

THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND WORLD PROGRAMMING LIMITED. PLEASE READ CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE.

These terms, together with any Transaction Documents (defined below), (together, the **Agreement**) constitute a legal agreement between you (**Licensee** or **you**) and World Programming Limited of Osprey House, Budds Lane, Romsey, Hampshire SO51 0HA, United Kingdom (**Licensor** or **us** or **we**) for the Software (defined below).

The Software is licensed not sold. We do not sell the Software to you. We or our licensors remain the owner of the Software at all times.

IMPORTANT NOTICE TO ALL USERS

BY INSTALLING OR USING THE SOFTWARE YOU AGREE TO THE TERMS OF THIS AGREEMENT.

IF YOU ARE A BUSINESS USER, THIS AGREEMENT WILL BIND YOU, YOUR AFFILIATES AND YOU AND YOUR AFFILIATES' RESPECTIVE EMPLOYEES, AGENTS, MEMBERS, CONTRACTORS AND CONSULTANTS ACTING ON YOUR OR YOUR AFFILIATES' BEHALF. YOU REPRESENT THAT THE PERSON ACCEPTING THESE TERMS IS AUTHORISED TO ENTER INTO THIS AGREEMENT ON YOUR AND YOUR AFFILIATES' BEHALF.

YOUR ATTENTION IS DRAWN TO THE LIMITATIONS ON LIABILITY BELOW.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT USE THE SOFTWARE AND MUST DELETE ANY AND ALL INSTALLATIONS AND COPIES OF THE SOFTWARE.

IF YOU HAVE ENTERED INTO AN AGREEMENT WITH SOMEONE OTHER THAN US FOR YOUR USE OF THE SOFTWARE (A RESELLER, OEM PROVIDER OR OUTSOURCE PROVIDER OF THE SOFTWARE), THESE TERMS WILL BE DEEMED TO APPLY IN THEIR ENTIRETY BETWEEN US AND YOU SAVE THAT ANY PAYMENT OF THE RELEVANT FEES (AS DEFINED BELOW) SHALL BE OWED TO THE RESELLER, OEM PROVIDER OR OUTSOURCE PROVIDER RATHER THAN TO US.

YOU SHOULD PRINT A COPY OF THIS DOCUMENT FOR FUTURE REFERENCE.

SECTIONS 7.2, 7.3, 9.3, AND 9.4 REPRESENT ESSENTIAL OBLIGATIONS, WITHOUT WHICH WE WILL NOT ENTER INTO THIS AGREEMENT.

1. Definitions and Interpretation

Academic means a Person who is an accredited or matriculated student or member of academic staff of an Academic Institution.

Academic Institution means a recognised not-for-profit academic or educational institution.

Additional Licence means any licence or entitlement to use the Software in addition to the licence(s) and entitlement set out in your Transaction Documents from time to time.

Additional Licence Fees means the fees payable in respect of any Additional Licence(s) requested pursuant to the terms of this Agreement and calculated according to the Licence Edition(s) requested. The Additional Licence Fees will be pro-rated from the first day of the calendar month specified in your Transaction Documents to the end of the Licence Period in which the Additional Licence is requested.

Affiliate means in relation to any entity, any other entity that is, in each case directly or indirectly, Controlling, Controlled by or under common Control with the first entity, where Control means to possess at least a 50% interest in an entity or the right to direct the management of the entity whether by contract or otherwise. Controlling and Controlled shall be construed accordingly.

Application means a software program developed by you or for you or that you have the right to use and that makes use of the Software. An Application must have significantly different functionality to the Software.

Bureau Provider Use means use of the Software by you for processing third party data provided to you by or on behalf of that third party, either for your own business purposes or those of the third party who engages you to provide this service.

Business Day means a day, other than a weekend or public holiday in the country in which the party receiving the notice is incorporated or resident, when the banks in the capital city of that country are open for business.

Business User means an incorporated or unincorporated company, partnership, charity, not-for-profit organisation, governmental department, governmental or regulatory or other body or any Person acting for or on behalf of such incorporated or unincorporated company, partnership, charity, not-for-profit organisation, governmental department, governmental or regulatory or other body or Person which/who uses the Software for the purposes of their trade, business, craft or profession.

Commercial Use means use of the Software by a Business User.

Consultancy Provider Use means use of the Software for your provision of professional services to a third party, including the development and testing of computer programs, problem diagnosis, demonstration, feasibility or proof of concept work but not including the processing of that third party's data for their or your business purposes.

Consumer means a Person who uses the Software other than for the purposes of their trade, business, craft or profession. An Academic (defined above) can be a Consumer.

Customer Data means data provided by you or on your behalf to us for the purposes of, or to facilitate, your use of the Software.

Data Protection Legislation means: (i) up to but excluding 25 May 2018, the Data Protection Act 1998; and (ii) from 25 May 2018 and thereafter, the General Data Protection Regulation ((EU) 2016/679) (the **GDPR**) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, unless and until the **GDPR** is no longer directly applicable in the UK, and then any successor legislation to the **GDPR** or the Data Protection Act 1998; or (iii) the equivalent laws, regulations and/or legislation that apply from time to time to the relevant party under the applicable law.

Demonstration Use means using the Software solely for the purpose of demonstrating it to a third party in order for that third party to evaluate the Software for use in the course of its trade, business, profession or craft or, if the third party is a Consumer, for their personal purposes.

Development and Testing Use means use of the Software to test, benchmark, create or modify computer programs or to verify the operation of such programs.

Disaster Recovery Use means use of the Software in a disaster recovery environment, solely in the event that your production environment is unavailable, and only until such time as your production environment is restored and for reasonable periodic testing of that disaster recovery environment.

Evaluation Use means evaluating the Software for use in the course of your trade, business, profession or craft if you are a Business User or for your personal purposes if you are a Consumer.

Event Outside Our Control means any act or event beyond our reasonable control, including, but not limited to, failure of or interruptions to public or private telecommunications networks, war, riots, disaster, strikes, civil disorder, acts of terrorism, acts of God, fires, explosions or any acts by authorities including government regulations.

Licence Edition means the edition(s) of licence you have purchased as specified in your Transaction Documents, each edition purchased constituting a separate Licence.

Licence Fees means the fees specified in your Transaction Documents.

Licence Key means a computer file provided to you by us (either directly or through a Reseller, Outsource Provider or OEM Partner) that enables operation of the Software.

Licence Period means:

- 1 in respect of a Standard Edition Licence, Application Provider Edition Licence or Disaster Recovery Edition Licence, Demonstration Edition Licence, Development Edition Licence or Outsource Edition Licence (each as defined below), the 12-month period (or other period specified in your Transaction Documents) commencing at 00:00 local time on the first day of the calendar month specified in your Transaction Documents or the most recent anniversary thereof, whichever is the later;
- 2 in respect of an Express Edition Licence or a Community Edition Licence (each as defined below), the 12-month period commencing at 00:00 local time on the first day of the year specified in your Transaction Documents or the most recent anniversary thereof, whichever is the later;
- 3 in respect of an Evaluation Edition Licence (as defined below), the 30 calendar day period commencing at 00:00 local time on the date specified in your Transaction Documents (or other period if specified in your Transaction Documents);
- 4 in respect of an Academic Edition Licence (as defined below), the 12-month period (or other period if specified in your Transaction Documents) commencing at 00:00 local time on the first day of the calendar month of September immediately preceding the date specified in your Transaction Documents or the most recent anniversary thereof, whichever is the later.

Non-Commercial Use means use of the Software by a Consumer.

OEM Customer means a user of the Software who is provided with access to the Software by a third party: (1) whose business it is to provide OEM software which includes the Software; and (2) with whom the relevant OEM provider has entered into an agreement for the provision of certain OEM software, including the use of the Software (an **OEM Provider**).

Operating Documents means all websites, manuals, documents, help systems, data, templates, examples and other information provided to you in any form relating to the Software.

Operating System means the computer operating system on which you may install the Software, as specified in your Transaction Documents.

Outsource Customer means a user of the Software who is provided with access to the Software by a third party: (1) whose business is to provide outsourced services which includes the Software; and (2) with whom the relevant outsource provider has entered into an agreement for the provision of certain outsourced services, including the use of the Software (an **Outsource Provider**).

Outsource Provider means a user whose Transaction Documents entitle them to make Outsource Provider Use of the Software.

Outsource Provider Use means the hosting and/or managing by you as an Outsource Provider, in accordance with this Agreement, of one or more installations of the Software on computer systems owned, controlled or managed by you or your Outsource Customer (and identified in your Transaction Documents) where each installation is provided for Development and Testing Use, Production Use and/or Disaster Recovery Use by an individual Outsource Customer in accordance with the terms of this Agreement for use by that Outsource Customer for that Outsource Customer's business purposes.

Person means a human being.

Personal Data means data subject to protection under data protection legislation in any jurisdiction.

Platform Type(s) means the platform(s) specified in your Transaction Documents.

Premium Technical Support Service means our premium technical response service as set out in the Technical Support Services Schedule.

Production Use means any use of the Software in your production environment for the purposes of processing live or historic data.

Transaction Documents means the electronic and/or printed documents you receive from us in connection with this Agreement, including order confirmations, purchase orders, pro-forma invoices, work orders and statements of work. If you are an Outsource Customer or an OEM Customer your Transaction Documents will be the electronic and/or printed documents you receive from your Outsource Provider or OEM Provider (respectively) in connection with your use of the Software (which should state, amongst other matters, your usage rights in respect of the Software and your Licence Period. If they do not, please contact your OEM Provider or Outsource Provider and seek confirmation of your usage rights and Licence Period).

Remote Desktop Access means the use of the Software via remote desktop software by a Person to access a desktop login session on a networked Server or Workstation from the Person's local computer.

Renewal Licence Fees means the fees payable by you in respect of the renewal of your licence(s) as set out in your Transaction Documents.

Reseller means an agent authorised by us to distribute licenses of the Software.

Server means a physical or virtual computer system including mainframe computers, that may enable the Software to make data or network services available to other users or computers, or may allow the Software to be used directly or indirectly by multiple users concurrently, and may be located anywhere, including in a datacentre, server room or server cabinet.

Software means the software modules listed in your Transaction Documents, together with any Updates, Upgrades, Standard or Premium Technical Support Services and Operating Documents (all defined above or below) for that software.

Standard Technical Support Service means our standard technical response service as set out in the Technical Support Services Schedule.

Technical Support Services Schedule means the schedule to this Agreement entitled "Technical Support Services Schedule", as amended from time to time.

Update means a new version of the Software that provides minor fixes and/or additional features, as determined by us in our sole discretion.

Upgrade means a new version of the Software that provides significant fixes and/or additional features, as determined by us in our sole discretion.

Virtual Desktop Infrastructure or **VDI** means use of the Software within a configuration of computers using Servers to provide independent virtualised desktop login sessions (each constituting a **Desktop**) to Persons working for you or on your behalf via thin client hardware or software.

Workstation means a personal computer, workstation, desktop, laptop, notebook, netbook, tablet or smartphone that has a physical screen connected to it, and that is not located within a data centre, Server room, Server rack, or otherwise located in any situation in which it is not attended by a Person.

Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of those words or the description, definition or phrase following such expression.

2. Grant and Scope of Licence

- 2.1 Subject to and conditional upon our collection of the License Fees and in consideration of you agreeing to comply with the terms of this Agreement, we will grant to you a non-exclusive, non-transferable, limited, revocable, licence to use, and to permit your Affiliates to use, the Software in accordance with the usage rights set out in your Transaction Documents for your own personal purposes (if you are a Consumer), or your and/or your Affiliates' normal internal business purposes (if you are a Business User) or for Outsource Provider Use (if you are an Outsource Provider) during the Licence Period.
- 2.2 If you are an Outsource Customer or an OEM Customer, you may only use the Software, always in accordance with the terms of this Agreement, when expressly permitted to do so by your Outsource Provider or OEM Provider and the remainder of this section will not apply to you.
- 2.3 If you are entitled to use the Software for Demonstration Use, you may use the Software for such demonstration purposes, but the output generated by the Software may under no circumstances be used for any other commercial purposes unless you are otherwise entitled to use the Software for such purpose.
- 2.4 If you are entitled to use the Software only for Evaluation Use, the Software's output and/or results may under no circumstances be used for any other business, commercial or personal purpose.
- 2.5 The issue of Transaction Documents by us, together with your deposit with us in England of monies equivalent to the License Fees set out in those Transaction Documents, constitute the terms upon which you offer to enter into a license with us. Your obligation to pay shall not arise until we accept your offer by issuing you with a License Key at which point we will be entitled to collect the monies you have deposited with us to discharge the Licence Fees.
- 2.6 Prior to our issue to you of a License Key all monies received by us from you will be held to your account. You may withdraw your offer to enter into a license at any time up until we have issued a License Key. If you withdraw your offer before a License Key is issued we will refund all monies deposited by you with us.
- 2.7 The Licence Key is confidential and solely for your use; it may not be shared or transferred. The Licence Key will be deemed to be delivered to you in England irrespective of where you are resident and where the Software is used. If we provide a Licence Key to you prior to our collection in England of the Licence Fees or any Renewal Licence Fees or Additional Licence Fees (the **Fees**), this shall not constitute a waiver of your obligation to pay. Any use that you make of the Software prior to our collection of any Fees will be upon the basis that you comply with the terms of this Agreement but that we shall be entitled to terminate any use of the Software with immediate effect upon giving notice to you. Upon any such termination, you shall make no further use of the Software and shall immediately and permanently delete any copies you have made of the Software and any License Keys in respect of the Licence for which you have failed to pay the Fees.
- 2.8 If you wish to acquire an Additional Licence, you shall notify us of the Licence Edition(s) you require and pay us the Additional Licence Fees. Any Additional Licence(s) shall expire at the end of the Licence Period in which it is acquired.
- 2.9 You acknowledge that the Software is activated by a Licence Key that shall also disable the Software at the end of each Licence Period. Upon receipt of any Renewal Licence Fees we shall provide you with a replacement Licence Key which you must use only in accordance with our instructions.
- 2.10 We shall obtain all necessary export licenses in respect of the Software. You shall be responsible for obtaining all necessary licenses and/or permissions to import the Software.

- 2.11 You shall permit only your authorised employees, agents, members, contractors and consultants to use the Software and shall procure that only your Affiliates' employees, agents, members, contractors and consultants use the Software, in each case solely in accordance with the terms of this agreement. If you permit your Affiliates' to use the Software on the terms of this Agreement, all references in the rest of this Agreement to "you" or "your" shall be interpreted to mean, respectively, "you or your Affiliates" and "you and your Affiliates". You are responsible for, and liable to us for, all use and/or misuse of the Software by or on behalf of any of your Affiliates or for any unauthorised use. In the event that any Affiliate or a person acting on behalf of any Affiliate uses the Software otherwise than in accordance with the terms of this agreement, you will be liable to us for any loss or damage we suffer as a result of such use as if the use were your own.

3. Rights and Restrictions for all Users

- 3.1 During the Licence Period you may, in accordance with and subject to your compliance with the terms set out below:

- (a) download, install and use the Software for your personal use (if you are a Consumer) or your normal internal business purposes (if you are a Business User) or for Outsource Provider Use (if you are an Outsource Provider). In respect of each Licence Edition you have acquired, you may only use the Software:
 - i) in accordance with the usage rights attributable to that Licence Edition, as set out below. If you are an Outsource Customer or OEM Customer, you may only make Development and Testing Use, Production Use and/or Disaster Recovery Use of the Software;
 - ii) on the Platform Type(s) specified in your Transaction Documents; and
 - iii) on the Operating System specified in your Transaction Documents;
- (b) make one backup copy of the Software; and
- (c) receive and use any Upgrade or Update as may be made available by us from time to time.

- 3.2 Unless you are an OEM Customer, you are entitled to:

- (a) Standard Technical Support Services in respect of any Standard Edition Licence, Application Provider Edition Licence or Disaster Recovery Edition Licence;
- (b) Premium Technical Support Services only if specified in your Transaction Documents.

If you are an OEM Customer then your OEM Provider, and not Licensor, is responsible for providing you with technical support services. If you obtained your licence of the Software via a Reseller then the Reseller may provide you with technical support services.

Our Software Service Lifetime (Sunset) Policy, which can be found at <https://www.worldprogramming.com/support/wps-analytics/service-lifetime> outlines the technical support available for each version of the Software. The end-of-life or sunset of a version of the Software is the term used to describe the end of support for the product after which date we will no longer provide new Upgrades, Updates, new features, improvements or technical assistance in respect of that version of the Software. The end-of-life dates for the various Software versions are set out at <https://www.worldprogramming.com/support/wps-analytics/service-lifetime>.

- 3.3 Except as expressly set out in this Agreement, you undertake:

- (a) not to copy the Software or any part of it except where such copying is necessary for the ordinary use of the Software in accordance with this Agreement;
- (b) not to make more than one backup copy of the Software;
- (c) not to rent, lease, sub-license, loan, translate, merge, adapt, vary, permit the use of the Software by, or transfer the Software to, any third party or person;
- (d) not to make alterations to the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other software or to create derivative works from the Software;
- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- (f) if you are a business or organisation of any nature, to supervise and control use of the Software and ensure that the Software is used only by your employees, agents, consultants and contractors and any other representatives acting on your behalf, and in accordance with the terms of this Agreement;

- (g) to include our copyright notice on all entire and partial copies you make of the Software on any medium, and not circumvent, remove or disable any notices or security protocols; and
 - (h) not to use the Software, or any of the information about the Software provided by us, or any information gained from observing, studying or testing the Software, to produce, improve or modify software to produce the same or similar functionality as the Software.
- 3.4 Upon your written request specifying the purpose for which the information is required, we will provide all information that is necessary to achieve interoperability between the Software and another software program to the extent required by applicable law. As such, you warrant and agree to the fullest extent permitted by applicable law, not to disassemble, reverse engineer or decompile the Software for any purpose. You agree not to disclose or communicate any such information received from us to any third party without our prior written consent, to use it only for the purposes of achieving interoperability of the Software with another software program including not to use it to create any software that is identical or similar to the Software.
- 3.5 If you are a Business User or organisation, we only supply the Software for use by your business, and you agree not to use or resell, sub-license or part with the Software for any other purpose.
- 3.6 If you are an individual acting for purposes which are outside your business, distance selling regulations under the applicable law may apply to this Agreement. If such distance selling regulations do apply, you have the right to cancel this Agreement without charge at any time within 14 days of your acceptance of its terms. If you do wish to do so you must inform us of your decision to cancel in writing.

4. Licence Editions and Usage Rights

4.1 Standard Edition Licence

A Standard Edition Licence entitles you to use the Software solely for Development and Testing Use, Production Use, Consultancy Provider Use and Bureau Provider Use.

4.2 Community Edition Licence

A Community Edition Licence entitles you to use the Software solely for Development and Testing Use and Production Use provided that you may only use the Software for Non-commercial Use. For the avoidance of doubt you may not make Commercial Use of the Software.

4.3 Express Edition Licence

An Express Edition Licence entitles you to use the Software solely for learning how to use the Software, for Development and Testing Use and for Evaluation Use.

4.4 Disaster Recovery Edition Licence

A Disaster Recovery Edition Licence entitles you to use the Software solely for Disaster Recovery Use.

4.5 Evaluation Edition Licence

An Evaluation Edition Licence entitles you to use the Software solely for Evaluation Use.

4.6 Demonstration Edition Licence

A Demonstration Edition Licence entitles you to use the Software solely for Demonstration Use.

4.7 Development Edition Licence

A Development Edition Licence entitles you to use the Software solely for Development and Testing Use.

4.8 Academic Edition Licence

An Academic Edition Licence is exclusively available to Academic Institutions and Academics.

If you are an Academic Institution you may use, and may authorise Academics to use, the Software solely for the purposes of providing or carrying out research, education, tuition or study in connection with the courses offered by the Academic Institution or research undertaken on behalf of the Academic Institution. The maximum number of Academics that can be authorised to use the Software at any one time is specified in your Transaction Documents.

If you are an Academic who has acquired an Academic Edition, you may use the Software for research or study in connection with your role at the Academic Institution. If you cease to maintain a role at an Academic Institution, this Agreement will terminate with immediate effect.

All research undertaken using the Software shall be strictly in accordance with the definition of Research and Experimental Development (R and D) according to section 2.1 of the OECD Frascati Manual 2015 available at <http://www.oecd.org/innovation/inno/frascati-manual.htm>, which is as follows: "R&D comprise creative and systematic work undertaken in order to increase the stock of knowledge -- including knowledge of humankind, culture and society -- and to devise new applications of available knowledge". We require you to place any results of research into the public domain before or at the same time as you provide the results to commercial sponsors or other sources of research funding.

4.9 Application Provider Edition Licence

An Application Provider Edition Licence entitles you to use the Software within or from an Application to provide services to your customers or potential customers via the Application. Under no circumstances shall anyone other than you have any access to the Software.

4.10 Outsource Edition Licence

An Outsource Edition Licence entitles you to make Outsource Provider Use of the Software on the terms of this Agreement in respect of any Outsource Customer specified in your Transaction Documents.

You shall not make Outsource Provider Use of the Software in respect of any Outsource Customer not specified in your Transaction Documents unless and until you have notified us in writing of the legal name and address of the relevant Outsource Customer, paid to us any Additional Licence Fees that become due and we have provided written approval of the new Outsource Customer.

An Outsource Customer shall be entitled to the same Standard Technical Support Services and Premium Technical Support Services to which you are entitled as specified in your Transaction Documents.

You must at all times use the Software in accordance with your usage rights and limits set out in this Agreement and your Transaction Documents. For these purposes, use of the Software by an Outsource Customer will be deemed to be use by you.

You recognise and acknowledge that you are fully responsible for ensuring that each and every Outsource Customer uses the Software in accordance with the terms of this Agreement. Upon our reasonable request you shall bring legal proceedings against any Outsource Customer that has used the Software other than in accordance with the terms of this Agreement.

Prior to any use by any Outsource Customer of the Software, you shall ensure that the Outsource Customer has been provided with a copy of the terms of this Agreement and that the Outsource Customer has agreed in writing that it is only permitted to make Development and Testing Use, Production Use and/or Disaster Recovery Use of the Software and for the number of installations and/or users solely in accordance with the terms of this Agreement and as specified accordingly in the Transaction Documents. You shall use commercially reasonable efforts to require that your Outsource Customer complies with the terms of this Agreement.

In the event that an Outsource Customer, or any employee, agent, consultant, contractor or other individual acting on behalf of that Outsource Customer, uses the Software other than in accordance with the terms of this Agreement, you shall be liable to us as if you had breached this Agreement and you shall indemnify us for any damage, loss and/or reasonable costs of any nature whatsoever that we suffer as a result. Any limitation on liability in this Agreement shall not apply in respect of your indemnity set out in this paragraph.

In the event that we wish to pursue an Outsource Customer in respect of their use of the Software other than in accordance with the terms of this Agreement, you shall promptly provide us with any support, assistance, documents or records we request.

In no circumstances shall we be liable to any Outsource Customer or to you in respect of any loss, damage, costs or expenses of any nature incurred by you as a result of any conduct by an Outsource Customer.

You warrant and agree that you have not and will not intentionally grant or purport to grant, or represent or purport to represent to any third party that you have, any rights related to the Software that are in any respect broader or inconsistent with the rights granted to you under this Agreement.

If it comes to your attention that the Outsource Customer acts or omits to act other than in accordance with the terms of this Agreement, you shall:

- (a) immediately inform us and provide us with full details of the act or omission by the Outsource Customer;
- (b) take prompt, commercially reasonable corrective action at your expense to remedy the breach and/or obtain all other appropriate relief and notify us in writing of corrective action taken;
- (c) upon our request, immediately take all steps to prevent the Outsource Customer from making any further use of the Software; and/or
- (d) provide us with reasonable cooperation if we choose to take action against such Outsource Customer and seek such relief as may be appropriate.

No action you take in respect of the Outsource Customer shall preclude us from also taking action to compel compliance by the Outsource Customer with the terms of this Agreement.

Your obligations set out in this section shall survive expiration or termination of this Agreement.

4.11 Platform Types

(a) **WORKSTATION**

- i) In respect of Software licensed for use on a Workstation you may install one copy of the Software on each Workstation up to the maximum number of permitted Workstations specified in your Transaction Documents (each an **Authorised Workstation**). If the Software has been licensed to you for use in a VDI, you may install the Software in the VDI. In that case, the Software may only be used via Desktops in that VDI and the maximum number of Desktops presented at any one time must not exceed the maximum permitted number specified in your Transaction Documents.
- ii) Software licensed for use on a Workstation shall not be installed on a Server or a workstation computer used as a Server. The sole exception is if the Software has been licensed to you for use in a VDI in which case the Software may only be installed on a Server within the VDI and may only be used via Desktops in that VDI.
- iii) Only one Person may use the Software on any one Authorised Workstation at any one time, or in the case of VDI, on any one Desktop at any one time. Provided that the Software is installed and used on no more than the maximum number of permitted Authorised Workstations (as specified in your Transaction Documents) at any one time, you may transfer the Software from an Authorised Workstation to another Workstation, provided that the Software is immediately removed from the original Authorised Workstation. If you do this, the Workstation to which the Software is transferred becomes the Authorised Workstation. You may not transfer the Software between Workstations to share a licence between workstation computers or facilitate a multi-user environment for any single instance or installation.
- iv) Any scheduled or automated use of the Software on a Workstation may only be for the direct benefit of the main user of the Software in fulfilling his or her business tasks.
- v) No direct or indirect access to the Software on an Authorised Workstation from other computers networked with the Authorised Workstation is permitted, with the sole exception that the main user of the Software may access the Software on the Authorised Workstation via Remote Desktop Access. You may not do this to share a licence between workstation computers or facilitate a multi-user environment for any single instance or installation.

(b) **SERVER**

- i) Software licensed for use on a Server may be installed on a Server or workstation computer used as a Server (in which case the workstation is treated as a **Server**).
- ii) The number of permitted installations of the Software on a Server is specified in your Transaction Documents.
- iii) The maximum quantity, size, capacity or specification of the Server(s) is specified in your Transaction Documents.
- iv) The maximum number of concurrent users of the Software on the Server(s) is specified in your Transaction Documents.

- v) If your Transaction Documents specify that the Software will be supplied with a client component (the **Software Client**) then the Software may be accessed via that Software Client which may be installed on one or more Servers or Workstations.
- vi) Scheduled or automated use of the Software, or batch processing, is permitted on Servers only for the usage purposes that are expressly permitted by the relevant Licence Edition(s).

5. Intellectual Property Rights

- 5.1 You acknowledge that all legal and beneficial rights, title, and interest in the Software and all intellectual property rights in or relating to the Software anywhere in the world belong to us and/or our licensors, that rights to use the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software other than the right to use it in accordance with the terms of this Agreement. Except as expressly permitted herein, you may not sub-license, transfer, assign, sell, or otherwise part possession with the Software.
- 5.2 You acknowledge that you have no rights to access the Software in source code form. If at any time or for any reason we are obliged to deposit or disclose the source code of the Software with/to you, or any state or governmental body by reason of your use or licensing of the Software, we shall be entitled to immediately terminate this Agreement and you shall be entitled to a refund of any unused portion of the Fees paid or payable by you in respect of the Licence Period during which the termination occurs.

6. Data Protection, Security and Integrity

- 6.1 You shall own all rights, title and interest in and to all Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 6.2 In the event of any loss or damage to Customer Data, your sole and exclusive remedy against us shall be for us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the most recent back-up of such Customer Data maintained by us although we have no obligation to create or maintain such back-up unless specified in your Transaction Documents. We shall not be responsible for any loss, destruction, corruption, alteration or disclosure of Customer Data caused by any third party. You shall be solely responsible for any and all reasonable costs of rectification of data if you are responsible for any security breach.
- 6.3 Each of us will comply with all requirements of the Data Protection Legislation which are applicable to each of us. This section is in addition to, and does not relieve, remove or replace, our or your obligations under the Data Protection Legislation.
- 6.4 We and you acknowledge that if we process any personal data on your behalf when performing our obligations under this agreement, you are the data controller and we are the data processor for the purposes of the Data Protection Legislation (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 6.5 Without prejudice to the generality of section 6.1, you shall ensure that you have all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this agreement so that we may fairly and lawfully use, process and transfer the Personal Data in accordance with this agreement on your behalf.
- 6.6 Without prejudice to the generality of section 6.1, we shall, in relation to any Personal Data processed by us as the data processor in connection with our performance of our obligations under this agreement:
 - (a) process that Personal Data only for the purpose and duration of this Agreement and on your written instructions unless we are required by applicable law to process Personal Data. Where we are relying on laws of a member of the European Union or European Union law or the Japanese law as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by applicable law unless that applicable law prohibit us from doing so;
 - (b) ensure that we have in place commercially reasonable technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data (a **Personal Data Breach**), that are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can

be restored in a timely manner after an incident, and/or regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us);

- (c) ensure that the individuals allowed to process Personal Data under this Agreement will respect the confidentiality of the Personal Data processed;
- (d) neither appoint sub-processors without your prior written approval, nor transfer any Personal Data outside of the European Economic Area (EEA) unless the following conditions are fulfilled:
 - i) you or we have put in place appropriate safeguards permitted under Data Protection Legislation in relation to the transfer;
 - ii) the data subject has enforceable rights and effective legal remedies;
 - iii) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv) we comply with your reasonable instructions notified to us in advance with respect to the processing of the Personal Data;

Either you or we may, at any time on not less than thirty (30) days' notice and upon mutual agreement, revise this section 6.6(c) by replacing it with any applicable controller to processor standard sections or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

- (e) assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify you without undue delay on becoming aware of a Personal Data Breach;
- (g) ensure that the Persons authorised to process the Personal Data within our organisation have committed to respect its confidentiality or are bound by a confidentiality obligation of a statutory nature;
- (h) at your written direction, delete or return Personal Data and copies thereof to you on termination of the agreement unless required by applicable law to store the Personal Data;
- (i) maintain complete and accurate records and information to demonstrate our compliance with this section;
- (j) indemnify you in accordance with the terms of this agreement against any loss or damage suffered by you in relation to any breach by us of our obligations under this section; and
- (k) in the event that we are required to do so under the Act on the Protection of Personal Information of Japan we shall, when we acquire such Personal Data, inform you of the purpose for which we shall use that Personal Data, except where the purposes for which we shall use the Personal Data have previously been published publicly.

7. Limited Warranties and Disclaimers

- 7.1 We warrant that we have the right and/or authority to grant this Licence, and we indemnify, hold harmless and agree to defend you in respect of any third party claims, suits, demands, actions, damages, fines, fees, costs and expenses, excluding legal fees (so far as the applicable law allows), arising from our breach, if any, of this warranty.
- 7.2 TO THE EXTENT PERMITTED BY THE APPLICABLE LAW, THE SOFTWARE IS NEITHER GUARANTEED NOR WARRANTED TO BE ERROR-FREE NOR DO WE AGREE TO ASSUME ANY LIABILITY IN THIS RESPECT. YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE SOFTWARE AND ANY DATA GENERATED OR PROCESSED BY THE SOFTWARE FOR YOUR INTENDED USE, AND YOU WILL DEFEND, INDEMNIFY AND HOLD US, OUR OFFICERS, AND OUR EMPLOYEES HARMLESS FROM ANY THIRD PARTY CLAIMS, DEMANDS, OR SUITS THAT ARE BASED UPON ANY LACK OF SUITABILITY OF THE SOFTWARE IN YOUR USE OR ANY DATA GENERATED BY THE SOFTWARE IN YOUR USE.
- 7.3 THE LIMITED WARRANTY SET FORTH IN THIS SECTION 7 IS THE ONLY WARRANTY MADE BY US, AND THE LIMITED REMEDIES SET FORTH IN THIS SECTION 7 STATE YOUR SOLE AND EXCLUSIVE REMEDIES AGAINST US OR OUR SUPPLIERS FOR BREACH OF WARRANTY. WE AND OUR SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, WE EXCLUDE TO THE EXTENT PERMITTED BY APPLICABLE LAW ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY,

INFORMATIONAL CONTENT OR ACCURACY, QUIET ENJOYMENT, TITLE AND NON-INFRINGEMENT, ERROR-FREE OPERATION, WITH REGARD TO THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. IF THE APPLICABLE LAW DOES NOT PERMIT OUR EXCLUSION OF IMPLIED WARRANTIES DESPITE THIS AGREEMENT, THEN ANY IMPLIED WARRANTIES, GUARANTEES, OR CONDITIONS LAST ONLY DURING THE TERM OF THE LIMITED WARRANTY AND ARE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

8. Indemnities

- 8.1 Notwithstanding anything to the contrary in section 7.1, we undertake at our own expense to defend you or, at our option and in our absolute discretion, settle any claim or action brought against you by a third party alleging that your possession or use of the Software (or any part thereof) in accordance with the terms of this Agreement infringes the third party's intellectual property rights (**Claim**) and we shall be responsible for any reasonable direct losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against you as a result of or in connection with any such Claim. This section shall not apply where the Claim in question is attributable to your possession or use of the Software (or any part thereof) 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 us if the infringement would have been avoided by the use of the Software not so combined, or use of an unsupported version of the Software.
- 8.2 If any third party makes a Claim, or notifies an intention to make a Claim against you, our obligations under section 8.1 are conditional on you:
- (a) as soon as reasonably practicable, giving written notice of the Claim to us, specifying the nature of the Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Claim without our prior written consent;
 - (c) not incurring any legal expenses in respect of the Claim without our prior written approval;
 - (d) allowing us to, in our absolute discretion, assume conduct and control of any proceedings related to the Claim and to defend, avoid or compromise the Claim in whatever way we see fit with our own choice of legal advisers. You may, at your sole expense, appoint additional legal advisers but we shall have no obligation to indemnify you in respect of any fees or expenses incurred by such legal advisers;
 - (e) giving us and our professional advisers access at reasonable times (on reasonable prior notice) to your premises, officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within your custody or control of the Customer, so as to enable us and our professional advisers to examine them and to take copies (at our expense) for the purpose of assessing and/or defending the Claim; and
 - (f) taking such action we may reasonably request to avoid, dispute, compromise or defend the Claim.
- 8.3 If any Claim is made, or in our opinion is likely to be made, against you, we may at our sole option (in so far as is permitted under applicable law) and expense:
- (a) procure for you the right to continue to use the Software (or any part thereof) in accordance with the terms of this Agreement and your applicable Licence Edition;
 - (b) modify, repair or replace the Software with software of equivalent functionality. If we determine in our discretion that it is not feasible to modify, repair or replace the Software with a functionally-equivalent non-infringing version, then either we or you may terminate this Agreement by providing written notice to the other, in which case we shall refund to you the remaining unused whole months of the Licence Fee or Renewal Licence Fee paid by you for the applicable Licence Period. Insofar as the applicable law permits, we shall have no other liability to you except as otherwise expressly provided in this section 8; or
 - (c) terminate this licence immediately by written notice to you and refund any remaining unused whole months of the Licence Fee or Renewal Licence Fee paid by you for the applicable Licence Period,
- provided that if we modify, repair or replace the Software, the modification, repair or replacement must comply with the warranties contained in this section 8 and you shall have the same rights in respect thereof as you would have had under that section had the references to the date of this Agreement been references to the date on which such modification or replacement was made.

- 8.4 Without prejudice to any legal warranties and/or liabilities that are binding under applicable law, this section 8 constitutes your exclusive remedy and our only liability in respect of Claims and, for the avoidance of doubt, is subject to sections 9.3 and 9.4.
- 8.5 Any indemnities we provide, and any obligation on us to modify, repair or replace the Software, shall not apply if the claim results, in whole or in part, from your conduct or the conduct of someone acting on your behalf or the conduct of an Outsource Customer, an OEM Customer, an Outsource Provider or an OEM Provider or someone acting on their behalf. In particular, but without limitation, we shall have no obligation or liability to you or to your Outsource Customer, OEM Customer, Outsource Provider or OEM Provider, if you or they have altered, modified or amended the Software in any way or used it outside the terms of this Agreement or in combination with any other software not provided by us, or it has not been loaded onto equipment specified by us or suitably configured equipment.
- 8.6 You shall indemnify us in respect of any damages, loss or costs of any nature that we suffer as a result of any claim brought against us by any third party in respect of or related to our processing of Customer Data in accordance with the terms of this Agreement.

9. Limitation of Liability; Exclusion of Certain Damages

- 9.1 You acknowledge that the Software has not been developed to meet any of your individual requirements, and that it is your responsibility to ensure that the features and operational capability of the Software meet your requirements before you purchase or use the Software.
- 9.2 The Software is not fault-tolerant and is not designed, manufactured or intended for use for hazardous environments or high risk activities requiring a fail-safe performance. You agree not to use the Software in connection with activities in which the failure of the Software could lead to death, personal injury, or severe physical or environmental damage. We and our licensors specifically disclaim any express or implied warranty of fitness for high risk activities.
- 9.3 IN THE EVENT THAT YOU SEEK TO CLAIM DAMAGES FROM US FOR ANY REASON, TO THE EXTENT PERMITTED BY THE APPLICABLE LAW YOU CAN RECOVER FROM US ONLY DAMAGES FOR DIRECT LOSS (SUBJECT TO SECTION 9.4) AND ONLY UP TO THE LESSER OF (1) THE AMOUNT YOU HAVE PAID FOR THE SOFTWARE DURING THE CURRENT LICENCE PERIOD OR; (2) THE AMOUNT OF FORESEEABLE DAMAGES.
- 9.4 TO THE EXTENT PERMITTED UNDER THE APPLICABLE LAW, WE SHALL NOT UNDER ANY CIRCUMSTANCES WHATSOEVER BE LIABLE TO YOU FOR ANY OTHER DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ARISING OUT OF THE USE OR MISUSE OF THE SOFTWARE. SUCH OTHER DAMAGES (WHETHER DIRECT (EXCEEDING THE AMOUNT SET OUT IN SECTION 9.3) OR INDIRECT) MAY INCLUDE BUT ARE NOT LIMITED TO:
- (a) LOSS OF PROFITS, SALES, BUSINESS, OR REVENUES;
 - (b) BUSINESS INTERRUPTION;
 - (c) LOSS OF ANTICIPATED SAVINGS;
 - (d) LOSS OR CORRUPTION OF DATA OR INFORMATION;
 - (e) LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION; OR
 - (f) ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PURE ECONOMIC LOSS, DAMAGE, COSTS, CHARGES OR EXPENSES.
- WHETHER OR NOT REASONABLY FORESEEABLE, AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY THAT YOU MIGHT INCUR THAT LOSS OR TYPE OF LOSS, OR IF REPAIR, REPLACEMENT OR A REFUND FOR THE SOFTWARE DOES NOT FULLY COMPENSATE YOU FOR ANY LOSSES.
- 9.5 Unless such limitation or exclusion is permitted by the applicable law, nothing in this Agreement shall limit or exclude either party's liability for:
- (a) wilful or grossly negligent conduct;
 - (b) breach of any primary obligations set out in this Agreement;
 - (c) death, bodily harm or personal injury resulting from either party's negligence;
 - (d) fraud or fraudulent misrepresentation; or
 - (e) any other liability that cannot be excluded or limited by applicable mandatory law.

- 9.6 This Agreement sets out the full extent of our obligations and liabilities in respect of this Agreement. Except as expressly stated in this Agreement, there are no conditions, warranties, representations or other terms, express or implied, statutory or otherwise, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software which might otherwise be implied in, or incorporated in, this Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

10. Termination

- 10.1 Either party may terminate this Agreement immediately upon written notice to the other party if the other party:
- (a) commits a material or persistent breach of this Agreement which they fail to remedy (if remediable) within 30 days after the service of written notice requiring them to do so;
 - (b) commits a material or persistent breach of this Agreement which is irremediable;
 - (c) cease, or threaten to cease, to trade, or an order is made or a resolution is passed for the winding up of them, or an order is made for the appointment of an administrator to manage their affairs or documents are filed with a court of competent jurisdiction for the appointment of an administrator, or notice of intention to appoint an administrator is given, or a receiver is appointed of any of their assets or undertakings, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of them, or if another person takes possession of or sells such of their assets, or they make any arrangement or composition with their creditors, or make an application to a court of competent jurisdiction for the protection of their creditors in any way, or they become bankrupt, or if they take or suffer any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt, or if they file for bankruptcy or are declared bankrupt. If either party is legally required to write to the other party's administrator or equivalent insolvency practitioner to enquire whether they wish the Agreement to continue, this Agreement shall only terminate if they do not wish to continue the Agreement.

Unless termination results from an uncured breach by us in which case you will be entitled to a refund of any unused prorated licence fee, in neither of the above cases will you be entitled to a refund of any Licence Fees or Renewal Licence Fees or Additional Licence Fees upon termination.

- 10.2 If you are an Outsource Customer or an OEM Customer this Agreement will terminate immediately upon the expiry or termination, for any reason, of our agreement with your Outsource Provider or your OEM Provider.
- 10.3 If you are an Outsource Provider or OEM Provider and we for any reason terminate our licence agreement with one of your Outsource Customers or OEM Customers (respectively), your rights to make Outsource Provider Use of the Software in respect of that Outsource Customer, or to provide a licence to that OEM Customer, will terminate upon our notification to you. You shall not be entitled to a refund of any Licence Fees, Renewal Licence Fees or Additional Licence Fees upon such termination.
- 10.4 Upon termination for any reason:
- (a) all rights granted to you under this Agreement shall cease;
 - (b) you must immediately cease all activities authorised by this Agreement; and
 - (c) you must immediately and permanently delete the Software from any and all computer systems storage systems or other systems controlled by or in possession or custody of you, and immediately destroy all copies of the Software then in possession, custody or control of you and, in the case of destruction, certify to us that this has been done.

11. Events Outside Our Control

- 11.1 We will use our reasonable endeavours to meet our obligations under this Agreement despite any Events Outside Our Control. However, we will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Agreement that is caused by an Event Outside Our Control.
- 11.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this Agreement, our obligations under this Agreement will be suspended and the time for performance of our obligations will be extended until the Event Outside Our Control ceases, but in any event no later than the expiry of the Licence Period in which the Event Outside Our Control commences.

12. Other Important Terms

- 12.1 We may transfer our rights and obligations under this Agreement to another organisation, but this will not affect your rights or our obligations under this Agreement.
- 12.2 You may not transfer or declare a trust over this Agreement or your rights or your obligations under this Agreement to another person or company or organisation without our prior written consent, which we may withhold in our sole discretion, and for which we may charge a fee.
- 12.3 We may modify the terms of this Agreement, at our sole discretion, providing that these modifications will not change the duration of this Agreement nor the principal characteristics of what is provided to you. We will notify you before we make any changes to these terms, in one of the following ways:
- (a) If you download or install a new version of the Software, the terms included with the Software will replace these terms.
 - (b) The license terms included within the Software are available on our website at <https://www.worldprogramming.com/try-or-buy/license-agreement>.
 - (c) We may email you.

Your continued installation and use of the Software after we provide notice of any amended terms constitutes your acceptance of the amended terms. In the event that you do not accept the changes to these terms, you must immediately cease to use the Software provided to you under this Agreement, notify us accordingly, and this Agreement shall terminate immediately. You shall be entitled to a refund of any unused portion of the Fees paid or payable by you in respect of the Licence Period during which the termination occurs.

- 12.4 This Agreement constitutes the entire agreement between us and you and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us and you, whether written or oral, relating to its subject matter. You agree that you have not relied upon and have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. You agree that you shall have no claim for innocent, negligent misrepresentation or negligent misstatement based on any statement made to you prior to entering into this Agreement or included expressly or impliedly in this Agreement.
- 12.5 If we fail to insist that you perform any of your obligations under this Agreement, or if we do not enforce our rights against you, or if we delay in doing so, this will not constitute a waiver of our rights against you and will not mean that you do not have to comply with those obligations. A waiver of any default by you will only be effective if it is in writing executed by one of our directors and will not constitute a waiver of any subsequent default by you.
- 12.6 Each provision of this Agreement operates separately. If any court or competent authority decides that any one of the provisions is unlawful, invalid or unenforceable, but would be lawful, valid or enforceable if some part of it were deleted or modified, the provision in question shall apply with such deletion or modification as may be necessary to make it lawful, valid or enforceable, and the remaining conditions will remain in full force and effect.
- 12.7 We may refer to your name and/or logo in publicity or advertising material but will not make any other reference to you, your projects or this agreement without your prior consent.
- 12.8 If there are any conflicts between the translated versions of this Agreement the English text shall be considered authoritative.
- 12.9 A person who is not a party to this Agreement shall not have any rights, statutory or otherwise, to enforce any term of this Agreement.
- 12.10 If you provide us with any feedback on the Software or our products or services, you grant us and our Affiliates and licensors the right to use such feedback to develop services and products and to create and own derivative works based on such feedback. Without limiting the foregoing, we, our Affiliates or our licensors may use information received from you to test, develop, improve and enhance our products and services.
- 12.11 U.S. GOVERNMENT END USERS. The Software was developed entirely at private expense. It is licensed only with "restricted rights" and as "commercial items" consisting of "commercial software" and "commercial software documentation" with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.
- 12.12 Any notice given by either of us under or in connection with this Agreement must be in writing (including email) and shall be: (a) delivered by hand, by registered mail or by pre-paid first-class post or other next working day delivery service to the other party's registered office (if a Business User) or to the usual or last known residential address (if a Person); or sent

by email to the email address notified by the other party from time to time. Any notice shall be deemed to have been received: (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (b) if sent by registered mail, pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; (c) if sent by email, at 9.00 am on the next Business Day after transmission. This section does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration.

12.13 Each of us agree that legal proceedings and associated documents shall be validly served on the other party if they are delivered by hand to the place of our business of the other party's company (if it is a Business User) or to the usual or last known residence if it is a Person. Both parties agree that any arbitral decision shall be final and binding and may be enforced against them in any jurisdiction in which they have any assets from time to time.

12.14 The 1980 UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13. Law and Jurisdiction

13.1 This agreement, its subject matter and its formation (and any dispute or claim including non-contractual disputes or claims) are governed by English law and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle all arguments, claims, disputes and differences of opinion arising out of or in connection with this Agreement including without limitation the use or misuse of the Software (whether subject to a subsisting license or not) together with any matters relating to the formation of this Agreement.

13.2 This Agreement shall be deemed to have been made and performed in England irrespective of your domicile or your principal place of business or where the Software is accessed or used.

13.3 All License Fees due to us under this Agreement shall only be discharged by our collection of the Licence Fees in England. The location of all debts owed under this Agreement shall be deemed to be in England. The courts of England and Wales shall have exclusive jurisdiction to determine any disputes arising in relation to or in connection with those debts.

13.4 Nothing in this section 13 shall limit or exclude our right to enforce our rights in relation to our intellectual property that subsists in any territory where the Software is used (whether such use is authorised or not).

13.5 All operation of conflict of laws is excluded.

For all Consumers and Business Users whose invoicing address is in the US:

Clauses 2.5 and 2.6 shall not apply.

Clause 2.7 shall be read as follows:

"We shall provide you with a Licence Key upon your payment of the Licence Fees. The Licence Key is confidential and solely for your use; it may not be shared or transferred. If we provide a Licence Key to you prior to your payment of the Licence Fees or any Renewal Licence Fees or Additional Licence Fees (the Fees), this shall not constitute a waiver of your obligation to pay. Any use that you make of the Software prior to payment of any Fees will be upon the basis that you comply with the obligations of a Licensee in accordance with these terms but that we shall be entitled to terminate any use with immediate effect upon giving notice to you. Upon any such termination, you shall make no further use of the Software and shall immediately and permanently delete any copies you have made of the Software and any Licence Keys in respect of the use for which you have failed to pay the Fees."

Clause 13 shall be read as follows:

"This Agreement, its subject matter and its formation (and any noncontractual disputes or claims) are governed by the laws of New York and all disputes, arguments and/or differences of opinion between us arising out of or in connection with this Agreement shall be submitted to mandatory, final and binding arbitration before a single arbitrator in New York in accordance with the Commercial Arbitration rules of the American Arbitration Association. The language of the arbitration shall be English."

Technical Support Services Schedule

If you are entitled to Standard Technical Support Services we provide technical support for defects you report in the Software.

The response times shown below indicate the target time within which we aim to respond to you after you report an issue, although we do not guarantee either response times or resolution times. It is expected that you will cooperate with us in order to resolve issues in a timely manner.

Severity 1: Site Down

- Production system is down
- Standard Response: 1 business day
- Premium Response: 2 hours 24x7

Severity 2: Critical

- Disruption to business process
- Standard Response: 1 business day
- Premium Response: 8 hours 24x7

Severity 3: Normal (Default)

- Ability to use Software is affected
- Standard Response: 2 business days
- Premium Response: 1 business day

Severity 4: Low

- Feature requests and minor issues
- Standard Response: 5 business days
- Premium Response: 2 business days

Business hours are between 0900 and 1700 UK time on UK working days excluding public holidays.

Standard Technical Support Services are available via email, website and online support systems.

Premium Technical Support Services include electronic access as for Standard Technical Support Services above, plus the option to use telephone for issues classified as **Severity 1**. A dedicated telephone number is therefore available to you if you have purchased Premium Technical Support Services. All requests for technical support must first be raised electronically, including full details of the issue, before using the telephone.

When using the telephone for technical service you shall remain available to communicate with the same level of response time associated with the issue being handled until it is mutually agreed that the response time for the individual issue can be changed.