

## SAXON OEM PRODUCT LICENSE AGREEMENT

This OEM Product License Agreement (“Agreement”), effective on date of signature (“Effective Date”) is between \_\_\_\_\_ (“Licensee”), and Saxonica Limited (“Saxonica”) a Company registered in England and Wales with its registered office located at Chiltern Chambers, St Peter's Avenue, Reading, United Kingdom RG4 7DH. For purposes of this Agreement, the term "Licensee" shall include any entity that controls, is controlled by, or is under common control with Licensee. For purposes of this definition, “control” means (a) the power, directly or indirectly, to control the direction or management of such entity, whether by contract or otherwise, and/or (b) ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity

In the event Licensee downloads Software (hereinafter defined) over the Internet, the terms of this Agreement will apply and will supersede and replace any “click-wrap” or “browsewrap” terms and conditions that may otherwise be solicited by Saxonica incidental to any such download or electronic delivery of such product to Licensee.

### 1. DEFINITIONS

When used in this Agreement, the underlined phrases in this Section shall have the following meanings:

1.1 Saxon shall mean the executable code of the versions and variants of Saxonica’s software product identified in Schedule A, together with all data files and Documentation that are distributed by Saxonica in the same package as the executable code, including all revisions, enhancements, upgrades, releases and new versions thereof or any replacement products thereto released generally by Saxonica during the term of this Agreement, whether or not they are marketed under the original name, together with any custom enhancements or modifications developed by Saxonica for Licensee, unless such extensions are covered by a separate service agreement. Saxonica shall have sole discretion as to whether any new software product developed by Saxonica that does not replace the version and variant identified in Schedule A is or is not deemed to be within the scope of this agreement.

1.2 Application shall mean the Licensee's product identified in Schedule A including all revisions, enhancements, upgrades, releases, and new versions thereof or any replacement products thereto.

1.3 Documentation shall mean the specifications (if any) and published technical manuals published by Saxonica in conjunction with Saxon.

### 2. GRANT OF LICENSE

2.1 License for Object Code Form of the Software. Subject to the following terms and conditions, Saxonica grants Licensee a non-exclusive license to use the executable code of Saxon and to integrate, distribute and sublicense Saxon as part of the Application. Licensee may not distribute or sublicense Saxon as a stand-alone product. The distribution rights granted hereunder shall be worldwide.

2.1.1 Licensee may, during the term of this Agreement:

- (i) save and use an unlimited number of copies of Saxon for any purpose contributing to the development, testing, marketing, documentation and support of the Application;
- (ii) make one copy of Saxon for archival purposes;

- (iii) redistribute and sublicense Saxon and/or portions of Saxon, to Licensee's end users who will use the Saxon as included with the Application for their own use (each an "End User") and Licensee's resellers and distributors who will embed/bundle and redistribute and sublicense Saxon as included with the Application (each an "OEM Customer"), provided that Licensee takes commercially reasonable measures to ensure that Saxon cannot be used other than with the Application, including without limitation the technical measures described in Schedule B.
- (iv) use Saxonica's trademarks in connection with the marketing, distribution and licensing of Saxon. Any such use of Saxonica's trademarks and the Saxonica name by Licensee shall be subject to Saxonica's then current trademark policies and procedures of which Licensee has prior reasonable notice.

2.1.2 Licensee may not reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of Saxon, or create derivative works from the object code version of Saxon save as expressly permitted by law. Licensee is responsible for ensuring that all copies of Saxon including partial copies are used in accordance with these conditions, and Licensee agrees to provide such information to Saxonica or its agents as may reasonably be required to demonstrate Licensee's compliance with these conditions.

### **3. TITLE TO SOFTWARE**

Saxon is the property of Saxonica or its suppliers. Saxon is licensed, not sold. Subject to the rights granted to Licensee herein, all right, title and interest in and to Saxon, in whole and in part and all copies thereof, are, and will remain, the sole and exclusive property of Saxonica and its suppliers. Nothing contained in this Agreement shall be construed directly or indirectly to assign or grant to Licensee any right, title, or interest in or to trademarks, copyrights, patents, or trade secrets of Saxonica, or any ownership rights in or to Saxon. Licensee agrees to abide by the copyright law and all other applicable laws including, but not limited to, export control laws.

### **4. INTELLECTUAL PROPERTY INDEMNITY**

Saxonica will defend, indemnify and hold harmless Licensee against all costs (including reasonable attorney's fees) arising from a claim that software furnished and used within the scope of this Agreement infringes any copyright, patent or trade secret provided that:

- (i) Licensee notifies Saxonica in writing within 30 days of the claim;
- (ii) Saxonica has sole control of the defense and all related settlement negotiations; and
- (iii) Licensee provides Saxonica with the assistance, information, and authority necessary to perform the above, at Saxonica's expense.

Licensee shall have the right to participate in the defense of any such claim at Licensee's own expense.

Saxonica will have no liability for any claim of infringement based on:

- (i) use of a superseded or altered release of Saxon, except for such alteration(s) or modification(s) which have been made by Saxonica or under Saxonica's direction, if such infringement would have been avoided by the use of a current, unaltered release of Saxon that Saxonica provides or has offered to Licensee; or
- (ii) the combination, operation, or use of any software furnished under this Agreement with programs or data not furnished by Saxonica if such infringement would have been avoided by the use of the software without such programs or data.

In the event that Saxon is held to infringe or is believed by Saxonica to infringe, or Licensee's use of Saxon is enjoined, Saxonica will have the option, at its expense, to:

- (i) modify Saxon to cause it to become non-infringing, so long as the modified software meets substantially similar specifications; or
- (ii) obtain for Licensee a license to continue using Saxon; or
- (iii) substitute all or part of Saxon with other software reasonably suitable to Licensee; or
- (iv) if none of the foregoing remedies are commercially feasible, terminate the license for the infringing software and refund any license fees paid, prorated with regard to the period during which this Agreement has ceased to be effective.

This Section states Saxonica's entire liability for infringement.

## **5. LIMITED WARRANTY**

5.1 For a period of ninety (90) days from the date of receipt of the software, Saxonica warrants (a) the Saxon software against any defects resulting from the electronic transmission process, (b) that any software media supplied by Saxonica will be free from defects in materials and workmanship, and (c) Saxon will conform in all material respect to its Documentation. Saxonica's, and its suppliers' and resellers', entire liability and Licensee's exclusive remedy shall be, at Saxonica's option, either (i) return of the price paid, or (ii) repair or replacement of the software that does not meet Saxonica's Limited Warranty. This Limited Warranty is void if failure of Saxon has resulted from accident, abuse, or misapplication. Any replacement software will be warranted for an additional ninety (90) days from delivery. Neither these remedies nor any product support services offered by Saxonica are available without proof of purchase from an authorized source.

5.2 Saxonica hereby represents and warrants to Licensee that Saxonica has not incorporated into Saxon any viruses, worms, bombs, traps, Trojan horses or other code designed to interrupt normal processing ("malware") and has used commercially reasonable and up-to-date methods to check for such malware prior to the delivery of Saxon to Licensee.

5.3 Saxonica represents and warrants that it has the authority to enter into this Agreement, and to license Saxon as contemplated hereunder, and that the performance of this Agreement shall not cause a breach of any other obligation of Saxonica.

5.4 EXCEPT FOR THE FOREGOING, THE SOFTWARE IS DELIVERED TO LICENSEE "AS IS" AND SAXONICA MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SAXONICA, AND ITS SUPPLIERS AND RESELLERS, DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES EVEN IF THAT PURPOSE HAS BEEN NOTIFIED BY LICENSEE TO SAXONICA. THIS LIMITED WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS. LICENCEE MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION. PRODUCT SPECIFICATIONS AND PERFORMANCE CLAIMS PUBLISHED BY SAXONICA (INCLUDING WITHOUT LIMITATION STATEMENTS REGARDING THE CONFORMANCE OF THE PRODUCT TO EXTERNALLY PUBLISHED SPECIFICATIONS), ARE MADE IN GOOD FAITH BUT DO NOT CONSTITUTE PART OF ANY CONTRACT.

5.5 Saxonica takes no responsibility for the accuracy of statements made by third parties on web sites or other channels of communication whether or not Saxonica has editorial control over such content.

## **6. DISCLAIMER OF DAMAGES/LIMITATION OF LIABILITY**

EXCEPT FOR INTELLECTUAL PROPERTY INDEMNITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY OR ITS SUPPLIERS OR RESELLERS BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY FOR ANY DAMAGES SUFFERED BY SUCH PARTY OR ANY USER OF THE SOFTWARE, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SIMILAR DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE, AND EXCLUDING INTELLECTUAL PROPERTY INDEMNITY OBLIGATIONS, EACH PARTY'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE SOFTWARE. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

## **7. FEES AND PAYMENTS**

Unless otherwise indicated in Schedule A, Licensee shall pay Saxonica an Initial Fee as listed in Schedule A, which Saxonica will invoice as soon as this Agreement is signed. In addition, Licensee shall pay Saxonica an Annual Fee as listed in Schedule A, acting as a combined license and support fee for unlimited distribution of Saxon with the Application. Saxonica will invoice the full Annual Fee on the Effective Date (defined above), unless a different payment schedule is defined in Schedule A. Invoices are to be paid within thirty (30) days of receipt by Licensee. All sums are to be paid in the currency identified in Schedule A.

## **8. TERM**

The term of this Agreement will commence on the Effective Date and will continue indefinitely until terminated in accordance with the provisions of Section 9 below. Until such termination, a combined license and support fee shall be payable equal to the amount listed in Schedule A as the Annual Fee, and shall be due on each anniversary of the Effective Date unless a different payment schedule is defined in Schedule A. Any increase in Annual Fee shall be subject to sixty (60) days prior written notice from Saxonica and will not exceed and will be in accordance with the European Central Bank Price Index ("CPI").

## **9. TERMINATION**

9.1 Withdrawal of Application. Licensee may at any time give thirty (30) days written notice to Saxonica that it intends to cease distribution of the Application. On completion of this notice period, no further Annual Fees will be payable, and Licensee's rights under section 2.1.1 shall cease. The rights of Licensee's existing end users to continue using Saxon as a component of the Application are unaffected.

9.2 Phased Termination. As an alternative to full renewal or immediate termination, Licensee may elect, by giving Saxonica thirty (30) days notice in writing, to enter into a phased termination period. Such a period shall commence on the date when Licensee notifies Saxonica that its latest Application version no longer includes Saxon, but earlier Application versions that do include Saxon remain available to Licensee's End Users and OEM Customers, and shall continue until the date when Licensee notifies Saxonica that it is no longer distributing Saxon other than for error-correction purposes as allowed by clause 9.2. For the duration

of such a phased termination period, an Annual Fee of 50% of the full Annual Fee will be payable, pro-rated for the duration of the phased termination period. During the phased termination period, all the provisions of this Agreement shall remain in force in respect of versions of the Application that include Saxon.

9.31 Termination on Breach. Either Licensee or Saxonica may terminate this Agreement prior to its expiration by written notice to the other party if the other party breaches any material term or condition of this Agreement and such breach remains uncorrected for thirty (30) days following written notice of the breach.

9.42 Effect of Termination. Upon expiration of this Agreement or termination of this Agreement due to Licensee's uncured breach, Licensee's rights to distribute and sub-license the Software shall cease as of the date of such expiration or termination. In the event this Agreement is terminated due to Saxonica's uncured breach, the license granted to Licensee in Section 2 shall continue until the end of the then-current term. Within a commercially reasonable period following such termination or expiration of this Agreement, Licensee will: (1) destroy or return to Saxonica all software media, if any; and (2) destroy all copies of Saxon in whatever form they exist, including the deletion of all copies from any electronic memories or remove Saxon from all Application products not yet shipped. Notwithstanding the foregoing, with respect to any Application products that contain Saxon that are in finished product form and that have been sold (with no return option) to Licensee's resellers or distributors prior to the termination date, Licensee may grant the approved license to use Saxon to End Users or OEM Customers of these specific copies of the Application; provided, however, that this permission does not allow Licensee, after the date of termination, to fill orders of dealers or distributors that have not been filled on the date of termination or that are received after that date, or to grant additional licenses to End Users or OEM Customers who already have a license for the Application that contains Saxon on the date of termination. All licenses for the Application that contains Saxon previously given to End Users or OEM Customers by or through Licensee, provided they were in accordance with the terms of this Agreement, shall continue in effect after termination or expiration of the Agreement, and Saxonica's obligations under section 4 (Intellectual Property Indemnity) shall continue in effect after termination or expiration of the Agreement in respect of such licenses; furthermore, where such licenses include the entitlement to receive updates to Licensee Product issued primarily to correct problems, Licensee may continue to distribute such updates to existing End Users and OEM Customers including either the original or an error-corrected version of Saxon. With the foregoing exception, licensee may not license any inventory of Application products containing the Software after the termination date without prior written consent of Saxonica. Notwithstanding the foregoing, Saxonica grants Licensee a limited license to retain and use a reasonable number of copies of Saxon for the sole purpose of, and only as long as is necessary to fulfill any pre-existing contractual obligations for maintenance and support services of the Application to its End Users and OEM Customers.

## **10. THIRD PARTY COMPONENTS**

Saxon includes components and code derived from components that were developed by various third parties and which are used modified and redistributed by Saxonica as permitted by the terms of licenses provided by those third parties. A list of such components is maintained and published on the Saxonica web site at <http://www.saxonica.com/>. Saxonica warrants that to the best of its knowledge the use of these components imposes no additional obligations on the Licensee other than potentially (a) a requirement to include notices published by such third parties in the Application (b) a requirement to refrain from using the name of the third party in advertising material and (c) a requirement to identify clearly any modifications made by Licensee to such components. Future versions of Saxon may include different third party components but these shall not impose materially different obligations on Licensee.

## **11. GENERAL**

(a) This Agreement constitutes the entire agreement between the parties on the subject matter herein, and supersedes any and all prior or contemporaneous oral or written representations, communications, or advertising with respect to Saxon. No purchase order, other ordering document or any hand written or typewritten text which purports to modify or supplement the printed text of this Agreement or any schedule will add to or vary the terms of this Agreement unless signed by both Licensee and Saxonica. (b) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach. (c) The provisions of this Agreement which require or contemplate performance after the expiration or termination of this Agreement shall be enforceable notwithstanding said expiration or termination. (d) Titles are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. (e) If any provision of this Agreement is held invalid, the remainder of this Agreement will continue in full force and effect. (f) Either Saxonica or Licensee may assign this Agreement in the case of a merger or sale of substantially all of its respective assets to another entity upon written notice to the other party. This Agreement shall be binding upon and shall inure to the benefit of the parties, their permitted successors and assigns. (g) This Agreement will be governed by the laws of England, and the parties submit to the exclusive jurisdiction, and venue in, the courts of London, England. (h) Any notice made in relation to this Agreement shall be sent to the addresses set forth above, or such other address as the intended recipient has previously designated by written notice. The notice shall be sent by courier or overnight service or by facsimile the receipt of which is confirmed in writing. (i) It is expressly understood that Saxonica and Licensee are business entities independent of one another. Neither the making of this Agreement nor the performance of any part of its terms shall be construed to constitute Licensee as an agent or representative of Saxonica for any purpose. Nor shall this Agreement be deemed to establish a joint venture or partnership.

## **12. SUPPORT**

Licensee will provide frontline support to its End Users and OEM Customers for Saxon as included in the Application consistent with its customary support policies and through its standard support channels. Saxonica shall provide the following support to Licensee: e-mail support as well as bug fixes, patches, new releases and new versions made generally available during the term of this Agreement. Saxonica shall use reasonable efforts to respond to e-mail support requests within two (2) working days, and where necessary to supply bug fixes within thirty (30) days.

Saxonica may at its discretion decline to provide the above support in respect of a version of the Saxon software if a replacement version has been available for at least 18 months, unless otherwise agreed in writing.

## **13. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representative. All copies of this Agreement, signed by both parties shall be deemed originals.

**Licensee**

**Saxonica Limited**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **SCHEDULE A: LICENSEE INFORMATION**

1. The Licensee is:

2. The software referred to in this agreement as “Saxon” is:

3. The “Application” is:

4. Currency:

5. Annual Fee:

6. Payment schedule for Annual Fee:

a single payment each year, to be invoiced on the Effective Date and each anniversary during the Term

## **SCHEDULE B: ISSUING LICENSE KEYS**

Commercial versions of the Saxon software are protected by a license key mechanism. This is designed to ensure that the added-value functionality of the software (specifically, the functionality that is not available in the open-source Saxon product) cannot be invoked unless a license key is used to activate the software.

When commercial versions of Saxon are purchased directly from Saxonica by end-users, Saxonica issues a unique license key file to the user. This license key file must be installed as specified in the product documentation. It is protected from tampering using public key encryption technology. The license keys that are issued to most purchasers allow perpetual use of the Saxon software, and provide access to any Saxon software release produced within 365 days after the date of issue of the license.

Although as a matter of procedure, unique license keys are issued for each purchaser, the license keys currently being issued are not technically tied to any specific user or computer equipment, and copying of validly-issued license keys is prevented only by virtue of the terms of the license agreement and not by any technical mechanism.

When Saxon is integrated with the Application under the terms of this or a similar Agreement, end-users do not need to acquire a license key file directly from Saxonica. Instead, Saxonica will issue the Licensee with an OEM license key which can be passed programmatically from the Application to the Saxon software to perform the activation. This OEM license key, unless otherwise agreed, will similarly allow perpetual use of the Saxon software, and will work with any Saxon software release produced within 365 days after the date on which the license key is created. A new OEM license key will be provided on request with each annual renewal of this agreement.

Saxonica will provide the Licensee with documentation and assistance as required to implement this mechanism, as well as supplying the license key itself. A license key, for development and testing purposes only, will be issued within 14 days of the Effective Date of this agreement.

The Saxon software does not collect any data relating to the activities of the end user and does not communicate any information to Saxonica or any other party.