

Schedule 3

helpIT systems ltd

Software Licence Agreement



SOFTWARE LICENCE

This Software Licence agreement is an agreement between the customer referred to in the Order Confirmation ("the Licensee") and helpIT systems limited of 9 North Street, Leatherhead, KT22 7AX, UK ("the Licensor").

1. Definitions

1.1 In this Agreement, the following expressions shall have the following meanings:-

"**Agreement**" means the terms and conditions of this document, the Order Confirmation and any document incorporated by specific reference.

"**Documentation**" – the guides and help files contained within the Software or accompanying the Software.

"**Effective Date**" – the date specified in the Order Confirmation from which rights hereunder are granted.

"**Initial Licence Fee**" – the Initial Licence Fee specified in the Order Confirmation.

"**Initial Licence Period**" – the Initial Licence Period specified in the Order Confirmation.

"**Intellectual Property Rights**" – all copyrights, patents, registered and unregistered design rights, topography rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world.

"**Licence**" – the licence to use the Software hereby granted.

"**Licence Pack**" – the printed material or PDF file containing this Software Licence and the Support and Update Agreement.

"**Licence Period**" – the Initial Licence Period specified in the Order Confirmation, or any subsequent period of the same duration commencing on a Renewal Date.

"**Module**" – a specific product licensed by the Licensor to the Licensee as identified in the Order Confirmation.

"**New Version**" – means a new version (as determined by us) of the Licenced Products (or part thereof) which we make available to you under this Agreement or otherwise but which is not included in the Initial Licence Fee or Renewal Fee.

"**Order Confirmation**" – the completed form entitled "Software and Data Order Confirmation".

"**Quality Assurance Checks**" – procedures which are appropriate to determine that each output of data by the Software, whether in electronic or paper form, is correct for the particular purpose of the Licensee, such checking procedures to include, but not be limited to, any quality assurance procedures described in the Documentation.

"**Renewal Date**" – the date of expiry of the Initial Licence Period or of any subsequent Licence Period.

"**Renewal Fee**" – the fee specified as such in the Order Confirmation (as increased from time to time in accordance with this Agreement).

"**Reseller**" – a third party who supplies the Software to Licensee and collects payment of the Licence Fee from Licensee.

"**Software**" – the Licensed Software identified in the Order Confirmation, consisting of any or all of the software products distributed by Licensee known as matchIT®, addressIT, suppressIT®, sortIT and the matchIT API.

"**Support and Update Agreement**" – The QAS Worldwide Support Services Policy

"**User Parameters**" – any parameters of use specified in the Order Confirmation.

2. Licence

2.1 In consideration of the payment of the Initial Licence Fee, the Licensor hereby grants to the Licensee a non-exclusive, non-transferable Licence in object code to use the Software only for its internal business purposes and strictly in accordance with the User Parameters and subject to any special conditions specified in the Order Confirmation.

2.2 Any use of the Software otherwise than in accordance with Clause 2.1 shall be subject to the Licensor's prior written consent and any reasonable additional licence fee which the Licensor determines.

2.3 The Licensee shall not, except to the extent permitted by law, modify, reverse assemble, decompile or reverse engineer the Software nor shall it permit whether directly or indirectly any third party to do any of the foregoing.

- 2.4 On supplying the Order Confirmation to the Licensee, the Licensor shall make available to the Licensee a temporary activation code, which will enable use of the Software by the Licensee for 30 days from the Effective Date (the "Initial Activation Period"). If the Licensee is unable to use the Software to achieve reasonable business purposes for which it licensed the Software which it has stated in writing and which have been accepted in writing by Licensor and has given the Licensor at least 7 days in total within the 30 day period to address any problems which prevent such use, the Licensee shall be entitled to cease all use of the Software and remove it from all computers onto which it has been placed and return or destroy the Software together with the Documentation (and any and all copies it has made of the foregoing) before the end of the Initial Activation Period and, if it does so, it shall have no obligation to pay the Initial Licence Fee. Notwithstanding the foregoing, all other terms and provisions of this Agreement shall continue to be in force during the Initial Licence Period, and afterwards as applicable.
- 2.5 The Initial Licence Fee is due for payment within 30 days of the invoice date.
- 2.6 However, if payment of the Initial Licence Fee has not been received by the Licensor (or by Reseller if the software was supplied by a Reseller) within the 30 day period referred to in Clause 2.5 above and the Software and Documentation have not been removed and returned or destroyed within that period pursuant to Clause 2.4 above, the Software will at the expiry of such period cease to function and this Licence will thereupon terminate.
- 2.7 In the event of the Licensor advising the Licensee in writing of the termination of the License pursuant to Clause 2.6 above, the Licensee shall be liable to pay to Licensor or Reseller one twelfth of the Initial Licence Fee, for receipt by the Licensor within 30 days of the Licensor or Reseller issuing a valid invoice for this amount. In the event that the Licensee fails to do so, it shall remain liable to pay the entire Initial Licence Fee, notwithstanding termination of the Licence.
- 2.8 The Licensee may extend this Licence before the expiry of any Licence Period by paying the Renewal Fee prevailing at that time. In extending the Licence, the Licensee also extends any Support and Update Agreement for the Software between the parties to this Agreement. The Licensor shall be entitled to increase the Renewal Fee with effect from the end of the second Licence Period, subject to 60 days' prior written notice to the Licensee; provided that except as allowed for in Clauses 2.8.1 and 2.8.2, any such increase shall be limited to the greater of five (5%) percent per annum and the increase in the RPI compounded annually since the last such increase. For the avoidance of doubt, the Licensee shall not be obliged to extend the Licence. The Licensor or Reseller shall issue a valid GST tax invoice for the extension of the Licence at least 30 days prior to the next Renewal Date.
- 2.8.1 If Licensee licenses a New Version and elects to combine the Renewal Fee for the New Version with the Renewal Fee for the Software previously licensed, the Licensor may increase the Renewal Fee by an amount which reflects such New Version, in addition to any increase allowed for under Clause 2.8.
- 2.9 Subject to Clause 2.4, if the Licensee fails to pay any sum due under this Agreement when it is expressed to be due, the Licensor shall be entitled to charge interest on a daily basis on all overdue amounts and on outstanding interest from the date of such failure until payment (both before and after judgement) at 3% above the Minimum Lending Rate from time to time of the Bank of England.
- 2.10 For the purposes of this Agreement, time of payment by the Licensee shall be of the essence.

3. New Versions

- 3.1 Any New Version supplied to the Licensee shall become subject to this Agreement in all respects on payment of the additional licence fee specified by the Licensor or Reseller to the Licensee and from that point forth, all references herein to the Software shall be deemed to incorporate such New Version(s).

4. Warranties

- 4.1 The Software has not been written to meet the individual requirements of the Licensee and it is the sole responsibility of the Licensee to satisfy itself prior to entering this Agreement that the Software will meet its requirements and be compatible with its hardware/software configuration. The Licensor makes no warranty or representation in that respect and no failure of any part or the whole of the Software to be suitable for the Licensee's requirements shall give rise to any right or claim against the Licensor.
- 4.2 The Licensor gives no warranties in connection with the Software other than that the Software will perform substantially in accordance with the Documentation for a period of 90 days from the Effective Date. All other warranties, express or implied, statutory or otherwise are excluded.
- 4.3 The Licensee hereby warrants that it has not been induced to enter into this Agreement by any prior representations whether oral or written except as expressly contained in this Agreement and the Licensee hereby waives any claim for breach of any such representations which are not so contained.

5. Limitation of Liability

- 5.1 The Licensor is not liable for any indirect loss or consequential loss howsoever arising suffered by the Licensee (including without limitation, in respect of both consequential and indirect loss, loss of profit, revenue, data or goodwill) or for any liability of the Licensee to any third party arising in any way in connection with this Agreement whether or not such loss has been discussed by the parties pre-contract.
- 5.2 The Licensee acknowledges that it is not practicable for the Licensor to check out all combinations of software parameters, user data and user choices in the Licensor's testing of the Software prior to delivery and that the duty of care in checking each and every output from the Software rests solely with the Licensee.
- 5.3 The Licensor shall not be liable for any loss or damage of whatsoever nature suffered by the Licensee arising out of or in connection with any breach of this Agreement by the Licensee or any act, misrepresentation, error or omission made by or on behalf of the Licensee (including, without prejudice to the generality of the foregoing, use of the Software by someone with inadequate understanding or experience, use of the Software not in accordance with the Documentation or failure to exercise appropriate Quality Assurance Checks on any output from the Software) or arising from any cause beyond the Licensor's reasonable control.
- 5.4 Subject to Clause 5.6 below, no matter how many claims are made and whatever the basis of such claims, the Licensor's maximum aggregate liability to the Licensee under or in connection with this Agreement (excluding indemnification claims under clause 7), in respect of any direct loss (or any other loss to the extent that such loss is not excluded by Clauses 5.1-5.3 above or otherwise) whether such claim arises in contract or in tort shall not exceed a sum equal to twice the Initial Licence Fee paid by the Licensee.
- 5.5 Whilst the Licensor makes all reasonable attempts to exclude viruses from the Software, it cannot ensure such exclusion and no liability is accepted for viruses. Thus, the Licensee is recommended to take reasonable measures to safeguard itself against this risk.
- 5.6 None of the clauses above shall apply so as to restrict liability for death or personal injury resulting from the negligence of the Licensor or its appointed agents.

6. Confidentiality, Copying and Intellectual Property Rights

- 6.1 The Licensee acknowledges that the ideas and expressions contained in the Software (and any modifications thereof or updates thereto provided to the Licensee by the Licensor) and any particulars thereof provided to the Licensee by the Licensor are confidential. The Licensee undertakes not to divulge such information to a third party and only to divulge such information to its associated companies, agents and employees as is strictly necessary to enable the Software to be used in accordance with and for the purposes hereof. The Licensee undertakes to ensure that such entities maintain such confidentiality and the Licensee acknowledges that the terms of this Clause and Clause 4 shall survive the termination for whatever reason of this Agreement.
- 6.2 The Licensor shall be entitled to disclose the name of the Licensee as a user of the Software.
- 6.3 Except for back-up purposes or otherwise in accordance with the law, the Licensee shall not itself nor allow any third party to duplicate or otherwise reproduce in whole or in part the Software.
- 6.4 The Licensee acknowledges that it obtains no Intellectual Property Rights whatsoever in any software or documentation by virtue of this Agreement.
- 6.5 The Licensee will notify the Licensor of any claim which may be made against the Licensor, or any related company or the Licensee alleging that the Software infringes the Intellectual Property Rights of a third party as soon as it becomes aware of any such actual or potential claim.
- 6.6 The Licensee shall immediately bring to the attention of the Licensor any infringement or suspected infringement by any third party of any of the Intellectual Property Rights in the Software of which it is aware and shall at the request and expense of the Licensor take such action or assist the Licensor in taking such action as the Licensor may deem appropriate to protect its Intellectual Property Rights.
- 6.7 In the event of any actual Intellectual Property Right infringements by the Software, the Licensee's only remedy and the Licensor's only liability will be, at the Licensor's choice, either a refund of any monies paid for the offending Software or the replacement of such Software with equivalent non-defective or non-offending products.
- 6.8 The Licensee undertakes not to remove, delete or obscure any copyright notices or confidentiality notices on or in the Software and to ensure the accurate reproduction of the same on any copies of the Software which it is entitled to make in accordance with the terms hereof.
- 6.9 The Licensor represents and warrants to the Licensee that the Licensor is, or is licensed for all purposes of this Agreement by the person who is, the owner of all Intellectual Property Rights in and over the Software.

7. Indemnity

- 7.1 The Licensor shall indemnify the Licensee against any direct claim, loss, liability, damage or expense resulting from or due to a claim that the Software or any part thereof infringe the Intellectual Property Rights of any third party provided that:-
- (i) Neither the Licensee nor any third party connected with the Licensee has directly or indirectly brought about such claim by breaching this Agreement or modifying the Software Materials or any part thereof or combining the Software with any other software or hardware, and, in such cases, the Licensee shall indemnify and hold the Licensor harmless with respect to any such claim;
 - (ii) The Licensor is given immediate and complete control of such claim;
 - (iii) The Licensee does not prejudice the Licensor's defence of such claim;
 - (iv) The Licensee gives the Licensor at the Licensor's expense, all reasonable assistance with the defence or settlement of such claim.

8. Term and Termination

- 8.1 The Licence shall continue for the initial Licence Period and thereafter for succeeding Licence Periods unless and until the Licensee does not extend the Licence pursuant to Clause 2.8 or this Agreement is terminated in accordance with the provisions of this Clause 8. If the Licensee does not extend the Licence, it will expire on the cessation of the relevant Licence Period.
- 8.2 Either party may terminate this Agreement immediately by written notice to the other in the event that any of the following occur:-
- (i) without prejudice to Clause 2.6 above, the other fails to pay any amount due hereunder within 30 days of its due date or breaches any term of this Agreement and such breach is incapable of remedy or continues for a period of 30 days after notice requiring the same to be remedied has been given by the terminating party to the other party or
 - (ii) an order is made or a resolution is passed for the winding up of the other party, or if a provisional liquidator is appointed in respect of the other party, or if an administration order is made in respect of the other, or if a receiver is appointed in respect of the other or all or any of its assets or if the other is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or if any voluntary arrangement is proposed under Part 1 of the Insolvency Act 1986 in respect of the other.
- 8.3 The Licensor may terminate this Agreement forthwith if the Licensee purports to breach Clause 9.4 hereunder.
- 8.4 Termination of this Agreement shall be without prejudice to any other rights or remedies of the terminating party.
- 8.5 In the event of termination of this Agreement, the Licensee shall, on the Licensor's written request, return the Software and Documentation supplied by the Licensor, together with any copies thereof, to the Licensor, for receipt by the Licensor within 30 days of the Licensee receiving such request from the Licensor.

9. General

- 9.1 Subject to Clause 9.2, this written Agreement, together with the Order Confirmation, constitute the entire agreement between the parties hereto relating to the subject matter hereof and neither party has relied on any representation made by the other party unless such representation is expressly included herein. In the event of conflicts arising between the terms of this Agreement and any other applicable terms and conditions mentioned in this Agreement, the following ascending order of priority (with (a) having the highest priority and (e) having the least) will prevail:
- (a) The Order Confirmation;
 - (b) The main body of this Agreement;
 - (c) The QAS Worldwide Support Services Policy.
- 9.2 No change, alteration or modification to this Agreement shall be valid unless in writing and signed by duly authorised representatives of both parties.
- 9.3 If any provision of this Agreement or part thereof shall be void for whatever reason, it shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 9.4 Subject to Clause 9.11 below, the rights and obligations of the Licensee under this Agreement are personal to the Licensee and the Licensee undertakes that it shall not, without the prior written consent of the Licensor, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.
- 9.5 The Licensor reserves the right to sub-contract any of the work required to fulfil its obligations hereunder.

- 9.6 Any notice given pursuant hereto may be served personally or sent by pre-paid registered letter or recorded delivery to the addresses given hereabove. Such notice shall be deemed to have been duly served upon and received by the addressee, when served personally, at the time of such service or, when posted, 48 hours after the same shall have been put into the post correctly addressed and pre-paid.
- 9.7 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.
- 9.8 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.
- 9.9 Clause headings have been included in this Agreement for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.
- 9.10 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.
- 9.11 The Licensee shall be entitled to assign this Licence to any one of the following:-
- (i) a "subsidiary" company as defined in Section 736 of the Companies Act 1985;
 - (ii) a company which purchases all of the assets of the Licensee;
 - (iii) a company whose assets are all purchased by the Licensee;
 - (iv) the entity resulting from a merger between the Licensee and another company.
- However any such assignment shall be subject to the following conditions:-
- (a) if the number of users increases or User Parameters are exceeded, the Licensor may charge additional Initial Licence Fees and Renewal Fees to reflect this;
 - (b) in the event of a transfer to a subsidiary, the Licensee shall have no further right itself to use the Software unless it agrees terms to do so with the Licensor.