

CHIRP – SOFTWARE FAIR USE LICENCE AGREEMENT

1. PARTIES

- 1.1 **ASIO LIMITED** (trading as Chirp), a company registered in England and Wales with company number 07851934, with its registered office located at Wework The Cursitor, 38 Chancery Lane, London, England, WC2A 1EN ("**Chirp**").
- 1.2 The PERSON or COMPANY listed in the website application ("**End User**").

Hereinafter referred to collectively as "Parties" and individually as "Party".

2. BACKGROUND

- 2.1 End User desires to evaluate certain software owned by Chirp for a Fair Use Period; and
- 2.2 Chirp desires to license such software to End User on the terms set out in this licence ("Licence" or "Agreement").

3. INTERPRETATION

- 3.1 The definitions and rules of interpretation in this clause apply in this Agreement.
 - 3.1.1 **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 **OR** any business entity from time to time controlling, controlled by, or under common control with, either party.
 - 3.1.2 **Information:** information owned by Chirp and obtained by the End User relating to the Software.
 - 3.1.3 **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.
 - 3.1.4 **Objective:** evaluation of the Software by the End User for use in the End User's business.
 - 3.1.5 **Software:** the machine-readable version of the Chirp program(s) on Windows, Linux, iOS and Android, or such platforms as Chirp may designate from time to time. Software-related user and technical documentation is included in the definition of "Software" for purposes of this Agreement. However, only such technical documentation as is necessary for configuration purposes, if any, is included within this definition and must be delivered hereunder. The definition of Software includes the

software development kit or "SDK", being a programming package that enables a programmer to develop applications using Chirp's Software which will include but not be limited to one or more APIs, programming tools, sample applications, executable and documentation. The SDK will support offline and online transactions although the SDKs may need to go online periodically to enable additional features.

- 3.1.6 **Specification:** the document detailing the specification of the Software in Annex A.
- 3.1.7 **Term:** the term of this Agreement.
- 3.1.8 **Fair Use Period:** A period renewed by Chirp at its sole discretion.
- 3.2 Holding company and subsidiary** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 3.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 3.4 Unless the context otherwise requires:
 - 3.4.1 words in the singular shall include the plural and in the plural shall include the singular;
 - 3.4.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
 - 3.4.3 a reference to one gender shall include a reference to the other genders; and
 - 3.4.4 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.
- 3.5 In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the schedules, annexes or appendices, the provision in the body of this licence shall take precedence.
- 3.6 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.
- 3.7 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.

- 3.8 The Schedules and Annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement Any reference to this Agreement or Licence includes the Schedules and Annexes.

4. LICENCE

- 4.1 In consideration of the promises and commitments made by End User to Chirp in this Agreement, Chirp grants to End User a non-exclusive, non-transferrable and revocable licence during the Term of this Agreement only, solely for the purposes of End User incorporating the Software into End User's products and services for direct sale to its own customers (and expressly not for the purpose of resale by those customers). For the avoidance of doubt, End User is not granted the right to sublicense or sell the Chirp Software as a standalone item. The End User acknowledges and agrees that the Software will, or may, automatically "time out" (that is to say, cease to operate) at the end of the Fair Use Period unless either:
- 4.1.1 the End User has at that time accepted a full licence of the Software, or
 - 4.1.2 the End User has requested a longer Fair Use Period, and Chirp has agreed.
- 4.2 End User shall not:
- 4.2.1 sub-license, assign or novate the benefit or burden of this licence in whole or in part;
 - 4.2.2 allow the Software to become the subject of any charge, lien or encumbrance; and
 - 4.2.3 deal in any other manner with any or all of its rights and obligations under this agreement.
- 4.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 4.4
- 4.5 During the Fair Use Period this licence may be terminated immediately by Chirp giving written notice if the End User is in breach of any of its obligations under this agreement, or upon acceptance by the End User of a full licence for the Software. Upon termination not followed by a full licence, the End User shall within two working days return to Chirp all documents containing any item of the Information and shall completely delete all electronic copies of all or any part of the Software and/or the Information.
- 4.6 Save for death and personal injury caused by Chirp's negligence, Chirp shall have no liability of any kind in any circumstances whatever to the End User in respect of the Software or Information greater than the limit set out in clause 4.8. In particular, Chirp shall have no liability in any circumstances whatever for any data loss or corruption greater than that limit and the End User agrees that it has sole responsibility for protecting its data during evaluation of the Software.
- 4.7 No representations, conditions, warranties or other terms of any kind are given in respect of the Software or the Information, and all statutory warranties and conditions are excluded to the fullest extent possible.

- 4.8 In the event that Chirp shall be found liable to the End User for any reason other than death or personal injury caused by Chirp's negligence, the sums payable to the End User in respect of such liability shall not in any circumstances exceed £1,000.
- 4.9 **Reference to Chirp within the End User's App:** These Terms are subject to the End User making appropriate reference to the Chirp technology within the End User's application, as set out below. Chirp may allow use of the Chirp technology in other cases but the End User should contact Chirp to discuss the End User's proposed use in advance to discuss such use. Under these Terms, implementation of the Chirp technology must ensure that:
- 4.9.1 A Chirp-enabled application contains a credit, with the words "Powered by Chirp" and a link to www.chirp.io. As a minimum, this credit should be in an FAQ page or suitable alternative available from within the App.
- 4.9.2 The sonic interactions used in the App are referred to as a 'chirp' or 'chirping' in user guides and/or marketing materials, accompanied by the Chirp logo.
- 4.9.3
- 4.9.4 The Chirp logo should be used in-app where practical although not to imply any approval by us.
- 4.9.5 Chirp brand assets are available on www.chirp.io. You may not distort, recolour our logos or in any other way modify the Chirp logo, unless resizing to a reasonable extent, as considered by Chirp.

5. NON-DISCLOSURE AGREEMENT

- 5.1 In consideration of the disclosure by Chirp to the End User of the Software and the Information for the purpose of the Objective, the End User undertakes that it will respect and preserve the confidentiality of the Information for a period of ten years after the date of such disclosure (subject to clause 5.3 below). The End User shall not without the prior written consent of Chirp:
- 5.1.1 communicate or otherwise make available the Information to any third party; or
- 5.1.2 use the Information itself for any commercial, industrial or other purpose other than the Objective; or
- 5.1.3 copy, adapt, or otherwise reproduce the Information save as strictly necessary for the purposes of the Objective.
- 5.2 The End User may disclose the Software and Information or any part thereof, with the prior consent of Chirp, to any employee of the End User who needs access to the Software and the Information in connection with the Objective. In such an event the End User agrees to ensure, before such disclosure, that the employee in question is made aware of the confidential nature of the Software and Information and understands that he/she is bound by conditions of secrecy no less strict than those set out here. The End User agrees to monitor the use of the Software and Information by these employees and to enforce their obligations of confidence at the request of Chirp.

- 5.3 The obligations contained in this clause 5 shall not apply, or shall cease to apply, to such part of the Information as the End User can show to the reasonable satisfaction of Chirp:
- 5.3.1 has become public knowledge other than through the fault of the End User or an employee or director of the End User to whom it has been disclosed in accordance with clause 5.2 above; or
 - 5.3.2 was already known to the End User prior to disclosure to it by Chirp; or
 - 5.3.3 has been received from a third party who neither acquired it in confidence from Chirp, nor owed Chirp a duty of confidence in respect of it.
- 5.4 If the End User decides not to accept a full licence of the Software, or otherwise at any time at the request of Chirp, the End User shall delete all copies of all or any part of the Information which have been provided to the End User pursuant to this agreement, together with all analyses, studies and other materials produced by the End User which contain, or could reveal, all or any part of the Information, and any summaries (in whatever form) prepared by the End User of oral Information disclosed by Chirp.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Company owns the Software, Information and all related documentation. The End User acknowledges that any disclosure pursuant to this agreement shall not confer on the End User any intellectual property or other rights in relation to the Software or the Information other than its right to use under clause 4.1.
- 6.2 Ownership of all complete or partial copies of the Software and related documentation shall at all times remain with Chirp. The End User agrees to mark any copies of the Software which it may make in any tangible medium with a notice that such copy belongs to Chirp.
- 6.3 If a third party notifies the End User of any claim that the use of the Software infringes any right of a third party, the End User agrees to immediately notify Chirp. If any such claim is made to the End User or Chirp, the End User shall, at Chirp's request, immediately cease use of the Software. If Chirp is unable to allow the End User to continue evaluation of the Software, the provisions of clause 4.6 shall apply.

7. PUBLICITY

- 7.1 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.

8. PROTECTION AND PROCESSING OF PERSONAL DATA

- 8.1 Each party shall comply with its respective obligations under the applicable provisions of the Data Protection Act 1998, the General Data Protection Regulation ((EU) 2016/679) (GDPR), or any national implementing laws or successor legislation thereto (the Act) and

references in this clause to "data processor", "data controller" and "personal data" shall have the meanings defined in the Act.

9. SUPPLIER'S WARRANTIES

- 9.1 Chirp does not warrant that the use of the Software will be uninterrupted or error-free.
- 9.2 End User 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 End User.
- 9.3 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.

10. LIMITS OF LIABILITY

- 10.1 Except as expressly stated in clause 10.2:
 - 10.1.1 Chirp shall not in any circumstances have any liability for any losses or damages which may be suffered by End User (or any person claiming under or through End User), 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:
 - 10.1.2 special damage even if Chirp was aware of the circumstances in which such special damage could arise;
 - 10.1.3 loss of profits;
 - 10.1.4 loss of anticipated savings;
 - 10.1.5 loss of business opportunity;
 - 10.1.6 loss of goodwill;
 - 10.1.7 loss or corruption of data,
 - provided that this clause 10.1.1 shall not prevent claims for loss of or damage to End User's tangible property that fall within the terms of clause 10.1.2 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 10.1.1;
 - 10.1.8 the total liability of Chirp, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed £1,000; and
 - 10.1.9 End User agrees that, in entering into this licence, 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 licence) that it shall have no remedy in respect of

such representations and (in either case) Chirp shall have no liability in any circumstances otherwise than in accordance with the express terms of this licence.

- 10.2 The exclusions in clause 9.3 and clause 10.1 shall apply to the fullest extent permissible at law, but Chirp does not exclude liability for:
- 10.2.1 death or personal injury caused by the negligence of Chirp, its officers, employees, contractors or agents;
 - 10.2.2 fraud or fraudulent misrepresentation;
 - 10.2.3 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
 - 10.2.4 any other liability which may not be excluded by law.
- 10.3 All dates supplied by Chirp for the delivery of the Software shall be treated as approximate only. Chirp shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 10.4 All references to "Chirp" in this clause 10 shall, for the purposes of this clause and clause 18 only, be treated as including all employees, subcontractors and suppliers of Chirp and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 18.

11. DURATION AND TERMINATION

- 11.1 Term: This Agreement shall commence on the date of this Agreement.
- 11.2 Chirp maintains the right to terminate this agreement at any time.

12. WAIVER

- 12.1 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.

13. REMEDIES

- 13.1 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.

14. ENTIRE AGREEMENT

- 14.1 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.

- 14.2 Each party acknowledges that, in entering into this Agreement, 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 licence or not) (**Representation**) other than as expressly set out in this Agreement.
- 14.3 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.
- 14.4 Nothing in this clause shall limit or exclude any liability for fraud.

15. VARIATION

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

16. SEVERANCE

- 16.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 16.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. COUNTERPARTS

- 17.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18. THIRD-PARTY RIGHTS

- 18.1 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.

19. NO PARTNERSHIP OR AGENCY

- 19.1 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.

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

20. FORCE MAJEURE

- 20.1 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 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

21. NOTICES

- 21.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:
- 21.1.1 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
 - 21.1.2 sent by email to contact@chirp.io in the case of Chirp, and to the email provided during the website sign-up process in the case of End User.
- 21.2 Any notice shall be deemed to have been received:
- 21.2.1 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.
 - 21.2.2 if sent by email, at 9.00 am on the next Business Day after transmission.
- 21.3 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.

22. GOVERNING LAW AND JURISDICTION

- 22.1 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.
- 22.2 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).

Annex A : Specification

(This Specification may be updated from time to time without prior notice from Chirp to the End User).

The definitions and rules of interpretation in this clause apply in this Annex.

SDK: The Chirp software library distributed in a form suitable for the End User's platform, for example a Microsoft Windows DLL, Android AAR or iOS Framework.

CHIRP ADMIN CENTRE: Chirp's web page accessible at <https://admin.chirp.io>

CHIRP LICENCE, CHIRP LICENCE FILE: A file or text string provided by Chirp (via API, admin centre or any other means) used to configure and authorise the Chirp SDK.

Additionally, End User shall integrate the Chirp Licence File into their solution in order that the SDKs function properly. The SDKs and Chirp Licence Files can be downloaded from the Chirp Admin Centre by End User. The SDK may not be used for any reason without supplying a valid, authorised licence file.

Chirp reserves the right to invalidate or otherwise disable a licence file without notice at any time for any reason.

Chirp Licence File – SDK relationship

The Chirp Licence File is generated by the Chirp at the time of download and will be valid for the current SDK versions. At the time of updating the Chirp Licence File by End User at a future later date, it may be necessary to update the SDK.

Warranty of compatibility with future versions

Each SDK includes new features and minor updates for that specific SDK. Chirp will endeavour to, but does not warrant that, any new release will be fully compatible with previous releases.

Online features

These features are not optional and will not be active without the running device being connected to the Internet.

- Anonymous usage analytics report to help Chirp identify where and how their technology is being used, including but not limited to the device's Operating System and version, the versions of the different components within the SDK, and the event being fired along with the time of the event and other information including but not limited to the device and account holder.
- An initialisation method to allow the SDK to authenticate the End User to Chirp's servers and dynamically download their latest licence file, enabling either Chirp or End User to roll out a new version of the configuration used by the SDK, or uninterrupted usage when the End User licence expiry date is extended by Chirp at Chirp's discretion.