SOFTWARE LICENCE AGREEMENT

PARTIES

    Licensor: Comet Licensing Limited (Us)

    Licensee: The procurer of Software Licenses (You)*

SECTION A: KEY DETAILS

Item	Detail
Software	**"Comet"** (client-installed software covering all versions which may be installed on PC, MAC, Linux, Android, IOS or other operating system from time to time)
	"Boosters" & Additional Components (comprising all external software components, provided by us that form part of the Comet Backup system. This excludes any third-party software not owned by us, which we may provide)
	"Comet Server" (comprising all Comet Server components including, but not limited to Auth, Replication, Storage, Constellation).
	"Comet Go" (Comet Licensing Limited provisioned and hosted service on Amazon EC2 comprising both Comet Server, Comet, with attached S3 storage)
Approved Purpose	The Licensee may use the Software solely for its own business purposes. The Software comprises various components which primarily facilitate the backup, storage and retrieval of data.
	"Comet" comprises software components that may be installed on hardware belonging to your clients or customers (Approved Users). You must ensure that their use of the Software complies with the terms of this Agreement.
	"Comet Server" and its associated components are for your exclusive business use and are to facilitate Your computer backup service. Comet Server components may be installed on hardware that you approve, but must remain within your direct control and you must have the ability to uninstall it.

Item	Detail
	"Comet Go" comprises software components that may be installed on hardware belonging to your clients or customers (Approved Users). You must ensure that their use of the Software and AWS Storage complies with the terms of this Agreement and [Amazons Acceptable Use Policy]().
Start Date	This agreement commences on the day that you first install any Software component that we provide.
End Date	This agreement rolls over in perpetuity until it is cancelled by either you or us by providing not less than 30 days' notice to the other party. Our obligations to you end if you breach this agreement or we terminate of this agreement for any reason.
Fees and Payment Terms	Fees and payment for services are listed on our website at www.cometbackup.com and may be subject to change from time to time without prior notification. We run promotions that you may wish to partake of. These are notified to you via our chosen media channels. We do not guarantee that you receive these notifications and it is your responsibility to visit our website to regularly check for updated pricing or promotions.
	Payment is due prior to the use of any software or service with the exception of approved promotional or free trial periods. Payment for services may be made via Credit Card or cleared funds into our bank account.
	Unless specifically stated otherwise, all fees and charges are due and payable in United States Dollars (USD) and are exclusive of any GST, VAT or local taxes (including sales taxes & state taxes) that may be applicable.

1   INTERPRETATION

1.1   **Definitions:** In the Agreement, the following terms have the stated meaning:

Term	Meaning
Agreement	Section A (Agreement and Key Details) and Section B (General Terms, including the Schedule).
Licensee	Licensee means the person, company or entity to which our Software is delivered. This includes downloading the Software from any of our websites or receiving it by any other means.
Approved Purpose	the approved purpose set out in the Key Details.
Confidential Information	the terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. The Licensor's Confidential Information includes the Software and the Documentation.
Documentation	the user and technical documentation designed to enable the Licensee to properly use and operate the Software (if any), and includes any update of the documentation.
End Date	the end date set out in the Key Details.
Fees	the fees set out in the Key Details.
Force Majeure	an event that is beyond the reasonable control of a party, excluding: ▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or ▲ a lack of funds for any reason.
GST	goods and services tax within the meaning of the Goods and Services Tax Act 1985 (applies to New Zealand customers).
Intellectual Property Rights	includes copyright, and all worldwide rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. **Intellectual Property** has a consistent

Term	Meaning
	meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.
Key Details	the Agreement specific details set out in Section A of the Agreement.
Software	the software set out in the Key Details, including any Update.
Start Date	the start date set out in the Key Details.
Support Services	the support services described in the Schedule.
Update	a new version of the existing Software released to the Licensee by the Licensor and intended to provide bug fixes and resolve other technical issues (and may or may not provide new features or additional functionality) and as indicated by the change in Software Version Number.
Approved User	a person or company (or any other entity acting as an individual or a business) whom you approve as a user of the Software.

1.2 **Interpretation:** In the Agreement:

a   clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;

b   words in the singular include the plural and vice versa;

c   a reference to:

   i   a **party** to the Agreement includes that party's permitted assigns;

   ii   **personnel** includes officers, employees, contractors and agents, but a reference to the Licensee's personnel does not include the Licensor;

   iii   a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;

   iv   **including** and similar words do not imply any limit; and

   v   a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;

d   no term of the Agreement is to be read against a party because the term was first proposed or drafted by that party; and

e   if there is any conflict between Section B and Section A of the Agreement, Section B prevails unless expressly stated otherwise in Section A.

2   LICENCE

Grant of licence: The Licensor grants to the Licensee, and the Licensee accepts, a non-exclusive and non-transferable licence for the duration of the Agreement to use the Software and the Documentation solely for the Approved Purpose and on the terms and conditions of the Agreement.

Approved Users. You may issue copies of Comet to Approved Users under the following conditions:

a   any agreement or contract between you and Approved Users does not contradict or seek to reduce our rights or our obligations under this Agreement; and

b   you are responsible for any breach of this agreement by Approved Users; and

c   Approved Users are not party to this agreement; and

d   you indemnify us fully against any claim made by an Approved User against us; and

e   no warranty is provided to Approved Users; and

f   no support services are provided by us to Approved Users

3   LICENCE CONDITIONS

3.1   **Conditions:** The Licensee must:

a   use the Software and the Documentation for lawful purposes only and must not copy, reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub-licence or otherwise deal in the Software or the Documentation except:

      i   as expressly provided for in the Agreement; or

      ii   to the extent expressly permitted by any law or treaty that is in force in the Territory where that law or treaty cannot be excluded, restricted or modified by the Agreement;

b   ensure the Software and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;

c   maintain all proprietary notices on the Software and the Documentation;

d   not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation or the Licensee's rights under the Agreement;

e   not challenge the Licensor's ownership of (including the Intellectual Property Rights in) the Software, the Documentation or any other item or material created or developed by or on behalf of the Licensor under or in connection with the Agreement; and

f   notify the Licensor in writing immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Software or the Documentation.

g   Must conform with [Amazon's Acceptable Use Policy](#) if using our 'Comet Go' storage service.

4   SUPPORT SERVICES

The Licensor may provide the Licensee with the Support Services in accordance with the Schedule, provided the Licensee has:

a   paid all Fees due and maintains a credit account balance sufficient to cover any paid support services; and

b   maintained a proper operating environment for the use of the Software in accordance with any guidance from the Licensor, including in the Documentation; and

c   complied with the Agreement and the Documentation.

5   FEES

5.1   **Fees:** The Licensee must pay the Fees to the Licensor for the Software licence under the Agreement and for the provision of the Support Services.

5.2   **Delay in receiving payment.** We are not responsible for any delay that is beyond our control in receiving payment from you. Payment is only considered to have been received when cleared funds have been deposited in our bank account. Telegraphic transfers may take several days to be delivered to us as cleared funds and it is your responsibility to ensure that you have made payment sufficiently in advance to ensure that you credit balance does not expire in the meantime.

5.3   **Fees are payable in advance.** License Fees and Support Fees are provided on a pre-paid basis and will only be provided if you have have a sufficient credit balance with us at the time. It is your sole responsibility to ensure that you maintain a sufficient credit balance in order to procure the services that you require from us.

5.4   **Suspension of services.** If your credit balance is not sufficient to procure services from us, then provision of those services will be suspended (your account will be in "Suspended State") until sufficient credit balance is restored. For the avoidance of doubt, this means that services to your Approved Users (the ability for them to use our Software) and your access to our paid support services will be inoperable.

5.5 **Erasure of CometGo!** If your credit balance is not sufficient to procure this service from us, then provision of this service will be suspended (your account will be in "Suspended State") until sufficient credit balance is restored. If your account remains suspended for more than 3 weeks we reserve the right to remove your CometGo! instance and data.

5.6 **Retained Intellectual Property:** Subject to clauses 5.7 and 5.8, the following Intellectual Property remains the property of the current owner:

a   Intellectual Property that existed prior to the Start Date; and

b   Intellectual Property that was developed independently of the Agreement.

5.7 **Software and related IP:** From the date of creation or development, the Licensor owns all Intellectual Property Rights in:

a   the Software and the Documentation; and

b   any other item or material created, developed or provided by or on behalf of the Licensor under or in connection with the Agreement.

5.8 **Feedback:** If the Licensee provides the Licensor with ideas, comments or suggestions relating to the Software or the Documentation (together **feedback**):

a   all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material enhancements, modifications or derivative works), are owned solely by the Licensor; and

b   the Licensor may use or disclose any feedback for any purpose.

5.9 **IP indemnity:**

a   The Licensor indemnifies the Licensee against any claim or proceeding brought against the Licensee to the extent that claim or proceeding alleges that the Licensee's use of the Software in accordance with the Agreement constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to the Licensee:

i   promptly notifying the Licensor in writing of any IP Claim;

ii   making no admission of liability and not otherwise prejudicing or settling the IP Claim, without the Licensor's prior written consent; and

iii   giving the Licensor complete authority and information required for the Licensor to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for the Licensor's account.

b   The indemnity in clause 5.9a does not apply to the extent that an IP Claim arises from or in connection with:

i   the Licensee's breach of the Agreement;

ii   the use of the Software in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by the Licensor;

iii   any third party data or data owned by the Licensee; or

iv   modification or alteration of the Software by a person other than the Licensor.

c   If at any time an IP Claim is made, or in the Licensor's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, the Licensor may (at the Licensor's option):

i   obtain for the Licensee the right to continue using the items that are the subject of the IP Claim; or

ii   modify, re-perform or replace the items that are the subject of the IP Claim so they become non-infringing.

6 CONFIDENTIALITY

6.1   **Security:** Each party must, unless it has the prior written consent of the other party:

a   keep confidential at all times the Confidential Information of the other party;

b   effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and

c   disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clause 6.1a and 6.1b.

6.2   **Permitted disclosure:** The obligation of confidentiality in clause 6.1a does not apply to any disclosure or use of Confidential Information:

a   for the purpose of performing the Agreement or exercising a party's rights under the Agreement;

b   required by law (including under the rules of any stock exchange);

c   which is publicly available through no fault of the recipient of the Confidential Information or its personnel;

d   which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or

e   by the Licensor if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the Licensor enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 6.

7 WARRANTIES

7.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, constitute binding obligations on the warranting party.

7.2 **Licensor warranties:** The Licensor warrants that:

a   to the best of its knowledge, the use of the Software by the Licensee in accordance with the Agreement will not infringe the Intellectual Property Rights of any other person; and

b   the Software will materially perform in conformity with the Documentation although the Licensee acknowledges that the Software is of a technical nature and may not be error-free or bug-free.

7.3 **Breach of warranty:** Subject to clause 7.4, if the Software does not meet the warranty in clause 7.2b, the Licensor may, at its option and cost, remedy, repair, enhance or replace the defective item so that the Software meets and satisfies that warranty. The remedy, repair, enhancement or replacement of a defective item as described in this clause will be the Licensee's sole remedy against the Licensor for a breach of warranty under clause 7.2b.

7.4 **Exclusion of warranty cover:** The Licensor is not obliged to remedy, repair, enhance or replace any defective item under clause 7.3 to the extent that the defect arises from or in connection with:

a   modification or alteration of the Software by any person other than the Licensor; or

b   a breach of the Agreement by the Licensee, including use of the Software by the Licensee or its personnel in a manner or for a purpose not reasonably contemplated by the Agreement or not authorised in writing by the Licensor.

7.5 **No implied warranties:** To the maximum extent permitted by law:

a   the Licensor's warranties are limited to those set out in the Agreement and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under the Sale of Goods Act 1908) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to the fees paid by the Licensee in the prior 3 months; and

b   the Licensor makes no representation concerning the quality of the Software or the Support Services, and does not promise that the Software will be error-free, bug-free, or will operate without interruption.

7.6 **Consumer Guarantees Act (New Zealand):** The Licensee agrees and represents that it is acquiring the Software and the Support Services, and entering the Agreement, for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Software or the Support Services, or the Agreement.

8   LIABILITY

8.1   **Maximum liability:** The maximum aggregate liability of the Licensor under or in connection with the Agreement or relating to the Software or the Support Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed $1,000. The cap in this clause 8.1 includes the cap set out in clause 7.5a.

8.2   **Unrecoverable loss:** Neither party is liable to the other under or in connection with the Agreement for any:

   a   loss of profit, revenue, savings, business, data and/or goodwill; or

   b   consequential, indirect, incidental or special damage or loss (including data loss) of any kind.

8.3   **Unlimited liability:**

   a   Clauses 8.1 and 8.2 do not apply to limit the Licensor's liability:

      i   under the indemnity in clause 5.9a; or

      ii   under or in connection with the Agreement for:

         ▲   personal injury or death;

         ▲   fraud or wilful misconduct; or

         ▲   a breach of clause 6.

   b   Clause 8.2 does not apply to limit the Licensee's liability:

      i   to pay the Fees; or

      ii   under or in connection with the Agreement for:

         ▲   breach of clause 2 or 3; or

         ▲   those matters stated in clause 8.3aii.

8.4   **No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

8.5   **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost, or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

9 TERM AND TERMINATION

9.1 **Duration:** Unless terminated under this clause 9, the Agreement:

a   starts on the Start Date and ends on the End Date; but

b   where there is no End Date, continues for successive terms of 30 days from the Start Date unless a party gives 30 notice that the Agreement will terminate on the expiry of the then-current term.

9.2 **Termination rights:**

a   Either party may, by notice to the other party, immediately terminate the Agreement if the other party:

    i   breaches any material provision of the Agreement and the breach is not:

        ▲   remedied within 10 days of the other party notifying it of the breach; or

        ▲   capable of being remedied;

    ii   becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or

    iii   is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.

b   The Licensor may, by notice to the Licensee, immediately terminate the Agreement if:

    i   the remedies in clause 5.9c are exhausted without remedying or settling the IP Claim;

    ii   ii the Licensee fails to install an Update in accordance with section 4 of the Schedule.

c   The Licensor may, without notice to the Licensee, immediately terminate the Agreement if:

    i   the Licensee's account has remained in a suspended state for 30 days or more.

9.3 **Consequences of termination or expiry:**

a   Termination or expiry of the Agreement does not affect either party's rights and obligations accrued before that termination or expiry.

b   On termination or expiry of the Agreement, the Licensee must pay all Fees for the rights and services provided prior to that termination or expiry.

c   The Licensee must return or destroy all Confidential Information of the Licensor (including, the Software and Documentation) in the Licensor's possession or control.

9.4   **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 5.5, 6, 8, 9.3, 9.4 and 10, continue in force.

10   DISPUTES

10.1   **Good faith negotiations:** Before taking any Court action, a party must use their best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.

10.2   **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.

10.3   **Right to seek relief:** This clause 10 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

11   GENERAL

11.1   **Force majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:

a   immediately notifies the other party and provides full information about the Force Majeure;

b   uses best efforts to overcome the Force Majeure; and

c   continues to perform its obligations to the extent practicable.

11.2   **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.

11.3   **Independent contractor:** The Licensor is an independent contractor of the Licensee. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

11.4   **Notices:** A notice given by a party under the Agreement must be delivered to the other party via email to an email address notified by the other party for this purpose. .

11.5   **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.

11.6   **Variation:** We reserve the right to vary this agreement at any time by providing written notice to you by email, courier or post. When notifying you to an address you have supplied to us, We deem you to have received and accepted the notification.

11.7   **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Software licence and the Support Services and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation,

warranty or agreement relating to the Software licence and the Support Services that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986.

11.8 **No assignment:**

a   The Licensee may not assign, novate, subcontract or transfer any right or obligation under the Agreement without the prior written consent of the Licensor, that consent not to be unreasonably withheld. The Licensee remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

b   Any change of control of the Licensee is deemed to be an assignment for which the Licensor's prior written consent is required under clause 11.8a. In this clause, **change of control** means any transfer of shares or other arrangement affecting the Licensee or any member of its group which results in a change in the effective control of the Licensee.

11.9 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.

SCHEDULE

Support Services

The Schedule sets out the terms on which the Licensor will provide Support Services to the Licensee for the duration of the Agreement.

1   For so long as the Licensee pays all Fees in advance and maintains a sufficient credit balance to pay for such services, and subject to the conditions in sections 3 and 4 of the Schedule, the Licensor must perform the Support Services.

2   Where the Licensee considers on reasonable grounds that the Software is not materially performing in conformity with the Documentation, the Licensee must:

a   notify us immediately via our support platform (or via email if the support platform is not available)

b   use reasonable efforts to assist in the resolution of the issue (taking into account the nature and severity of the issue).

3   The provision of support by the Licensor under section 2 of the Schedule is conditional on the Licensee:

a   first using reasonable efforts to resolve the issue by referring to the Documentation; and

b   contacting the Licensor during its normal hours of support; and

c   allowing Licensor reasonable time to investigate the issue;

4   The Licensor may, at its discretion, from time to time provide the Licensee with Updates, in which case the terms set out below will apply.

a   Where the Licensor provides an Update, the Licensee must promptly install the Update.

b   Without limiting clause 9.2bii, if the Licensee fails to install the Update, the Licensor may, at its option:

i.   cease providing the Support Services; or

ii.   increase the Fees with immediate effect by an amount the Licensor considers reasonable to cover any additional cost of the Licensor continuing to provide the Support Services.

5   Nothing in the Agreement requires the Licensor to provide Support Services where the support is required as a result of a circumstance described in clause 7.4a or 7.4b.