

Library Use Only:

Num:

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AGREEMENT

between

(The “Licensee”)

and

National Library of Scotland (The “Library”)

for the use of content.

In this Licence Agreement (“**Agreement**”) the following expressions shall have the following meanings:

Commencement Date	Date on which this Agreement begins as set out in the Schedule to this Agreement.
Derivative Works	Any change or variation to the Content, or new work or content (in any form, medium or format) that is based on or derived from the Content and developed, created or generated by the Licensee during the Term for the Purpose. To be clear, Derivative Works are considered such only to the extent that they are, or that they incorporate, the Content and no content, whether created by the Licensee or another party, that is external to this Agreement is considered for the purposes of this Agreement to be a Derivative Work.
Content	The files, still images, moving images, text, executable code, software, information, data and metadata in any medium or form (including without limit digital, electronic, written and mechanical) provided by the Library to the Licensee as more fully described in the Schedule to this Agreement.
Fees	The fees payable to the Library for use of the Content, as set out in the Schedule to this Agreement.
Intellectual Property Rights	Any copyright (including format rights and moral rights), design rights, trade marks, patents, database rights, rights in and to inventions, confidential information and know-how, and all rights having similar or equivalent effect or protection anywhere in the world (whether registered or unregistered).
Production Run	The number of products or applications in which the Licensee is permitted under this Agreement to use or apply the Content, as set out in the Schedule to this Agreement.
Purpose	The reason that, and the manner and/or media in which, the Licensee may use the Content, as more fully described in the Schedule to this Agreement.
Territory	World-wide.
Term	The term of this Agreement, which shall be for a period of 5 (five) years from the Commencement Date.

Terms of this Agreement

1. **Grant of Licence:**
The Library grants the Licensee a non-exclusive, non-transferable, revocable **Licence** to use the Content in the Territory for the Purpose for the Term.
2. **The Licence granted in Clause 1 is subject to the following conditions:**
 - (a) The Licence is limited to the Content specified in the Schedule to this Agreement, and does not include any other content or materials owned by or licensed to the Library.
 - (b) Unless otherwise specified in the Schedule to this Agreement, the Licensee is responsible for processing the Content in the form and manner required for the Purpose.
 - (c) The Licensee shall at its own cost comply with all applicable laws in relation to the use of the Content, and shall be responsible for obtaining any and all consents, licences, clearances and/or authorisations required for the use of the Content for the Purpose (including without limit from the original artists, owners and/or creators of such content, or from any relevant authorities or collection societies).
 - (d) The Content may only be used by the Licensee solely for the Purpose and no other purpose whatsoever. If the Licensee wishes to use the Content for any other purpose it must notify the Library in writing and where the Library agrees to the use of the Content for such other purpose, enter into a separate agreement with the Library in relation to such further purpose.
 - (e) This Licence is personal to the Licensee and may not be assigned, transferred, sub-licensed or sub-contracted to any person without the prior written consent of the Library including where specified in the Schedule to this Agreement. The Licensee shall notify the Library in writing if it wishes to extend the rights granted under this Agreement to any third party. Unless expressly authorised in the Schedule to this Agreement or otherwise agreed in writing by the Library, the Licensee may not provide any part of the Content to any third party or permit any third party to copy, reproduce or otherwise use all or any part of the Content for any purpose (including the Purpose).
 - (f) The Licensee may use the Content to create Derivative Works for the Purpose. The Licensee will deliver and make such Derivative Works available to the Library in the form and media specified in the Schedule to this Agreement.
 - (g) The Licensee shall not use the Content in any way or manner that (i) prejudices or is likely to prejudice the image, prestige, goodwill or reputation of either the Library or (where applicable) the owner/author of the Content; (ii) constitutes or is deemed by the Library (acting reasonably) to constitute any derogatory treatment; (iii) brings or is likely to bring the Library or (where applicable) the owner/author of the Content into disrepute; (iv) is obscene, defamatory, libelous, unlawful or violates any applicable laws; or (v) infringes any third party's Intellectual Property Rights.
 - (h) At any time during the Term, the Library (acting reasonably) may require the removal of, or revisions to, any of the Content used by the Licensee, and the Licensee shall remove and/or make the required revisions to the relevant materials as soon as possible following such notice from the Library, and in any event within thirty (30) calendar days of the date of such notice.
 - (i) All use and/or copying of the Content shall include a credit or statement (in the words, form and location as described in the Schedule to this Agreement) acknowledging that the Content is owned by and is used with permission of the Library.
 - (j) The Library shall be entitled to audit and inspect the Licensee's books, records, servers and/or premises during normal business hours during the Term on notice to the Licensee, to verify the Licensee's compliance with its obligations under this Agreement. The Licensee will cooperate with the Library and provide it with such access and/or information (including as described in the Schedule to this Agreement) as the Library may require from time to time during the Term.

This right of inspection and audit shall remain in effect for the period of one year after expiry or termination of the Agreement.

3. Payment

- (a) In consideration of the rights and Licence granted by the Library to the Licensee under this Agreement, the Licensee shall pay the Library the Fees. To be clear, the Fees apply only to the rights and Licence granted by the Library under this Agreement and do not include any other fees or charges which, where applicable, may be invoiced separately by the Library to the Licensee.
- (b) The Fees do not include VAT which, where applicable, shall be paid by the Licensee in addition to the Fees at the then prevailing rate.
- (c) The Licensee shall pay all Fees in accordance with the payment schedule set out in the Schedule to this Agreement, and where no payment schedule is specified, within thirty (30) calendar days of the date of the relevant invoice.
- (d) Except where other means are specified by this Agreement, all payments shall be made by electronic transfer to the Library's bank account specified in the Schedule to this Agreement or otherwise notified in writing by the Library to the Licensee from time to time.
- (e) The Library shall be entitled to interest at the rate of three (3%) percent above base rate of The Bank of England from time to time on any Fees that are not paid on the due date, from the due date until the date of payment.
- (f) The Licensee shall not be entitled to any deduction, set-off or withholding of the Fees, or to otherwise retain any sums due to the Library under or pursuant to this Agreement.

4. Intellectual Property Rights

- (a) Any and all right, title, interest and property in and to the Content (including any and all Intellectual Property Rights arising in such, and any goodwill accruing from the Licensee's use of such) shall as between the Library and the Licensee, remain owned by and vested in the Library. Any and all right, title, interest and property in and to Derivative Works shall as between the Library and the Licensee, remain owned by and vested in the Licensee.

- (b) The Licensee shall notify the Library of any actual or suspected unauthorised use, misuse or infringements of any of the Content or where applicable, the Derivative Works, as soon as it becomes aware of such, and shall co-operate fully with the Library in taking such steps as required by the Library in connection with such unauthorised use, misuse or infringement (including raising any legal proceedings) to protect such Content and/or Derivative Works.

5. Warranties, Indemnity and Liability

- (a) The Content is provided on an "as is" basis and the Library expressly excludes any and all terms, conditions and warranties that might otherwise be implied or incorporated into this Agreement by statute, common law, course of dealing or otherwise in relation to the Content and Derivative Works to the fullest extent permitted by law.
- (b) Nothing in this Agreement shall operate to exclude or limit either party's liability for death or personal injury caused by its negligence, fraud, or any other liability which cannot be excluded or limited by law.
- (c) The Licensee shall indemnify the Library against all claims, damages, costs, losses, liabilities and expenses arising out of the Licensee's use of the Content, Derivative Works, and activities under this Agreement.
- (d) The Licensee shall notify the Library of any third party claims that use of the Content constitutes an infringement or unauthorised use of its Intellectual Property Rights. The Library shall be entitled to control the defence of such claim and at its option challenge, negotiate and/or settle such matter at its cost and expense provided the Licensee shall provide promptly to the Library such information and assistance as the Library reasonably requests to dispute, resist, appeal, compromise, defend, remedy, mitigate or take such other action as Library considers appropriate in respect of such claim.
- (e) Subject to Clause 5(b), the Library's liability under this Agreement for any claim, damage, costs, losses, liabilities or expenses suffered by the Licensee (howsoever arising), shall not exceed the total Fees actually paid by the

Licensee to the Library under this Agreement.

6. Term and Termination

- (a) This Agreement shall come into effect on the Commencement Date and unless terminated earlier as set out in this Clause 6, shall continue for the Term.
- (b) The Licensee shall contact the Library in writing no later than three (3) months' prior to the expiry of the Term if it wishes to extend the Term or renew this Agreement. On receiving such notice the Library shall, acting reasonably, consider such request, provided that the Library shall be entitled to conduct an audit of the Licensee's use of the Content and/or Derivative Works in determining whether to agree to any such extension or renewal. Where the Library agrees to such extension or renewal, the parties shall enter into a new agreement on the terms agreed between the parties.
- (c) The Library shall be entitled forthwith to terminate this Agreement by written notice to the Licensee if the Licensee:
 - (i) commits any material breach of any of the provisions of this Agreement (including using the Content and Derivative Works in any manner not authorized under this Agreement) and such breach is incapable of remedy, or in the case of a breach which is capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - (ii) ceases or threatens to cease to carry on its business;
 - (iii) challenges the Library's rights in or ownership of any of the Content or the validity of its rights; or
 - (iv) is subject to any of the following events (or any event analogous to such events in any jurisdiction other than Scotland): a proposal is made for voluntary arrangement or for any other composition, scheme or arrangement with or for the benefit of its creditors; a resolution is passed for its winding up

(other than for the purpose of a bona fide reconstruction or amalgamation); a petition is presented for its winding up or an application is made for the appointment of a provisional liquidator; a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or is declared bankrupt or is otherwise unable to pay its debts when they fall due.

- (d) In addition to its right under Clause 6(c), where the Licensee fails to remedy any material breach notified in accordance with Clause 6(c)(i), the Library shall be entitled to take such remedial steps as it (acting reasonably) considers appropriate, and in such circumstances the Licensee shall be liable for any costs, losses, claims, liabilities, damages and/or expenses the Library suffers or incurs as a result of taking such action.
- (e) Immediately on expiry or termination of this Agreement all rights and licenses granted by the Library hereunder shall automatically terminate and the Licensee shall:
 - (i) cease all use of the Content; and
 - (ii) at the Library's option, return to the Library or destroy and/or erase such Content including any and all copies of such (including from any back-up systems and/or cached storage). Where the Library options for the destruction or erasure of the Content, the Licensee shall confirm in writing to the Library within thirty (30) calendar days of its receipt of the Library's notice that it has complied with the obligations set out herein.

7. Entire Agreement

This Agreement constitutes the entire Agreement and understanding between the parties and supersedes all previous communications and Agreements between the parties regarding its subject matter. This Agreement may not be amended or

- varied without the prior written consent of the Library.
- 8. Force Majeure**
Neither party shall be liable or be deemed to be in default for any total or partial failure to perform or fulfil its obligations under this Agreement by reason of force majeure, namely, any events or circumstances beyond the reasonable control of that party.
- 9. Notices**
Any notices which either party may be required to give to the other shall be sufficiently served if given in writing to the postal or email address of that party set out herein or to such other address as may be notified in writing by that party for this purpose. Notices shall be deemed to have been given three (3) business days after the date of posting or sending. In this Agreement, business days means any day other than a Saturday, a Sunday or a day defined by the Banking and Financial Dealings Act 1971 as a Bank Holiday in Scotland.
- 10. Severability**
If any provision of this Agreement is found by any court or other competent

- authority to be invalid, unlawful or unenforceable, then such term or provision shall be deemed not to form part of this Agreement to the extent necessary to give effect to the commercial intention of the parties, and the remaining provisions of this Agreement shall continue in force to the maximum extent permitted at law.
- 11. Jurisdiction and Governing Law**
This Agreement and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with the laws of Scotland and all disputes arising in any way out of or affecting this Licence shall be subject to the exclusive jurisdiction of the Scottish Courts, to which the parties agree to submit. Notwithstanding the foregoing, nothing in this Agreement shall affect the Library's right to (a) enforce any judgment of a Scottish Court in any relevant foreign jurisdiction, or (b) apply for or raise proceedings for interdict, injunction or similar in any relevant jurisdiction in relation to any infringement of Intellectual Property Rights.

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This is the Schedule referred to in the foregoing Agreement between the Licensee and the Library

The Parties to this agreement are:

Party	Address
Licensee	
Library	National Library of Scotland/Leabharlann Nàiseanta na h-Alba George IV Bridge Edinburgh EH1 1EW

To be completed by the Licensee	
Content	
Production Run	
Products and/or Services	
Purpose	

To be completed by the Library	
Access and audit rights	None specified
Acknowledgement	The Licensee shall display the following in all instances where the Content is used: 'Reproduced by permission of the National Library of Scotland'
Commencement Date	The Commencement Date of this Agreement is:
Delivery of Derivative Works (Clause 2(f))	None specified
Fees	In consideration of the rights and Licence granted by the Library to the Licensee under this Agreement, the Licensee shall pay the Library: The Fees have been calculated as follows:
Processing by the Library (Clause 2(b))	None
Right to sub-license (Clause 2(e))	None

I hereby agree to the terms of this Agreement as set out on this page, the preceding 5 pages and any appended pages:

Signed for and on behalf of the licensee.

Signed for and on behalf of the library.

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

At: (Place) _____

At: (Place) _____

E-mail: _____

E-mail: _____