



G8CC

Terms and Conditions

GARNET8
making IT simple

Crown
Commercial
Service
Supplier

PLEASE CAREFULLY READ BEFORE REGISTERING FOR A MONITORED SERVICE, DEPLOYING A PRIVATE G8CC SaaS.

This licence agreement (Licence) is a legal agreement between you (Licensee or you) and GARNET8 Limited of Hillsons House, Hillsons Road, Bottings Industrial Estate, Botley, Southampton, S030 2GE (Licensor, us or we) for.

G8CC computer software (including any open source software comprised therein), the data supplied with the software and the associated media (Software); and printed materials and online documents (Documents).

We license use of the software and Document to you on the basis of this license. We do not sell the Software or the Documents to you. We remain the owners of the Software and Documents at all times.

OPERATING SYSTEM REQUIREMENTS: THIS SOFTWARE REQUIRES A LINUX DISTRIBUTION OPERATING SYSTEM, PREFERABLY UBUNTU SERVER, WITH A HTTP(s) AND SERVER-2-SERVER PORT AVAILABLE FOR G8CC TO LISTEN ON.

IMPORTANT NOTICE TO ALL USERS.

THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 2 AND CLAUSE 6.

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT LICENSE THE SOFTWARE AND DOCUMENTS TO YOU AND YOU MUST DISCONTINUE THE REGISTRATION, DOWNLOADING PROCESS NOW.

1. GRANT AND SCOPE OF LICENCE

1.1

In consideration of payment by you of the agreed licence fee set out in the Schedule and you agreeing to abide by the terms of this Licence. we hereby grant to you for the Subscription Term and any subsequent Renewal Period. a non-exclusive. non-transferable licence to use the Software and the Documents on the terms of this Licence.

1.2 You may:

1.2.1

Download, install and use the Software for your personal purposes (if you are a consumer) or your internal business purposes (if you are a business) only:

1.2.1.1

Is only a multi-user or network licence and only can be used by the number of concurrent users agreed between you, that are registered with the GARNET8 Collaboration Clouds Master Service, one-user registration can't be used by multiple people, the account can only be used by the person who the account is registered to;

1.2.2

make up to 1 copy of the Software for back-up purposes only;

1.2.3

receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by us from time to time;

1.2.4

configure a custom interface to the Software which authorised users will access prior to accessing the Software; and

1.2.5

use any Documents in support of the use permitted under Clause 1.2 and make up to two copies of the Documents as are reasonably necessary for its lawful use.

2 RESTRICTIONS

Except as expressly set out in this Licence or as permitted by any local law, you undertake:

2.1

not to copy the Software or Documents 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;

2.2

not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documents;

2.3

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;

2.4

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 thing 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 interoperability of the Software with another software program, and provided that the information obtained by you during such activities:

2.4.1

is used only for the purpose of achieving inter-operability of the Software with another software program; and

2.4.2

is not unnecessarily disclosed or communicated without our prior written consent to any third party; and

2.4.3

is not used to create any software which is substantially similar to the Software;

2.5

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;

2.6

to supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this License;

2.7

to include our copyright notice and links to the open source licence agreements on all entire and partial copies you make of the Software on any medium; and

2.8

not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person.

2.9

to comply with all applicable technology control or export laws and regulations.

3. USER SUBSCRIPTIONS

3.1

in relation to the Authorised Users, You undertake that:

3.1.1

the maximum number of Authorised Users that it authorises to access and use the Software and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

3.1.2

it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software and/or Documentation;

3.1.3

each Authorised User shall keep a secure password for its use of the Software and that each Authorised User shall keep its password confidential ;

3.1.4

it shall permit Us to carry out an audit to establish whether the number of Authorised Users does not exceed the number of User Subscriptions. Such audit may be conducted no more than once per quarter, at Our expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with Your normal conduct of business;

3.1.5

if any of the audits referred to in clause 3.1.4 reveal that any password has been provided to any individual who is not an Authorised User, than without prejudice to Our other rights, You shall promptly disable such passwords and Us shall not issue any new passwords to any such individual; and

3.1.6

if any of the audits referred to in clause 3.1.4 reveal that You has underpaid Subscription Fees to Us, then without prejudice to Our other rights, You shall pay to Us an amount equal to such underpayment as calculated in accordance with Our current prices within 10 Business Days of the date of the relevant audit.

3.2

You shall not and shall use all commercial and reasonable efforts to ensure you're your Authorised Users shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Software that:

3.2.1

is unlawful, harmful, SPAM, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or which might otherwise threaten or compromise the security of the Software;

3.2.2

facilitates illegal activity;

3.2.3

depicts sexually explicit images;

3.2.4

promotes unlawful violence;

3.2.5

is discriminatory based on race, colour, religious belief, sexual orientation, disability; or

3.2.6

in a manner that is otherwise illegal or causes damage or injury to any person or property;

and Us reserves the right, without liability or prejudice to its other rights to You, to disable Your access to any material that breaches the provisions of this clause.

3.3

You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation and, in the event of any such unauthorised access or use promptly notify use.

3.4 Increasing the number of Authorised Users.

3.4.1

You are authorised to add new user through the data container administrators user interface, through the new data container screen and through the system administration interface within you G8CC platform.

3.4.2

New users pricing will depend on the schedule or the configuration you have chosen to use your G8CC platform in.

3.4.2.1

In a self hosted configuration the price for new users will depend on the schedule pricing you've agreed to and how many existing users you already have within your GARNET8 Limited account.

3.4.2.2

New Users pricing for any additional days will be calculated by dividing the schedule price by 30 and multiplying that by the number of days between user activation and your next billing date, after this point, the next billing date, the new user will be billed at the full schedule price.

3.4.2.3

If you're increasing the number of authorised users within a monitored, hosted configuration and it exceeds the number of authorised users within your package, you will be charged at the agreed amount within the pricing schedule for additional users within that configuration. Any new users that are added will be charged within the same way as clause 3.4.2.2.

3.4.2.4

if you want to upgrade the hardware, virtual machine, hosting system that your using within the package due to the additional users, you will agree to pay the new price and except any inconvenience caused when migrating your system to the new hardware and you will agree to pay any additional costs that are incurred by GARNET8 Limited when doing this procedure, such as unsocial hours.

3.5 Decreasing the number of Authorised Users.

3.5.1

You are authorised to remove users through the data container administration interface.

3.5.2

Cost reduction will depend on you configuration.

3.5.2.1

If you are removing a user from a self hosted configuration, you will pay for that user at a full schedule price up to and including the closest billing date.

3.5.2.2

If you are removing a user from a hosted package you will not incur any costs if it is within the number of users within the package costs.

3.5.2.3

If the user is being charged at a additional cost to the number of users within the package, that users cost will be removed after the closest bill date.

3.5.2.4

If you wish to downgrade your hardware, your package cost will reflect that:

3.5.2.5

any additional user charges will be incurred if the total number of users exceeds the allowance within your new package.

3.5.2.6

Costs incurred by GARNET8 when migrating your package as in clause 3.4.2.4 will be an additional charge to you.

3.6

The rights provided under this clause 3 are granted to You only, and shall not be considered granted to any subsidiary or holding company .

4 MAINTENANCE AND SUPPORT

4.1

Subject to clause 15. We shall use commercially reasonable endeavors to make the Software available at all times in accordance with the level of service purchased. except for:

4.1.1

planned maintenance which involves a shut down of the software (notice of which shall be given 48 hours before such planned maintenance is due to be carried out); and

4.1.2

unscheduled maintenance performed outside normal business hours;

4.1.3

any breaches by You or its Authorised Users of clauses [].

5 CUSTOMER DATA

5.1

You shall own all right, title and interest in and to all of Your data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your data.

5.2

The parties agree that You are the best judge of the value and importance of the data. Notwithstanding clause 5.5, You acknowledge that You should operate and implement You own disaster recovery procedures and back-up procedures, for Your own benefit, to ensure that data integrity can be maintained in the event of loss or corruption of data from the Software for any reason.

5.3

Both parties shall ensure that all personal data that it processes through its use of the Software is done strictly in accordance with the Data Protection Act 1998.

5.4

You will not have access to your data stored on the Software during a suspension.

5.5

You therefore agree that you will maintain at least (1) additional copy of your data stored on Software somewhere other than on the Software.

5.6

Depending on which pricing tier you have chosen, you will be allocated a certain amount of data storage. If you exceed the amount of data storage within that pricing tier, you will automatically upgrade into the next pricing tier and will be charged accordingly. In respect of our highest level of data storage, we reserve operate a fair use policy so that the integrity of the Software is not threatened. Accordingly, if we believe in our reasonable opinion that your data storage in this higher level pricing tier is unreasonable, we reserve the right to terminate or suspend this agreement.

5.7

In the event that date specific data is stored on the Software for longer than a period of 7 years, we reserve the right to charge additional fees in respect of the continued storage of this historic data.

5.8

General Data Protection Regulation (GDPR), under GDPR, the infrastructure provider or hosting services is the controller and you the Licence become the processor. Under these ruling you the Licence agree to uphold the measures under GDPR to ensure the security and compliance of the GDPR ruling.

6 INTELLECTUAL PROPERTY RIGHTS

6.1

You acknowledge that all intellectual property rights in the Software and the Documents anywhere in the world belong to us, that rights in the Software are licensed (not sold) to you and that you have no rights in, or to, the Software or the Documents other than the right to use them in accordance with the terms of this License.

6.2

GARNET8 is the trade mark of Gamet8 Limited.

6.3

You acknowledge that you have no right to have access to the Software in source code form.

7 LIMITED WARRANTY

7.1

We warrant that for a period of [90 days] from the date of installation of the Software (Warranty Period):

7.1.1

the Software will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Documents; and

7.1.2

that the Documents correctly describe the operation of the Software in all material respects.

7.2

If, within the Warranty Period, you notify us in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Documents, we will, at our sole option, either repair or replace the Software, provided that you make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault.

7.3

The warranty does not apply:

7.3.1

to any of the open source elements comprising the Software;

7.3.2

if the defect or fault in the Software results from you having altered or modified the Software;

7.3.3

if the defect or fault in the Software results from you having used the Software in breach of the terms of this Licence; and

7.3.4

to any custom interface configuration that you have made to the Software.

7.4

If you are a consumer, this warranty is in addition to your legal rights in relation to Software that is faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

8. LIMITATION OF LIABILITY IF YOU ARE A BUSINESS

USER

8.1

You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documents meet your requirements.

8.2

If you are a business customer, we only supply the Software and Documents for internal use by your business, and you agree not to use the Software or Documents for any re-sale purposes.

8.3

We shall not in any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the License for:

8.3.1

loss of profits, sales, business, or revenue;

8.3.2

business interruption;

8.3.3

loss of anticipated savings;

8.3.4

loss or corruption of data or information;

8.3.5

loss of business opportunity, goodwill or reputation; or

8.3.6

any indirect or consequential loss or damage.

8.4

Other than the losses set out in condition 8.3 (for which we are not liable), our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to [110%] of the Licence Fee Paid within the 12 months prior to your claim. This maximum cap does not apply to condition 8.5.

8.5

Nothing in this Licence shall limit or exclude our liability for:

8.5.1

death or personal injury resulting from our negligence;

8.5.2

fraud or fraudulent misrepresentation;

8.5.3

any other liability that cannot be excluded or limited by English law.

8.6

This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Software and Documents. Except as expressly stated in this Licence, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software and Documents which might otherwise be implied into, or Incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

9 LIMITATION OF LIABILITY IF YOU ARE A CONSUMER

9.1

You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documents meet your requirements.

9.2

If you are a consumer, we only supply the Software and Documents for domestic and private use. You agree not to use the Software and Documents for any commercial, business or re-sale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

9.3

We are only responsible for loss or damage you suffer that is a foreseeable result of our breach of this Licence or our negligence up to the amount specified in condition 9.4, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and us at the time we granted you the Licence.

9.4

Our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to [110%] of the Licence Fee paid in the 12 months prior to the claim. This does not apply to the types of loss set out in condition 9.5.

9.5

Nothing in this Licence shall limit or exclude our liability for:

9.5.1

death or personal injury resulting from our negligence;

9.5.2

fraud or fraudulent misrepresentation;

9.5.3

any other liability that cannot be excluded or limited by English law.

10 SUSPENSION AND TERMINATION

10.1

We may suspend the licence granted under this Agreement in the event that:

10.1.1

You fail to pay the Licence Fees on the due date;

10.1.2

We reasonably suspect You to be in breach of any Licence clauses.

10.2

We may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.

10.3

Upon termination for any reason:

10.3.1

all rights granted to you under this Licence shall cease;

10.3.2

you must immediately cease all activities authorised by this Licence; [and]

10.3.3

you must immediately pay to us any sums due to us under this Licence; and

10.3.4

you must immediately delete or remove the Software from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of the Software and Documents then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

11 COMMUNICATIONS BETWEEN US

11.1

Any notice given by you to us, or by us to you, will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and. in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

12 EVENTS OUTSIDE OUR CONTROL

12.1

We will not be liable or responsible for any failure to preform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control.

12.2

An Event Outside Our Control means any act or event beyond our reasonable control. Including without limitation failure of public or private telecommunications networks.

12.3

if an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:

12.3.1

our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and

12.3.2

we will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event Outside Our Control.

12.4

Outages and Service Level Agreements within Hosted/Monitored packages are out of the scope of GARNET8 Limited control and you will be an addition license held by the Hosting/Service provider. This will be outlined when you choose a Hosting provider to work with when delivering your G8CC system through.

13 OTHER IMPORTANT TERMS

13.1

We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.

13.2

You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.

13.3

If you are a business customer, this Licence and any document expressly referred to in it constitutes the entire agreement between us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Licence or any document expressly referred to in it. You agree that you shall have no claim for innocent or negligent misrepresentation or negligence misstatement based on any statement in this in this Licence or any document expressly referred to in it.

13.4

If we fail to insist that you perform any of your obligations under this Licence, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with with those obligations. If we do waive a default be you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

13.5

Each of these conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

13.6

If you are a consumer, please note that this Licence, its subject matter and its formation are governed by English law. You and we both agree to that the courts of England and Wales will have non-exclusive jurisdiction. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are resident of Scotland, you may also bring proceedings in Scotland.

13.7

If you are a business customer, this Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.