

## AGREEMENT Between

- (1) The licensee : NETAXIA Limited
- (2) The licensor : Steering Committee of the World Register of Marine Species (WoRMS) represented by Vlaams Instituut voor de Zee (VLIZ)

## BACKGROUND

WoRMS grants to the licensee a licence to use the taxonomic content of the World Register of Marine Species (WoRMS Content) for the duration, and on and subject to the terms and conditions set out in this Agreement.

The Licensee shall sponsor the editors of WoRMS through the VLIZ Philanthropy program.

## CONTACTS

**For the WoRMS** -----

TEL: -----

Email : -----

**For the licensee** Graham Worley

TEL: +44 (0)7900897667

Email: G.Worley@netaxia.co.uk

## AGREED TERMS

### 1. Definitions & Interpretations

- 1.1. The definitions and rules of interpretation set out in this clause 1 apply in this Agreement and have the following meanings:

**Affiliate:** any business entity from time to time Controlling, Controlled by, or under common Control with the licensee;

**Agreement:** means this Licence Agreement;

**Breach:** an action in which this Agreement is not honoured by at least one party to the Agreement.

**Confidential Information:** means information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of the Company and/or any Group Company for the time being which is confidential to the Company and/or any Group Company, and shall include trade secrets including, without limitation, technical data and know-how relating to the business of the Company and/or any Group Company or any of its or their business contacts, including in particular (by way of illustration and without limitation):

- (i) business plans, business methods, corporate plans, management systems, financial information, maturing new business opportunities, research and development projects, concepts ideas, new products, software, software

- designs, artwork, inventions, sales statistics, sales techniques, marketing surveys and plans, costs, profit or loss figures, prices and discount structures;
- (ii) client and potential client lists, contact details or contractors and suppliers and individuals within clients including their names, addresses and contact details;

**Control / Controlling / Controlled:** a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation;

**Device:** means each PC, laptop or other device on which instances of The licensee Software are used and from which such instances of the Software are accessed;

**Device Licence:** the per device licence purchased by customers of The licensee for each device upon which instances of the licensee's software are used;

**Device Licence Maintenance Renewal:** the annual maintenance renewal of the device licence;

**Effective Date:** the date by which this Agreement has been signed by both parties, as indicated in the signature page of this Agreement;

**Initial Term:** the fixed initial term of this Agreement, as defined in clause 6.1;

**Intellectual Property:** all copyright, trade marks, trade names, patents, database rights, design rights, trade secrets, know-how, and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

**Renewal Term:** as defined in clause 6.2;

**Representation:** as defined in clause 9.2;

**Royalties:** the payments by the licensee to WoRMS for use of the WoRMS Content under the terms of this Agreement;

**Termination:** occurs when one party to the Agreement takes an action (as described in clauses 6.2 to 6.4). The effect of termination is as defined in clauses 7.1 to 7.5.

**Update:** an up-to-date version of the WoRMS Content as a readable file;

**WoRMS Content:** means the content contained on the open access WoRMS database released as a readable file (but excluding content supplied to WoRMS from the external database 'AlgaeBase'), including the scientific and vernacular names, accepted names and synonyms, citations, status, record status, rank, parent, and sources.

## 2. **Delivery, Grant of Licence and Use of the WoRMS Content**

- 2.1 In consideration of the Royalties as detailed in clause 5 to be paid by the licensee to WoRMS and subject to the terms of this Agreement, WoRMS grant to the licensee a limited, non-exclusive, non-transferable, non-assignable, licence (without the right to grant any sub-licences) to distribute the WoRMS Content as part of its software activities. These activities include all device licence sales and device licence maintenance renewals through which the most recent update of the WoRMS Content will be made available after the Agreement date.
- 2.2 WoRMS will provide access to the most recently updated copy of the WoRMS Content electronically at least once per month to the licensee for this purpose.
- 2.3 WoRMS grants the licensee the non-exclusive right to distribute the WoRMS Content for the Initial Term.
- 2.4 The licensee is responsible for distributing the WoRMS Content to its customers in an uneditable format and for ensuring that the WoRMS Content in its software products is being updated at least 4 times a year.
- 2.6 In respect of the licence granted under clause 2.1 above:
  - 2.6.1 The licensee must pay the Royalty Fee as detailed in clause 5;
  - 2.6.2 The licensee may not use the WoRMS Content other than as specified in this Agreement without the prior written consent of the WoRMS Steering Committee, and must acknowledge that additional fees may be payable on any change of use that WoRMS approve;
  - 2.6.3 the use of WoRMS Content is licensed for use by the licensee strictly for its business use as described in this Agreement;
  - 2.6.4 except as expressly stated in this clause 2.1, the licensee have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the WoRMS Content in whole;
  - 2.6.5 The licensee is at all times responsible for ensuring that the use of the WoRMS Content complies with the requirements of this Agreement.
- 2.7 The licensee shall not allow the WoRMS Content to become the subject of any charge, lien or encumbrance.

## 3. **The licensee shall:**

- 3.1. The licensee shall notify WoRMS as soon as it becomes aware of any unauthorised use of the WoRMS Content by any other person and/or for any purpose outside the permitted scope of use;
- 3.2. The licensee shall cite WoRMS as the source of the WoRMS Content in each case where the WoRMS Content is accessed, as per the WoRMS website (i.e. **WoRMS Editorial Board** (2016). World Register of Marine Species. Available from <http://www.marinespecies.org> at VLIZ. Accessed 2016-10-25. doi:10.14284/170; respectively the currently applicable version of this citation)
- 3.3. The licensee shall ensure that the WoRMS Content will not be used to promote the sales of the licensee software products per se in promotional material. The inclusion of the WoRMS Content will be described de facto and not conflated with claims for the licensee's software products;
- 3.4. The licensee shall provide a link to the WoRMS website from that of the licensee for information purposes such that awareness of the WoRMS Content is extended to as wide an audience as possible;

- 3.5. The licensee shall only distribute WoRMS with its software, and not provide an online variant of WoRMS through a website that could be viewed as competition with WoRMS.

#### **4. Intellectual Property Rights, Confidentiality**

- 4.1. The licensee acknowledges that all Intellectual Property Rights in the WoRMS Content belong and shall continue to belong to WoRMS. The licensee acknowledges that it shall have no rights in or to the WoRMS Content other than the right to use it in accordance with the terms of this Agreement. Any infringement by the licensee of WoRMS Intellectual Property Rights constitutes a material breach of this Agreement.
- 4.2. WoRMS shall inform its editors and data providers of the existence and content of this agreement, and of the fees payed by the licensee to WoRMS.

#### **5. Fees and Payment**

- 5.1. Royalties will be paid on all device licence sales and annual device licence maintenance renewals sold by the licensee wherein the updated WoRMS Content is supplied on a routine basis.
- 5.2. Royalties will be 20% of all device licences purchased and device licence maintenance renewals of those licences. In effect this means royalties are paid for the distribution of the WoRMS list on a per device licence basis and for as long as device licence maintenance is renewed.
- 5.3. Royalties will be calculated on the basis of yearly reports of all software sales and maintenance renewals, provided to WoRMS by the licensee. The licensee would facilitate WoRMS to audit the sales if it so requested.
- 5.4. Royalties invoices will be raised by VLIZ on a yearly basis, and paid by the end of the following month to the VLIZ philanthropy program.

#### **6. Duration and Termination**

- 6.1. The Initial Term of this Agreement is 60 Months from the Effective Date.
- 6.2. After expiry of the Initial Term, this Agreement shall automatically renew for subsequent periods of 12 months calculated from the anniversary of the Effective Date (each such 12 month period, a “Renewal Term”) unless either the licensee or WoRMS give at least 60 days prior written notice to the other to terminate this Agreement; and if such notice is given, this Agreement shall expire at the end of the current Initial Term or Renewal Term.
- 6.3. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if:
  - 6.3.1. the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 6.3.2. the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- 6.3.3. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 6.3.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 6.3.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 6.3.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 6.3.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 6.3.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 6.3.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 6.3.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 6.3.4 to clause 6.3.10 (inclusive);
- 6.3.11. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

6.4. Either party may terminate this Agreement in accordance with clause 6.2.

## 7. **Effect of Termination**

7.1. Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.

7.2. Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this Agreement shall remain in full force and effect.

7.3. Upon expiry or earlier termination of this Agreement for any reason, all rights granted to the licensee under this Agreement shall cease and the licensee shall cease all activities previously authorised by this Agreement. However, if the licensee have paid all amounts due to WoRMS under this Agreement, the licensee remain entitled to use the WoRMS Content in accordance with the terms of this Agreement, but only on an "as is" basis, without warranty and without the benefit of the Maintenance Programme, in the version that is in use by the licensee at the term of expiry or termination of this Agreement.

- 7.4. Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 7.5. On termination of this Agreement for any reason, the licensee shall immediately pay any outstanding unpaid invoices and interest due to WoRMS.
8. **Warranty, Disclaimer, Indemnity and Limitation of Liability**
- 8.1. Unless otherwise separately undertaken by the Licensor, to the extent possible, the Licensor offers the Licensed Material as-is and as-available, and makes no representations or warranties of any kind concerning the Licensed Material, whether express, implied, statutory, or other. This includes, without limitation, warranties of title, merchantability, fitness for a particular purpose, non-infringement, absence of latent or other defects, accuracy, or the presence or absence of errors, whether or not known or discoverable.
- 8.2. To the extent possible, in no event will WoRMS or VLIZ be liable to the licensee or the users of the licensee's software on any legal theory (including, without limitation, negligence) or otherwise for any direct, special, indirect, incidental, consequential, punitive, exemplary, or other losses, costs, expenses, or damages arising out of this license or use of the licensed material, even if WoRMS or VLIZ have been advised of the possibility of such losses, costs, expenses, or damages.
- 8.3. The disclaimer of warranties and limitation of liability provided above shall be interpreted in a manner that, to the extent possible, most closely approximates an absolute disclaimer and waiver of all liability.

9. **General**

- 9.1 This Agreement constitutes the whole Agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.
- 9.2 Each party acknowledges that, in entering into this Agreement (including schedules to it), it does not rely on any statement, representation, assurance or warranty (“Representation”) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.
- 9.3 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.
- 9.4 No variation of this Agreement shall be effective unless it is in writing and signed by both the parties to this Agreement.
- 9.5 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 Belgium. The parties irrevocably agree that the courts of Belgium 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).

Signed by for and on behalf of World Register of Marine Species Steering Committee of WORMS	Chair of the steering committee
Signed by for and on behalf of Flanders Marine Institute	Director 
Signed by for and on behalf of the licensee	Director 

Date: 16<sup>th</sup> December 2016

Licence Version 001

Date 2016