



## End User Licence Agreement

### Legal Document

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## Document History

Version	Date	Author	Description
1	09/05/2023	Simone Hutchinson	EULA placed in Syntelate XA template.

## IMPORTANT, PLEASE READ

This Syntelate XA software ("the Software") is supplied subject to Licensor's End User Licence Agreement which is set out below.

THE END USER LICENCE AGREEMENT CONTAINS THE CONDITIONS UNDER WHICH YOU ARE AUTHORISED TO USE THE SOFTWARE AND THE ACCOMPANYING DOCUMENTATION. IT CONTAINS OBLIGATIONS IMCUMBENT UPON EACH USER OF THE SOFTWARE AND THE DOCUMENTATION (TOGETHER THE "SOFTWARE MATERIALS") AND ALSO RESTRICTIONS AND EXCLUSIONS OF THE LICENSOR'S LIABILITY.

BY ACCEPTING INSTALLATION, YOU WILL BE INDICATING THAT YOU HAVE READ AND UNDERSTOOD THE END USER LICENCE AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS.

## END USER LICENCE AGREEMENT

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions.

**Commencement Date:** the date on which the terms of the Licence are accepted.

**Documentation:** the documents provided by the Licensor for the Software, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual.

**End-User:** the end-user of the Software who has acquired the right to use the Software on the terms and conditions of this Licence.

**Licence:** the licence to use the Software and the Documentation on these terms and conditions.

**Licensor:** Inisoft Limited incorporated and registered in Scotland with company number SC 290311 whose registered office is at 10 Charlotte Square, Edinburgh EH2 4DR.

**Supplier:** the supplier from whom you purchased the Software and the Documentation.

## 2. LICENCE

2.1 The Licensor grants to the End-User a non-exclusive, non-transferable licence for the full period of the copyright in the Software commencing on and including the Commencement Date to use the Software and the Documentation on the terms of the Licence.

2.2 The End-User may:-

- (a) install and the use the Software for its internal purposes only for the number of concurrent users for which it has paid a licence fee;
- (b) make back-up copies of the Software for back-up purposes only subject to compliance with the undertakings set out in condition 3.1;
- (c) receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by the Licensor from time to time;
- (d) use any Documentation in support of the use permitted under condition 2.1 and make copies of the Documentation as are reasonably necessary for the lawful use of the Software.

## 3. END-USER'S UNDERTAKINGS

3.1 Except as expressly set out in the Licence or as permitted by law, the End-User undertakes:

- (a) not to copy the Software or Documentation except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;

- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation;
- (c) not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the Software nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by the End-User during such activities:
  - (i) is used only for the purpose of achieving inter-operability of the Software with another software program; and
  - (ii) is not unnecessarily disclosed or communicated to any third party without the Licensor's prior written consent; and
  - (iii) is not used to create any software which is substantially similar to the Software;
- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- (f) to supervise and control use of the Software and ensure that the End-User's employees and representatives use the Software in accordance with the terms of the Licence;
- (g) to include the copyright notice of the Licensor on all entire and partial copies the End-User makes of the Software on any medium.

3.2 The End-User must permit the Licensor and its representatives, at all reasonable times and on reasonable advance notice, to inspect and have

access to any premises at which the Software or the Documentation is being kept or used, to the computer equipment located there, and to any records kept pursuant to the conditions, for the purpose of ensuring that the End-User is complying with the terms of these conditions.

## **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 The End-User acknowledges that all intellectual property rights in the Software and the Documentation throughout the world belong to the Licensor, that rights in the Software are licensed (not sold) to the End-User, and that the End-User has no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of the Licence.

4.2 The End-User acknowledges that it has no right to have access to the Software in source code form or in unlocked coding or with comments.

4.3 The integrity of the Software is protected by technical protection measures (TPM) so that the intellectual property rights, including copyright, in the Software of the Licensor are not misappropriated. The End-User must not attempt in any way to remove or circumvent such TPM, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in its possession for private or commercial purposes, any means whose sole reasonable purpose is to facilitate the unauthorised removal or circumvention of such TPM.

## **5. WARRANTY**

5.1 The Licensor warrants that:

- (a) the medium on which the Software is stored and distributed is at the time it is installed, and will be for the period of 90 days thereafter (Warranty Period), free from defects in design, material and workmanship under normal use. If a defect in the medium occurs during the Warranty Period, the Licensor will replace it free of charge if the End-User returns it to the Licensor with proof of purchase and (so far as the End-User are able) a documented example of such defect or error;

(b) during the Warranty Period, the Software will, when properly used, perform substantially in accordance with the functions described in the Documentation (provided that the Software is properly used on the computer and with the operating system for which it was designed as referred to in the accompanying documentation), and the Documentation correctly describes the operation of the Software in all material respects;

(c) it has tested the Software for viruses using commercially available virus-checking software, consistent with current industry practice.

5.2 The End-User acknowledges that the Software has not been developed to meet the End-User's individual requirements and that it is therefore the End-User's responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet the End-User's requirements.

5.3 The End-User acknowledges that the Software may not be free of errors or bugs and the End-User agrees that the existence of any minor errors which do not materially affect the functionality of the Software shall not constitute a breach of the Licence.

5.4 If, within the Warranty Period, the End-User notifies the Licensor in writing of any defect or fault in the Software in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from the End-User having amended the Software or used it in contravention of the terms of the Licence, the Licensor will, at its sole option, repair or replace the Software, provided that the End-User makes available all the information that may be necessary to assist the Licensor in resolving the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault.

## **6. LICENSOR'S LIABILITY**



6.1 This condition sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

- (a) any breach of the Licence however arising
- (b) any use made of the Software or the Documentation by the End-User, or of any product or service incorporating any of the Software or the Documentation; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these conditions

6.2 Nothing in these conditions shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

6.3 Without prejudice to condition 6.2 neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- (a) loss of income;
- (b) loss of business profits or contracts;
- (c) business interruption;
- (d) loss of information;
- (e) loss of, damage to or corruption of data;

- (f) loss of the use of money or anticipated savings;
- (g) loss of opportunity, goodwill or reputation;
- (h) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise;

provided that this condition 6.3 shall not prevent claims for loss of or damage to the End-User's tangible property that fall within the terms of condition 5 or any other claims for direct financial loss that are not excluded by any of categories (a) to (h) inclusive of this condition 6.3.

6.4 Subject to condition 6.2 and condition 6.3, the Licensor's maximum aggregate liability under or in connection with the Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the fee paid by the Licensee for the Licence

6.5 Subject to condition 6.2, condition 6.3 and condition 6.4, the Licensor's liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in the UK.

6.6 The Licensor undertakes at its own expense to defend the End-User or, at its option, settle any claim or action brought against the End-User alleging that the use or possession of the Software infringes the UK Intellectual Property Rights of a third party (Claim) and shall indemnify the End-User in respect of any reasonable losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the End-User as a result of or in connection with any such Claim. For the avoidance of doubt, condition 6.6 shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Software other than in accordance with the terms of this Licence, use of the Software in combination with any hardware or software not supplied or specified by the Licensor, if the infringement would have been avoided by the use of the Software not so developed, modified or combined, or use of a release of the Software which the Licensor is not supporting.

**6.7 Condition 6.6 is conditional on the End-User:**

- (a) as soon as reasonably practicable, giving written notice of the Claim to the Licensor, specifying the nature of the Claim in reasonable detail;
- (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Licensor (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) giving the Licensor and its professional advisers at reasonable times (on reasonable prior notice) access to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the End-User, so as to enable the Licensor and its professional advisers to examine them and to take copies (at the Licensor's expense) for the purpose of assessing the Claim.

**6.8 If any Claim is made, or in the Licensor's reasonable opinion is likely to be made, against the End-User, the Licensor may at its sole option and expense:**

- (a) procure for the End-User the right to continue using, developing, modifying or maintaining the Software in accordance with the terms of this Licence;
- (b) modify the Software so that it ceases to be infringing and provides comparable functionality;
- (c) replace the Software with non-infringing works providing comparable functionality; or
- (d) terminate the Licence immediately on notice to the End-User and pay to the End-User an amount equal to the fee payable the Licensee for the Licence.

**6.9 If the Licensor fails to defend any such Claim within the applicable time frame given by the third party claimant and the courts the End-User shall have**

the right to defend and settle such Claim on such terms as it sees fit and shall be entitled to be indemnified in accordance with clause 6.6.

6.10 Conditions 6.5 to 6.9 constitutes the End-User's exclusive remedy and the Licensor's only liability in respect of Claims.

6.11 THESE CONDITIONS SET OUT THE FULL EXTENT OF THE LICENSOR'S OBLIGATIONS AND LIABILITIES IN RESPECT OF THE LICENCE OF THE SOFTWARE AND DOCUMENTATION. IN PARTICULAR, THERE ARE NO CONDITIONS, WARRANTIES, REPRESENTATIONS OR OTHER TERMS, EXPRESS OR IMPLIED, THAT ARE BINDING ON THE LICENSOR EXCEPT AS SPECIFICALLY STATED IN THESE CONDITIONS. ANY CONDITION, WARRANTY, REPRESENTATION OR OTHER TERM CONCERNING THE SUPPLY OF THE SOFTWARE AND DOCUMENTATION WHICH MIGHT OTHERWISE BE IMPLIED INTO OR INCORPORATED IN THESE CONDITIONS, OR ANY COLLATERAL CONTRACT, WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, IS HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

## **7. TERMINATION**

7.1 The Licensor may terminate the Licence immediately on written notice to the End-User if:

- (a) the End-User commits a material or persistent breach of the Licence which the End-User fails to remedy (if remediable) within 14 days after the service on the End-User of written notice requiring the End-User to do so;
- (b) a petition for a bankruptcy order to be made against the End-User has been presented to the court; or
- (c) the End-User (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any

part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt.

## 7.2 Upon termination for any reason:

- (a) all rights granted to the End-User under the Licence shall cease;
- (b) the End-User must cease all activities authorised by the Licence; and
- (c) the End-User must immediately delete or remove the Software from all computer equipment in the End-User's possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software then in the End-User's possession, custody or control and, in the case of destruction, certify to the Licensor that the End-User have done so.

## 8. TRANSFER OF RIGHTS AND OBLIGATIONS

8.1 These conditions are binding on the End-User and the Licensor and on their respective successors and assigns.

8.2 The End-User may not transfer, assign, charge or otherwise dispose of any of the End-User's rights or obligations arising under these conditions, without the prior written consent of the Licensor, such consent not to be unreasonably withheld. Any such transfer that may be agreed shall be without charge to the End-User or the transferor.

8.3 The Licensor may transfer, assign, charge, sub-contract or otherwise dispose of any of its rights or obligations arising under it, at any time during the term of the licence granted under these conditions.

## 9. EVENTS OUTSIDE THE LICENSOR'S CONTROL

9.1 The Licensor will not be liable or responsible for any failure to perform, or delay in performance of, any of his obligations under these conditions that is caused by an event outside its reasonable control (Force Majeure Event).

9.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond the Licensor's reasonable control and includes in particular (without limitation) the following:

- (a) strikes, lock-outs or other industrial action;
- (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (e) impossibility of the use of public or private telecommunications networks;
- (f) the acts, decrees, legislation, regulations or restrictions of any government.

9.3 The Licensor's performance under the Licence is deemed to be suspended for the period that the Force Majeure Event continues, and it will have an extension of time for performance for the duration of that period. The Licensor will use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under the Licence may be performed despite the Force Majeure Event.

## 10. WAIVER

10.1 If the Licensor fails, at any time during the term of the Licence, to insist upon strict performance of any of the End-User's obligations under the Licence, or if the Licensor fails to exercise any of the rights or remedies to

which it is entitled under the Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve the End-User from compliance with such obligations.

10.2 A waiver by the Licensor of any default shall not constitute a waiver of any subsequent default.

10.3 No waiver by the Licensor of any of the terms and conditions of the Licence shall be effective unless it is expressly stated to be a waiver and is communicated to the End-User in writing.

## **11. SEVERABILITY**

If any of the terms of these conditions are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## **12. ENTIRE AGREEMENT**

12.1 The Licence and any document expressly referred to in it constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between the parties, relating to the licensing of the Software and Documentation.

12.2 The parties each acknowledge that, in entering into the Licence (and the documents referred to in it), neither of them relies on any statement, representation, assurance or warranty (Representation) of any person (whether a party to the Licence or not) other than as expressly set out in these conditions or those documents.

12.3 Each of the parties agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in the Licence.

12.4 Nothing in this condition shall limit or exclude any liability for fraud.

## 13. LAW AND JURISDICTION

The Licence, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.