

1. BACKGROUND

Kognat Proprietary Limited ACN 623 943 304 (“**Licensor**”) owns a software product called “Rotobot”(“**Software**”). The Licensor licences the Software to customers and also provides support (upon the request of the customers) to those customers in relation to installing and using the Software.

If you wish to obtain a licence to use the Software, you must agree to the terms of this Licence Agreement. You must also read and agree to the Open Source Material terms detailed here <https://kognat.com/open-source-material/>

Any Licence granted to you will be a non-transferable, non-exclusive and royalty-free licence to use the Software.

2. Definitions

Unless qualified by or inconsistent with the context:

“**GST**” has the same meaning as in the GST Act.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

“**Intellectual Property Rights**” means:

- copyright, trade marks, designs, patents, semiconductor or circuit layout rights;
- trade, business or company names;
- the right to have Confidential Information kept confidential; and
- any application or right to apply for registration of any of the rights defined in this clause.

“**Licence Fee**” means the fee, specified on the Licensor’s website, payable by you to the Licensor in order to use the Software. The Licence Fee differs depending on the Licence you select.

“**Licence Manager**” means Reprise Software, Inc.

“**notice**” means prior written notice and “**notify**” means prior notification in writing.

“**Open Source Material**” means the Open Source material used in the development of the Software from time to time by the Licensor, as described on the Licensor’s website.

“**Trial Period**” means a trial period of 30 days you are entitled to, subject to agreement with the Licensor, to trial the Software before purchase.

3. Term

This Agreement and the licence granted by it commences on the date the Licensor supplies you with the Licence (“**Commencement Date**”) and expires 12 months from the Commencement Date, unless terminated in accordance with clause 17 of this Agreement (“**Term**”).

4. Grant of Licence

Subject to the other terms of this Agreement, the Licensor grants the Licence to you for the Term. You can only obtain a Licence through the Licence Manager. The Software must be used strictly in accordance with the terms of the Licence. You are not licensed or authorised to sell, assign, grant a licence of or otherwise dispose of the Software or any interest in it except in accordance with clause 19.

5. Licence type

Depending on the licence you have selected, you will receive either a node licence entitling you to access the Software from one source ("**Node Licence**"), or a floating licence allowing you to access the Software from any source, provided the Software is only being accessed from one source at a time ("**Floating Licence**"). Other than the differences in access outlined in this clause 5, and differences in Licence Fee, the terms and conditions of each Licence are the same. You will receive the Licence you select when placing an order on the Licensor's website.

6. Licence Fee

In consideration of the Licensor granting the Licence to you, you will pay the Licence Fee to the Licensor. The Licence Fee must be paid by you in full before your Licence is granted to you. The Licence Fee is inclusive of GST. If you have used the Software during a Trial Period, the Licensor will remove the watermark on the Software after you have paid the Licence Fee in full.

7. Further Term

The parties may agree to a further term at or before the expiration of the Term. The Licensor reserves the right to vary the Licence Fee for any further term.

8. Software ownership

By purchasing a Licence, you acknowledge that:

- 8.1. the Licensor is, at the date of this Agreement, the sole and exclusive owner of all title to and interest in the Software;
- 8.2. the Licence is derived solely from this Agreement;
- 8.3. you may only purchase the Licence through the link on the Licensor's website and through the Licence Manager; and
- 8.4. the Licence will terminate on the termination of this Agreement.

The Licensor warrants that it has, as at the date of this Agreement, the right to grant the Licence to you pursuant to this Agreement.

You agree that you will not directly or indirectly at any time during or after the Term do or allow anything that contests or impairs the Licensor's title to and interest in the Software.

You must not reproduce, modify, adapt, enhance, decompile or reverse engineer the Software or allow any other person to do so.

You acknowledge that no sale of the Software or the Licensor's Confidential Information or of any interest in it either has occurred or is occurring pursuant to this Agreement.

9. Improvements

You agree that the Licensor is not bound to make any improvements or updates to, or modifications or enhancements of, the Software ("**Improvements**"). If the Licensor does make any Improvements, those Improvements (including all Intellectual Property Rights in those Improvements) will belong to the Licensor and will form part of the Software for the purposes of this Agreement. You will not be charged for any Improvements for the duration of your Licence.

10. Modifications

You must not modify or alter the Software, or merge all or any part of the Software with any other software, without the Licensor's prior written consent.

If the Software is modified or altered by you with the Licensor's consent, you will fully indemnify the Licensor against all liability which is incurred by the Licensor if such modifications or alterations infringe any Intellectual Property Rights of a third party or otherwise cause the Licensor to suffer loss, damage or expense.

The Software as modified or altered remains the property of the Licensor in all respects. You will, if necessary, assign to the Licensor all Intellectual Property Rights arising out of any modifications to the Software.

11. Intellectual Property Rights

You acknowledge and agree that all Intellectual Property Rights in the Software are and will remain the sole property of the Licensor.

You must not, during the Term or at any time after the termination of this Agreement, in any way question or dispute the Licensor's ownership of the Intellectual Property Rights in the Software.

Any Intellectual Property you generate using the Software during the term of your Licence, other than Intellectual Property Rights referred to in clauses 9 and 10 remain your property.

12. Security

You will be solely responsible for the use, supervision, management and control of the Software. You must ensure that the Software is protected at all times from misuse, damage, destruction or any form of unauthorised use.

13. Support services

You can request that the Licensor provide support services to you during the Term. Support will be limited to responses by the Licensor to a specific query you may have. The parties may agree additional support services to be provided by the Licensor and such additional support services must be agreed in writing along with any additional fees payable by you. Any support provided is ultimately at the discretion of the Licensor.

14. Confidentiality

Except where disclosure is required by law or must be made to a legal advisor, each party must keep confidential the other party's Confidential Information. Each party must take all reasonable steps to ensure that its employees, agents and sub-contractors do not make public or disclose the other party's Confidential Information. A party must immediately notify the other party of any infringement, misuse or

misappropriation of the other party's Confidential Information of which the first party becomes aware.

15. Licensor's liability

- 15.1. Except where implied by law, any condition or warranty which would otherwise be implied in this Agreement is expressly excluded.
- 15.2. To the extent permitted by law, the Licensor is under no liability to you in respect of any loss or damage (including consequential loss or damage) which arises directly or indirectly in respect of the Software or its use, or in respect of a failure or omission on the part of the Licensor to comply with its obligations under this Agreement.
- 15.3. You warrant that it has not relied on any representation made by the Licensor which has not been expressly stated in this Agreement.
- 15.4. You will, at all times, warrant to the Licensor that all uses of the Software by you are lawful in any jurisdiction which you are using the Software and indemnify and hold harmless the Licensor from and against any loss or liability incurred or suffered by the Licensor arising from any unlawful act on your part.
- 15.5. You will, at all times, indemnify and hold harmless the Licensor from and against any loss or liability incurred or suffered by the Licensor arising from:
 - 15.5.1. a breach by you of your obligations under this Agreement; or
 - 15.5.2. any wilful, unlawful or negligent act or omission by you.
- 15.6. To the extent permitted by law, the Licensor makes no representation or warranty as to the quality or performance of the Software. The Software has certain intended functions but the Licensor does not make any representation or warranty as to the accuracy of these functions. Any function of the software may fail from time to time. The Licensor utilises Open Source Material in the development of the Software and makes representation or warranty as to the quality or performance of that software.

16. Licensee's acknowledgement

You acknowledge that software in general is not error-free and agrees that the existence of any error in the Software does not constitute a breach of this Agreement by the Licensor.

17. Termination

The Licensor can terminate this Agreement immediately by notice to you if you:

- 17.1. breach this Agreement and, if the breach can be remedied, fail to remedy the breach within fourteen (14) days of a notice from the Licensor requiring the breach to be remedied;
- 17.2. breach this Agreement and the breach cannot be remedied;

Termination of this Agreement the Licensor will not prejudice any other rights or remedies of the Licensor.

18. Consequences of termination

Immediately upon the termination of this Agreement, any obligations of the Licensor under this Agreement will automatically cease and you must cease using the Software and the Licensor's Confidential Information.

19. Assignment

You must not assign your rights or obligations under this Agreement without the Licensor's prior written consent.

The Licensor is entitled to transfer or assign the Software or to grant rights in relation to the Software or assign its rights and obligations under this Agreement to a third party but, in any case, subject to your rights under this Agreement.

20. General

The provisions of this Agreement must not be varied except by agreement in writing signed by the parties.

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provision which will be deemed deleted.

This Agreement will be governed by the laws in force in South Australia. The parties submit themselves to the non-exclusive jurisdiction of South Australian courts and competent appellate courts.

This Agreement constitutes the entire agreement between the parties in relation to its subject matter. This Agreement supersedes any prior agreements, understandings, negotiations and discussions whether oral or written regarding the ownership or licensing of the Software.

The parties are independent contractors. The relationship between the parties is not one of partnership, agency or joint venture.

Notices under this Agreement must be delivered by hand, by prepaid post, by facsimile or by electronic mail to the addresses notified by the parties to each other from time to time.

Any waiver by the Licensor of any breach by you of any of the terms of this Agreement will not effect or prejudice the rights and remedies of the Licensor in respect of any future or other breach by you of any of the terms of this Agreement. No failure or delay by the Licensor to act upon or enforce any of its rights or remedies under this Agreement will be deemed a waiver by the Licensor of any such rights or remedies or effect or prejudice the rights and remedies of the Licensor under this Agreement.

A party that breaches this Agreement will be liable for all costs, losses and damages incurred by the other party as a result of that breach.

The parties must do everything necessary or desirable to give effect to the terms of this Agreement.

The covenants, conditions and provisions of this Agreement which are capable of

having effect after the termination of this Agreement will remain in full force and effect following termination.