

SOFTWARE LICENCE AGREEMENT

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THIS AGREEMENT is dated day of 20

BETWEEN

1. **EYOTO** (as defined in the Quote) ("**Supplier**"); and
2. **CUSTOMER** (as defined in the Quote) ("**Customer**").

AGREED TERMS

1. INTERPRETATION

- 1.1 All initial capitalised terms in this agreement shall have the meaning given to them in the Terms and Conditions and/or the Quote, unless otherwise defined herein. Unless otherwise indicated, the provisions in the Terms and Conditions and/or the Quote shall apply to this agreement and references to "this Agreement" in the Terms and Conditions shall be deemed to refer to this agreement.

"**Fee**" means the licence fee payable by the Customer to the Supplier under clause 4.

"**Heightened Cybersecurity Requirements**" means any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or its end users relating to security of network and information systems and security breach and incident reporting requirements, which may include the Network and Information Systems Regulations 2018 (*SI 506/2018*), all as amended or updated from time to time.

"**Maintenance Release**" means release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

"**New Version**" means any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

"**Open-Source Software**" means any software programs which are licensed under any form of open-source licence meeting the Open Source Initiative's open source definition from time to time.

"**Software**" means the computer programs listed in Schedule 1 and any Maintenance Release which is acquired by the Customer during the subsistence of this agreement.

"**Third-Party Additional Terms**" means the additional terms and conditions set out in Appendix 1 relating to Third-Party Software.

"**Third-Party Software**" means the third-party software identified in Appendix 1.

2. LICENCE

- 2.1 In consideration of the Fee paid by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive licence for the term specified in the Quote commencing on and including the date of this licence to use the Software (the "**Minimum Term**"). The Parties agree that the Minimum Term shall be extended for a further one year term ("**Extended Term**") at the end of the Minimum Term unless either Party gives the other Party no

less than six (6) months' prior written notice terminating the Agreement (such notice to take effect no sooner than the end of the Minimum Term). Any Extended Term shall be extended for a further one year term at the end of each such Extended Term unless either Party gives the other Party no less than six (6) months' prior written notice terminating the Agreement (such notice to take effect no sooner than the end of the current Extended Term). If the Supplier provides the Customer with a Product and/or Service which requires use and/or access of the Software, the Product and/or Service shall be used on the basis of this agreement.

2.2 In relation to scope of use:

2.2.1 for the purposes of clause 2.1, use of the Software shall be restricted to use of the Software in object code form in the manner specified in Schedule 1 (and restricted to use in the Product in which the Software was supplied) 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).

2.2.2 For the purposes of clause 2.1, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed.

2.2.3 the Customer may not use the Software other than as specified in clause 2.1 and clause 2.2.1 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.

2.2.4 where it is possible to make backup copies, the Customer may make as many backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.

2.2.5 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 except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.

2.2.6 the Third-Party Software shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to the Third-Party Additional Terms.

- 2.2.7 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 Third-Party Additional Terms howsoever arising.
 - 2.2.8 the Supplier may treat the Customer's breach of any Third-Party Additional Terms as a breach of this licence.
- 2.3 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 2.2.5 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:
 - 2.4.1 sub-license, assign or novate the benefit or burden of this licence in whole or in part;
 - 2.4.2 allow the Software to become the subject of any charge, lien or encumbrance; and
 - 2.4.3 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, such consent not to be unreasonably withheld or delayed.
- 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 licence, 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 A party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 2.7 shall be made until notice of the identity of the proposed assignee has been given to the other party.
- 2.8 The Customer shall:
 - 2.8.1 ensure that each user of the Software shall keep a secure password for their use of the Services and/or Software, that such password shall be changed no less frequently than quarterly and that each user shall keep their password confidential.
 - 2.8.2 ensure that the Software is installed on designated equipment only;
 - 2.8.3 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
 - 2.8.4 notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;
 - 2.8.5 pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which the Supplier would have

levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

- 2.9 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times. If any such inspection reveals that any password has been provided to any individual who is not an authorised user, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual.

3. MAINTENANCE RELEASES

The Supplier will provide the Customer with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

4. FEES

The Customer shall pay to the Supplier licence fees as set out in the Quote and in accordance with the provisions of the Terms and Conditions and the Quote.

5. SUPPLIER'S WARRANTIES

- 5.1 The Supplier warrants that the Software (excluding Third-Party Software) will conform in all material respects to Schedule 1 (or, where applicable, to any written specification provided by EYOTO to the Customer which is labelled as a specification) for a period of one year from the date of this agreement, or where applicable, for the period set out in the Extended Warranty ("**Warranty Period**"). If, within the Warranty Period, the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to Schedule 1 (or, where applicable, to any written specification provided by EYOTO to the Customer which is labelled as a specification), and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall address any such defect or fault in the manner set out in any applicable support agreement, provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.
- 5.2 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free or that it will meet any Heightened Cybersecurity Requirements.
- 5.3 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.
- 5.4 The Customer acknowledges that any Open-Source Software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in clause 5.5.

5.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement 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:

6.1.1 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:

- (a) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity;
- (e) loss of goodwill;
- (f) loss or corruption of data;
- (g) wasted expenditure,

provided that this clause 6.1.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 6.1.2 or any other claims for direct financial loss that are not excluded by any of categories (a) to (f) inclusive of this clause 6.1.1;

6.1.2 the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and

6.1.3 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 agreement 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 5.5 and clause 6.1 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:

6.2.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;

6.2.2 fraud or fraudulent misrepresentation;

- 6.2.3 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
 - 6.2.4 any other liability which may not be excluded by law.
- 6.3 All dates supplied by the Supplier for the delivery of the Software or the provision of Services 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.
- 6.4 All references to "the Supplier" in this clause 6 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Customer acknowledges that all Intellectual Property Rights in the Software and any Maintenance Releases belong and shall belong to the Supplier or the relevant third-party owners (as the case may be), 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 this agreement.
- 7.2 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this agreement infringes the UK Intellectual Property Rights of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 7.2 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 7.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under clause 7.2 are conditional on the Customer:
- 7.3.1 as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 7.3.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - 7.3.3 giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 7.3.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or

losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

7.4 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

7.4.1 procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this agreement;

7.4.2 modify the Software so that it ceases to be infringing;

7.4.3 replace the Software with non-infringing software; or

7.4.4 terminate this agreement immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 5.1 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this agreement been references to the date on which such modification or replacement was made.

7.5 Notwithstanding any other provision in this agreement, clause 7.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.

7.6 This clause 7 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 6.1.

8. TERMINATION

8.1 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.

8.2 On termination for any reason:

8.2.1 all rights granted to the Customer under this agreement shall cease;

8.2.2 the Customer shall cease all activities authorised by this agreement;

8.2.3 the Customer shall immediately pay to the Supplier any sums due to the Supplier under this agreement; and

8.2.4 the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.

8.3 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 including clause 1, clause 5 (except clause 5.1), clause 6, clause 8 and Schedule 1 shall remain in full force and effect.

9. DATA PROTECTION

The data protection provisions in the Terms and Conditions (in particular, clause 10) and/or the Quote shall apply to this agreement and references to "this Agreement" in the Terms and Conditions shall be deemed to refer to this agreement.

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1 - SOFTWARE

	Name	General description / function
1.	Theia Client Software	This is a remote application that is installed on the Customer's client's computer system. This allows for remote connection to and control of EYOTO Theia via the EYOTO Cloud Portal. This application cannot be used without Theia Portal Software.
2.	Theia Control Software	This software is stored on each EYOTO Theia's control computer system, receives instructions from the EYOTO Cloud Portal and controls each such EYOTO Theia.
3.	Theia Portal Software	This is a cloud service that controls the communications (control and images) between Theia Client Software and Theia Control Software.
4.	Atlas Control Software	This software is stored on Atlas Global and Atlas Duo and controls each such Product locally.
5.	Atlas Portal Software	This allows the (1) remote set up of Atlas Global and Atlas Duo and (2) storage of measurement results from Atlas Global and Atlas Duo.
6.	Babel Fish	This is the Lab Management System application. This is installed on a computer system in the Customer's network and controls communications between (1) Atlas Duo and/or Atlas Global and (2) the Lab Management System.

APPENDIX 1 – THIRD-PARTY SOFTWARE AND THIRD-PARTY ADDITIONAL TERMS

As may be notified in writing by the Supplier to the Customer from time to time.