time as is specified in the Licence Form; and

- (c) if necessary in order for Customer to be able to use the Software on a network, Customer may also install copies of the Software on workstations connected to the servers on which the Software is installed (although Customer may not install the Software on more workstations than Customer is allowed to have people use the Software at any one time).
- 6.3 Customer may uninstall the Software from any particular computer, network server or workstation in order to install it onto a different computer, network server or workstation provided that:
- (a) Before carrying out such reinstallation, Customer notifies APT of this and completes a written reinstallation request form in such form as may be specified by APT from time to time; and
  - (b) Such reinstallation does not breach any other term of this agreement or of the Contract relating to the Software being reinstalled.
- 6.4 If the Licence Form says that use of the Software is restricted to a particular site, Customer may only use it on computers at that site. Customer may change the site to another one provided Customer tells APT first and provided that Customer does not use the Software at more than one site at once. If Customer is reinstalling the Software onto different computers as part of the move to a different site, Customer must also comply with clause 6.3.
- 6.5 Except as expressly allowed otherwise by this agreement, only Customer is allowed to use the Software. Use by Customer includes use by:
- (a) Customer's employees;
  - (b) any contract staff who are working for Customer;
  - (c) any other person working with Customer and acting on Customer's behalf;
- provided that in each of these cases the person concerned is using the Software exclusively on behalf of Customer and for the purposes of Customer's business.
- 6.6 Remote access to the Software by permitted users is allowed PROVIDED THAT:
- (a) the Software is licensed for use on a network;
  - (b) the other restrictions on use of the Software set out in this agreement (such as those relating to who may use the Software, what the Software may be used for and how many people may use it any one time) are complied with.
- 6.7 The purpose for which the Software is intended to be used is set out in the Licence Form and Customer may only use the Software for that purpose. If the Licence Form states that the Software is being licensed for BACS bureau use, then Customer may use the Software to provide BACS bureau services to third parties provided that it does not allow such third parties to install or use the Software themselves. Other than as expressly stated otherwise in this clause 6.7, Customer may only use the Software for Customer's own internal business purposes and may not use the Software for or on behalf of any third party.
- 6.8 Customer may make as many backup copies of the Software as are necessary to support Customer's use of the Software in accordance with this agreement. Such backup copies may be used for the purposes of backup only and not as additional copies of the Software to be put into live use.

## 7. What Customer is not allowed to do with the Software

- 7.1 Except to the extent set out in clause 6, Customer is **not** allowed to do any of the following things with the Software:
- (a) install them on more than the number of computers specified in the Licence Form;
  - (b) have more than one person use any copy of them at once, unless the Licence Form says Customer can use them on a network;
  - (c) if the Licence Form says Customer can use them on a network, have more people using them at any one time than the number of permitted users specified in the Licence Form;
  - (d) if the Licence Form says that use is restricted to a particular site(s), use them anywhere other than at that site(s) (or at any replacement site(s) to which Customer has moved as permitted by clause 6.4), subject to the provisions relating to disaster recovery set out above;
  - (e) allow anyone else to use them other than Customer or Customer's employees, contract staff or other persons on Customer's behalf as set out in clause 6;
  - (f) subject to clause 6.7 above, use them for or on behalf of anyone else (which includes operating any form of facility on behalf of anyone else or operating a Software bureau service);
  - (g) copy or adapt them except as allowed by this agreement and then only in order for Customer to use them in accordance with this agreement; or
  - (h) reverse-engineer or decompile them except to the extent that Customer is allowed to do so under English law in circumstances under which English law does not allow APT to stop Customer doing so.
- 7.2 Customer must comply with any reasonable instructions which APT gives Customer relating to the use of the Software. Customer must allow APT access to any premises controlled by Customer in order to allow APT to check that the Software is being used properly.

## 8. Charges

- 8.1 In each case the Licence Form will set out the licence fees and other charges (e.g. installation/training fees) payable by Customer in relation to the Software and any services to be supplied in accordance with that Licence Form. The licence fees and other charges will be due on the dates (or on the happening of the events) specified in that Licence Form.
- 8.2 If for any reason the Licence Form does not specify the charges for any services to be supplied by APT in accordance with that Licence Form then the applicable charges will be APT's then current charges for the supply of such services and will be due immediately following the supply of such services.
- 8.3 If the Licence Form says that APT is to install the Software or provide any training in relation to the Software, then APT will also charge Customer for its reasonable travel costs and expenses incurred in providing these services. Such travel costs and expenses will include (where applicable) reasonable mileage charges and accommodation and subsistence costs.
- 8.4 If the Licence Form says that the Software is licensed on a monthly basis, then APT may increase the licence fees payable under that Contract from time to time provided that no such increase may take effect before the end of the Minimum Period. If APT wishes to increase the licence fees, it shall notify Customer of the proposed increase at least 60 days before the beginning of the Licence Month concerned. The revised charges will then apply in the following Licence Month and after that unless Customer terminates this agreement in accordance with clause 12.2.
- 8.5 APT may invoice Customer for the licence fees and other charges as soon as they become due. Customer must pay the invoices within 30 days of receiving them (and if APT posts them to Customer, Customer will be treated as having received them two working days later).
- 8.6 If Customer is late in paying any invoices, then APT may if it wishes to do so charge interest on all unpaid amounts. Interest will be payable from the date of the invoice until the date of payment and will continue to be payable even if APT obtains a judgment from a court in relation to any claim for payment of the invoice. The rate of interest will be 8% per year above the base rate for the time being of Barclays Bank.
- 8.7 The amounts specified in the Licence Form do not include VAT or any other taxes on supplies (unless the Licence Form expressly states otherwise) and Customer must pay these to APT as well as the amounts concerned.

## 9. Warranties and other terms

- 9.1 APT warrants that the Software will for a period of 12 months after the date of its delivery to Customer be free from any material defect which has an adverse effect on its use in accordance with this agreement.
- 9.2 If APT supplies any services to Customer under this agreement, then APT warrants that the services will be provided with reasonable care and skill.
- 9.3 If either of the warranties in clause 9.1 or 9.2 is breached, Customer must tell APT as soon as possible. Before Customer is allowed to do anything else about it, Customer must give APT a reasonable time to fix the problem and (if necessary) to supply Customer with a corrected version of the Software or re-perform any relevant services. This will be done without any additional charge to Customer. If APT is unable to do this within a reasonable time or APT does not think that it is a sensible way to deal with the problem, then APT may if it wishes elect to terminate the relevant Contract, take back the relevant Software and to refund to Customer all of the money which Customer has paid to APT under the relevant Contract.
- 9.4 It is a condition of this agreement that APT is entitled to supply the Software to Customer and to allow Customer to use them in accordance with the terms of this agreement.
- 9.5 Apart from the terms set out above, no conditions, warranties or other terms apply to the Software or its supply or license under this agreement or to any services supplied under this agreement. In particular, no implied terms relating to satisfactory quality or fitness for any particular purpose will apply. Customer is responsible for deciding whether or not the Software is suitable for Customer's purposes and APT will not be responsible for this. Also, it is not a term of this agreement that use of the Software will be uninterrupted or error-free.
- 9.6 APT will not be liable for breach of any of the warranties or other terms in this agreement to the extent that the breach arises from:
- (a) use of the Software other than in accordance with normal operating procedures as notified to Customer by APT;
  - (b) any alterations to the Software made by anyone other than APT or someone authorised by APT;
  - (c) any problem with the computer on which the Software is installed, any equipment connected to that computer or any other Software which is installed on that computer;
  - (d) any abnormal or incorrect operating conditions;
  - (e) any other hardware or Software being used with the Software, unless this use has been approved by APT (and anything set out in the Licence Form will be treated as having been approved by APT);
  - (f) any failure by Customer to carry out or provide suitable data in relation to any tests required by BACS before any Software can be used to process BACS payments.

## 10. Exclusions and limitations

**THIS IS AN IMPORTANT CLAUSE. ITS EFFECT IS TO LIMIT APT'S LIABILITY UNDER THIS AGREEMENT. CUSTOMER SHOULD READ IT CAREFULLY AND MAKE SURE CUSTOMER IS HAPPY WITH IT BEFORE SIGNING THIS AGREEMENT.**

- 10.1 APT's liability:
- (a) for death or personal injury caused by APT's negligence or the negligence of APT's employees or agents;
  - (b) under Part I of the Consumer Protection Act 1987;
  - (c) for breach of clause 9.4;
  - (d) for fraudulent misrepresentation,

is not excluded or limited by this agreement, even if any other term of this agreement would otherwise suggest that this might be the case.

- 10.2 Other than as set out in clause 10.1, APT shall **not** be liable (whether for breach of contract, negligence or for any other reason) for any:
- (a) loss of profits;
  - (b) loss of sales;
  - (c) loss of revenue;
  - (d) loss of any software or data;
  - (e) loss of use of hardware, software or data;
  - (f) indirect, consequential or special loss.
- 10.3 Subject to clauses 10.1 and 10.2, APT's total liability under each Contract and in relation to anything which APT has done or not done in connection with the Contract concerned (and whether the liability arises because of breach of Contract, negligence or for any other reason) shall be limited:
- (a) where the Licence Form states that the Software is licensed on a monthly basis, to an amount equal to 125% of the total amount paid or payable by Customer under the Contract concerned during the Minimum Period; and
  - (b) where the Licence Form states that the Software is not licensed on a monthly basis, to an amount equal to 125% of the total amount paid or payable by Customer under the Contract concerned.

## **11. Confidentiality and Data Protection**

- 11.1 APT will keep confidential any information which Customer supplies to APT in connection with this agreement and Customer must do the same in relation to any information which APT supplies to Customer (which will include the Software). This will not apply to any information which:
- (a) is available to the public other than because of any breach of this agreement;
  - (b) is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;
  - (c) is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;
  - (d) is trivial or obvious; or
  - (e) is required to be disclosed by law or by any court or tribunal with proper authority to order its disclosure.
- 11.2 In the course of APT providing any services under this agreement, it may be necessary from time to time for APT to have access to personal data belonging to or retained by Customer and for APT to process that personal data on behalf of Customer.
- 11.3 In relation to any transfer and processing of personal data as referred to in clause 11.2:
- (a) it is the intention of the parties that:
    - (i) Customer will be the data controller; and
    - (ii) APT will be a data processor;
  - (b) Customer will:
    - (i) ensure that it is fully and lawfully entitled to transfer the relevant personal data to APT so as to allow APT lawfully to process the personal data in accordance with this agreement on behalf of Customer;
    - (ii) subject to APT complying with its obligations under this agreement, be responsible for ensuring that the processing of the personal data complies with the Data Protection Act 1998 (including the eight principles set out in the Data Protection Act 1998). This includes taking all steps necessary (including, where appropriate, obtaining consent from each of the relevant data subjects) so as to ensure that the transfer to APT of the personal data and its processing by APT in accordance with this agreement complies with the Data Protection Act 1998;

- (c) APT will process the personal data only in accordance with:
  - (i) the terms of this agreement; and
  - (ii) any instructions given by Customer from time to time;
- (d) each party will take appropriate technical and organisational measures against:
  - (i) unauthorised or unlawful processing of the personal data; and
  - (ii) accidental loss or destruction of, or damage to, the personal data.

## 12. Term and termination

- 12.1 This agreement will commence on the date set out in the front sheet and it will then continue until terminated in accordance with its terms. Each Contract will commence on the date set out in the relevant Licence Form. If the Licence Form says that the Software is licensed on a monthly basis, then that Contract will last for an initial minimum period of 24 calendar months (the "**Minimum Period**") unless terminated earlier in accordance with this clause 12 and will then continue on a monthly basis until terminated in accordance with this clause 12. Each additional month following the Minimum Period will be referred to in this agreement as a "**Licence Month**"). If the Licence Form does not say that the Software is licensed on a monthly basis then that Contract will continue indefinitely until terminated in accordance with this clause 12.
- 12.2 If the Licence Form says that the Software is licensed on a monthly basis, APT or Customer may terminate that Contract by giving not less than one month's notice provided that such notice may only be given so as to expire either on the last day of the Minimum Period or on the last day of a Licence Month.
- 12.3 APT or Customer may terminate a Contract if:
  - (a) the other breaches the Contract and it is not possible to remedy that breach; or
  - (b) the other breaches the Contract and it is possible to remedy that breach, but the other fails to do so within 30 days of being asked to do so.

For the purposes of this clause 12.3, in order for it to be possible to remedy a breach it must be possible to take steps so as to put the other party in the position it would have been in if the breach had never occurred.
- 12.4 APT or Customer may terminate this agreement (and all Contracts entered into in relation to it) if:
  - (a) any distress or execution is levied on any of the other's property or assets;
  - (b) the other makes or offers to make any arrangement or composition with creditors;
  - (c) any resolution or petition to wind up the other's business (other than for the purpose of amalgamation or reconstruction) is passed or presented or if a receiver or administrative receiver of the other's undertaking, property or assets is appointed or a petition presented for the appointment of an administrator.
  - (d) the other is subject to any proceedings which are equivalent or substantially similar to any of the proceedings under sub-clause (a), (b) or (c) under any applicable jurisdiction.
- 12.5 Apart from any other rights which APT might have, if Customer breaches any Contract APT may suspend performance of any of its obligations or exercise of any of Customer's rights under the relevant Contract until Customer remedies the breach to the reasonable satisfaction of APT.

## 13. What happens on termination of a Contract or of this agreement

- 13.1 On termination of a Contract for any reason:
  - (a) Customer's licence to use the Software supplied and licensed to it under that Contract will immediately terminate and Customer must immediately stop using such Software; and
  - (b) Customer must return all copies of the Software supplied and licensed to it under that Contract to APT or (if the copies are on media which is non-removable and forms part of equipment belonging to Customer) delete all copies in such a way that they cannot be recovered. In either case Customer must confirm to APT in writing that it has done this.
- 13.2 On termination of this agreement for any reason all Contracts will automatically terminate.
- 13.3 Termination of any Contract or of this agreement will not affect any accrued rights or liabilities which either APT or Customer may have by the time termination takes effect.

#### **14. Other terms**

- 14.1 Customer may not sub-license any of Customer's rights under this agreement or any Contract. Customer may not assign any of Customer's rights or obligations under this agreement or any Contract without APT's consent. APT reserves the right to charge Customer a reasonable administration fee in relation to any such assignment.
- 14.2 APT may sub-contract the performance of any of APT's obligations under this agreement or any Contract APT may assign this agreement or any Contract or any of APT's rights or obligations under this agreement or any Contract to someone else.
- 14.3 APT will not be liable to Customer for any breach of this agreement or any Contract which arises because of any circumstances which APT cannot reasonably be expected to control.
- 14.4 All notices and consents relating to this agreement or any Contract must be in writing. All variations to this agreement or any Contract must be agreed, set out in writing and signed on behalf of both APT and Customer before they take effect.
- 14.5 This agreement and any relevant Licence Form sets out all of the terms that have been agreed between APT and Customer in relation to the subjects covered by it. Subject to clause 10.1(d), no other representations or terms shall apply or form part of this agreement or any Contract between the parties.
- 14.6 No term of this agreement or any Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.
- 14.7 This agreement is governed by English law. Both APT and Customer submit to the exclusive jurisdiction of the English courts in relation to any dispute concerning this agreement or any Contract.

## SCHEDULE 1

### 1. Definitions

1.1 In this agreement the following terms shall have special meanings:

"**Licence Month**" means as defined in clause 12.1;

"**Minimum Period**" means as defined in clause 12.1;

"**Software**" means as defined in clause 4.1.

1.2 For the purposes of this agreement, the following terms have the same meaning as in the Data Protection Act 1998:

- (a) personal data;
- (b) data controller;
- (c) data processor;
- (d) processing; and
- (e) data subject.

1.3 Any Software supplied or licensed under this agreement will not be treated as goods within the meaning of the Sale of Goods Act 1979. Otherwise, the term "**goods**" will have the meaning given to it in that Act.

### 2. Interpretation

2.1 In this agreement, unless it says otherwise:

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