

# HEELAN ASSOCIATES

*Traditional Values Modern Thinking*



## **SOFTWARE LICENCE AGREEMENT**

## ABOUT US

- (A) Heelan Associates Limited (Supplier) is the customer of software with rights to sell licences of certain software products listed in Schedule 1 and is willing to sell such licences to you to use these products, subject to the terms of this agreement.

## Agreed terms

### 1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this licence.

**Affiliate:** includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks are open for business.

**Fee:** the fee payable by the Customer to the Supplier under clause 4.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**Site:** the premises from which the Customer carries out its business as notified to the Supplier in writing from time to time.

**Software Products:** the computer programs listed in **Error! Reference source not found.** which is acquired by the Customer under this agreement.

**Source Code Materials:** the source code of the Software, and all technical information and documentation required to enable the Customer to modify and operate it.

**Software Products Additional Terms:** the additional terms and conditions included in Schedule 1 relating to Software Products.

**Supplier:** Heelan Associates Limited incorporated and registered in England and Wales with company number 05705976 whose registered office is at 1 The Briars, Waterberry Drive, Waterlooville, Hampshire, United Kingdom, PO7 7YH

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

- 1.3 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;

- (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
  - (c) a reference to one gender shall include a reference to the other genders; and
  - (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the schedules or appendices, the provision in the body of this licence shall take precedence.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.7 The Schedules and Annexes form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedules and Annexes.

## **2. Licence**

- 2.1 In consideration of the Fee paid by the Customer to the Supplier, the Supplier agrees to sell to the Customer a non-exclusive licence to use the Software. The Software is licenced to you on a monthly basis and shall continue unless terminated in accordance with Clause 8 or either party gives to the other party 30 days' written notice to terminate.
- 2.2 In relation to scope of use:
- (a) for the purposes of clause 2.1, use of the Software shall be restricted to use of the Software for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).
  - (b) the Customer must comply with any Software Products Additional Terms;
  - (c) except as expressly stated in this clause 2, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.
  - (d) the Customer shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Software Products Additional Terms howsoever arising.

- 2.3 The Customer may not use any such information provided by the Supplier to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 2.4 The Customer shall not:
- (a) Further sub-license, assign or novate the benefit or burden of the licence in whole or in part;
  - (b) allow the Software to become the subject of any charge, lien or encumbrance; and
  - (c) deal in any other manner with any or all of its rights and obligations under this agreement,
- without the prior written consent of the Supplier.
- 2.5 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Customer.
- 2.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 2.7 The Customer shall:
- (a) ensure that the number of persons using the Software does not exceed the amounts outlined in the Supplier Products Additional Terms;
  - (b) notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person.

### **3. Fees**

- 3.1 The Customer shall pay to the Supplier fees as set out in the online order placed by the Customer and confirmed in writing by email. The Supplier reserves the right to increase the Fee at any time and shall give the Customer 30 days' notice in writing of any increase.
- 3.2 The Supplier shall invoice the Customer monthly by direct debit each calendar month until this Agreement is terminated by either party in accordance with this Agreement..
- 3.3 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.
- 3.4 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under this agreement, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

#### **4. Confidentiality and publicity**

4.1 Each party shall keep confidential all, and shall not use for its own purposes (other than implementation of the licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

4.2 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

#### **5. Supplier's warranties**

5.1 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.

5.2 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

5.3 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

#### **6. Limits of liability**

6.1 Except as expressly stated in clause 6.2:

(a) the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;

- (iv) loss of business opportunity;
  - (v) loss of goodwill;
  - (vi) loss or corruption of data,
- (b) the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and
- (c) the Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this licence or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability in any circumstances otherwise than in accordance with the express terms of this agreement.

6.2 The exclusions in clause 5.3 and clause 6.1 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:

- (a) death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which may not be excluded by law.

6.3 All dates supplied by the Supplier for the delivery of the Software shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

## **7. Intellectual property rights**

7.1 The Customer acknowledges that all Intellectual Property Rights in the Software belong and shall belong to the relevant third-party owners, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of the licence and the Software Products Additional Terms.

## **8. Termination**

8.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1(c) to clause 8.1(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

- 8.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 8.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 8.4 On termination for any reason:
- (a) all rights granted to the Customer under the licence shall cease;
  - (b) the Customer shall cease all activities authorised by the licence; and
  - (c) the Customer shall immediately pay to the Supplier any sums due to the Supplier under the licence.
- 8.5 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

## **9. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **10. Remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **11. Entire agreement**

- 11.1 This agreement, the schedules and the documents annexed as appendices to this agreement or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 11.2 Each party acknowledges that, in entering into this agreement and the documents annexed to it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this agreement or not) (**Representation**) other than as expressly set out in this agreement or those documents.
- 11.3 Each party 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.

11.4 Nothing in this clause shall limit or exclude any liability for fraud.

**12. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**13. Severance**

13.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

13.2 If any provision or part-provision of this agreement is deemed deleted under clause 13.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**14. Counterparts**

This agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**15. Third-party rights**

15.1 The Supplier and the relevant third party owner of the software may enforce the terms of this agreement to the fullest extent permitted by law as if they were a party to this agreement, subject to and in accordance with this clause 15, this agreement and the Contracts (Rights of Third Parties) Act 1999.

15.2 Except as provided in clause 15.1, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

15.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

**16. No partnership or agency**

16.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**17. Force majeure**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

**18. Notices**

18.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the main business email address communicated to you from time to time.

18.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- (c) if sent by email, at after the time of transmission.

18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

**19. Governing law and jurisdiction**

19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**Schedule 1 Software Terms and Conditions**

Xero Standard Edition: <https://www.xero.com/uk/legal/terms/>

QuickBooks Online Essentials Edition: <https://quickbooks.intuit.com/uk/legal/terms-of-service/>