

**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 Invoice (defined below), (together, the **Agreement**) constitute a legal agreement between you (**Customer**) and World Programming Limited of Osprey House, Budds Lane, Romsey, Hampshire SO51 0HA, United Kingdom (**Supplier**), (together, the Parties) for the Software (defined below).

### Description of Licensed Software

The Software is data analytics software for business analysts and data scientists for performing data mining and predictive modelling and developing and deploying data analytics applications. The Software has a built-in SAS language compiler that can be used to develop and run SAS language programs and combine programs written in the SAS, R, SQL and Python programming languages.

### IMPORTANT NOTICE TO ALL USERS

THE SOFTWARE IS LICENSED NOT SOLD. SUPPLIER DOES NOT SELL THE SOFTWARE TO CUSTOMER. CUSTOMER SHALL NOT ACQUIRE ANY INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE UNDER THIS AGREEMENT.

BY INSTALLING OR USING THE SOFTWARE CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT.

IF CUSTOMER IS A BUSINESS, THIS AGREEMENT WILL BIND CUSTOMER, CUSTOMER'S AFFILIATES AND CUSTOMER'S AND CUSTOMER'S AFFILIATES' RESPECTIVE EMPLOYEES, AGENTS, MEMBERS, CONTRACTORS AND CONSULTANTS ACTING ON CUSTOMER'S OR CUSTOMER'S AFFILIATES' BEHALF. CUSTOMER REPRESENTS THAT THE PERSON ACCEPTING THESE TERMS IS AUTHORISED TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND CUSTOMER'S AFFILIATES.

IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CUSTOMER MUST NOT USE THE SOFTWARE AND MUST DELETE ANY AND ALL INSTALLATIONS AND COPIES OF THE SOFTWARE UNDER ITS CONTROL.

IF CUSTOMER HAS ENTERED INTO A MASTER LICENCE AGREEMENT WITH SUPPLIER IN RESPECT OF USE OF THE SOFTWARE BY CUSTOMER THEN THE TERMS OF THAT MASTER LICENCE SHALL GOVERN USE OF THE SOFTWARE BY CUSTOMER AND CUSTOMER'S AFFILIATES INSTEAD OF THE TERMS OF THIS AGREEMENT.

IF CUSTOMER HAS ENTERED INTO AN AGREEMENT WITH SOMEONE OTHER THAN SUPPLIER FOR CUSTOMER'S USE OF THE SOFTWARE (A RESELLER, OEM PROVIDER OR OUTSOURCE PROVIDER OF THE SOFTWARE), THE TERMS OF THIS AGREEMENT SHALL BE DEEMED TO APPLY IN THEIR ENTIRETY BETWEEN CUSTOMER AND SUPPLIER 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 SUPPLIER.

SUPPLIER OFFERS A FREE ONE-MONTH EVALUATION OF THE SOFTWARE VIA SUPPLIER'S WEBSITE AT [WORLDPROGRAMMING.COM](http://WORLDPROGRAMMING.COM) SO THAT CUSTOMER HAS AN OPPORTUNITY TO EVALUATE THE SOFTWARE, INCLUDING TO CHECK THE SOFTWARE'S SUITABILITY FOR CUSTOMER'S NEEDS, PRIOR TO ENTERING INTO THIS AGREEMENT.

ATTENTION IS DRAWN TO THE LIMITATIONS ON LIABILITY IN THIS AGREEMENT. SECTIONS 10.3, 10.5, 12.2, AND 12.3 REPRESENT ESSENTIAL OBLIGATIONS, WITHOUT WHICH SUPPLIER SHALL NOT ENTER INTO THIS AGREEMENT.

## 1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this section shall apply to this Agreement.

**Affiliate** means a legal entity that Controls, is Controlled by or is under common Control with a party, where **Control** means the possession, directly or indirectly, of the power to direct, through the ownership of more than fifty percent (50%) of its voting or equity securities, contract, voting trust or otherwise; the term **Controlled** or **Controlling** shall be interpreted accordingly.

**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.

**Cloud** means a public or private elastic compute, storage and networking infrastructure.

**Customer Data** means data owned, held, processed or controlled by Customer.

**Consultancy Provider Use** means use of the Software for Customer's 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 Customer's 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 below) can be a Consumer.

**Data Protection Legislation** means (1) the General Data Protection Regulation ((EU) 2016/679) (the **GDPR**) and any national implementing laws, regulations and/or 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 and (2) any equivalent laws and/or regulations that apply to the Customer from time to time.

**Documentation** means all websites, manuals, documents, help systems, data, templates, examples and other information provided to Customer in any form relating to the Software.

**Early Access Software** means Software that is released prior to Generally Available Software and has a reduced service lifetime as described in Supplier's software service lifetime policy as updated from time to time, available on Supplier's website.

**Event Outside Party's Control** means any act or event beyond a Party's reasonable control, including failure of or interruption to public or private telecommunications networks.

**Full Licence Key** means a Licence Key that enables the Software to operate for the full duration of the relevant Licence Period.

**Generally Available Software** means Software that is made available to all Licensees and is supported for the full service lifetime as described in Supplier's software service lifetime policy as updated from time to time available on Supplier's website.

**Invoice** means a document identified by an invoice number requesting payment of Licence Fees and setting out scope of Licences sent by Supplier to Customer in accordance with this Agreement.

**Licence** means an entitlement to use the Software as specified by a line item in an Invoice that identifies Software component, Licence Edition, Platform Type, Licence Period and any other scope specifications for that entitlement.

**Licence Edition** means licence edition as specified in a Licence.

**Licence Fees** means the fees specified for a Licence.

**Licence Key** means a computer file provided to Customer by Supplier (either directly or through an authorised distributor) that enables operation of the Software.

**Licence Period** means the duration of a Licence specified in an Invoice. All Licence Periods shall end on the last day of the calendar month specified in the Invoice.

**Operating System** means the computer operating system on which Customer may install the Software as specified in the relevant Licence.

**Person** means a human being.

**Personal Data** means data subject to protection under Data Protection Legislation.

**Platform Type(s)** means the platform type(s) specified in the relevant Licence.

**Purchase Order** means a document provided by Customer to Supplier that places an order in accordance with this Agreement.

**Quotation** means a quotation document provided by Supplier to Customer that offers to Customer one or more Licences.

**Quotation Request** means a document provided by Customer to Supplier that requests a Quotation.

**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 Request** means a document provided by Customer to Supplier that requests the renewal of a Licence.

**Reseller** means an agent authorised by Supplier to distribute licences 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 any software components licensed to Customer by Supplier, together with any Updates, Upgrades, Technical Support and Documentation (all as defined in this Agreement) for that software that are provided to Customer.

**Technical Preview Software** means preview, alpha, beta or other pre-release versions of the Software for which Supplier does not provide support as described in Supplier's software service lifetime policy as updated from time to time available on Supplier's website.

**Technical Support** means the technical response service as set out in the Technical Support Schedule.

**Temporary Licence Key** means a Licence Key that enables the Software to operate for a portion of a Licence Period prior to Supplier's receipt of Licence Fees in respect of the relevant Licence.

**Update** means a new version of the Software that provides minor fixes and/or additional features.

**Upgrade** means a new version of the Software that provides significant fixes and/or additional features.

**Virtual Desktop Infrastructure or VDI** means use of the Software within a configuration of computers using server computers to provide independent virtualised desktop login sessions (each constituting a **Desktop**) to Persons working for Customer or on Customer's 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.

- 1.2 Section and schedule headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context requires otherwise:
  - (a) words in the singular shall include the plural and vice versa;
  - (b) 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 the words, description, definition, phrase or term preceding those terms.
- 1.4 References to "this section" are to top-level sections of this Agreement (e.g. 1, 2, 3) including all sub-sections of that section. References to "this sub-section" are to second-level sections of this Agreement (e.g. 1.1, 1.2, 1.3) including all sub-sections of that sub-section. References to schedules are to schedules of this Agreement.
- 1.5 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 1.6 Where an Affiliate of Customer installs and/or uses the Software, any reference to "Customer" shall be interpreted to mean "Customer and Customer's Affiliate(s)" as and where appropriate. Customer shall procure that each of its Affiliates complies with this Agreement.

## 2. Scope

This Agreement sets out the terms of Customer's use of and entitlement to the Software and Technical Support.

## 3. Purchasing and Payment

- 3.1 Supplier may issue a Quotation upon receipt of a Quotation Request or Renewal Request from Customer. Supplier will endeavour to ensure that the Quotation accurately reflects the Quotation Request or Renewal Request. It is Customer's responsibility to validate suitability of any Quotation for Customer's needs.

- 3.2 If Customer wishes to purchase the Licence(s) set out in a Quotation, then either:
- (a) Customer shall pay immediately via electronic bank transfer or credit or debit card and Supplier shall issue to Customer an invoice and a Full Licence Key;
- OR
- (b) Customer shall issue a Purchase Order to Supplier to place an order for the Licence(s) set out in the Quotation. Within a reasonable time of receiving a Purchase Order Supplier shall issue an Invoice together with Temporary License Key(s) for thirty (30) days. Supplier's provision of a Temporary Licence Key to Customer shall not constitute a waiver of Customer's obligation to pay. Any use that Customer or a Customer's Affiliates make of the Software prior to Supplier's receipt of the applicable Licence Fees will be upon the basis that Customer complies with this Agreement. If Licence Fees are not received prior to expiration of Temporary Licence Key, then the relevant Licence is deemed to be terminated unless otherwise agreed in writing by the Parties. Supplier shall provide Customer with a Full Licence Key upon Supplier's receipt of Licence Fees in respect of the relevant Licence(s).
- 3.3 Customer acknowledges that the Software is activated by a Full Licence Key that shall disable the Software at the end of the Licence Period of the relevant Licence. Each Licence Key is confidential and solely for Customer's and/or Customer's Affiliates' use: it may not be shared or transferred other than between Customer and Customer's Affiliates. Customer must keep securely any and all Licence Keys.
- 3.4 Customer shall pay Invoices electronically by the due date shown on the invoice or to the bank account specified on the Invoice. Payment terms are thirty (30) days unless agreed otherwise between the Parties.
- 3.5 All Invoices shall be paid by Customer to Supplier free and clear of all deductions. If any deduction or withholding is made by Customer or is required by law Customer shall pay to Supplier the full Invoice amount net of any deduction or withholding.
- 3.6 Without prejudice to any other right or remedy that Supplier may have, if Customer fails to pay Supplier any sum due under this Agreement on the due date, Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount and interest.

#### 4. Grant of Licence

- 4.1 Subject to and conditional upon Supplier's receipt of the License Fees and in consideration of Customer agreeing to comply with this Agreement Supplier grants to Customer a non-exclusive, non-transferable, revocable, limited, right to use the Software, and to allow Customer's Affiliates to use the Software, in accordance with this Agreement during the Licence Period and shall deliver the Software to the Customer for such use.
- 4.2 If Customer is a Consumer, use of the Software must be for Customer's own personal purposes. If Customer is a Business User then all use of the Software must be for Customer's and/or Customer's Affiliates' normal internal business purposes.
- 4.3 Customer shall procure that each Customer Affiliate that uses the Software shall do so in accordance with this Agreement. In the event that any Customer Affiliate, or person acting or purporting to act on behalf of a Customer Affiliate, uses the Software otherwise than in accordance with this Agreement, Customer shall be liable to Supplier for any loss or damage Supplier suffers as a result of such use as if the use were Customer's own.
- 4.4 Customer shall only be entitled to use the Software for Customer's normal business purposes in accordance with: (1) the usage rights ascribed to any Licences designated in the Invoice; and (2) any terms and restrictions specified in the Invoice and this Agreement.
- 4.5 Customer shall be responsible for obtaining any necessary licences and/or permissions to import the Software into country of use by Customer. Supplier shall obtain all necessary licences and/or permissions to export the Software from Supplier's country of residence (UK) to Customer's country of residence.
- 4.6 Customer shall permit only its authorised employees, agents, members, contractors and consultants to use the Software and shall procure that only Customer's Affiliates' employees, agents, members, contractors and consultants use the Software, in each case solely in accordance with this Agreement.
- 4.7 Supplier may offer Technical Preview Software to Customer. Customer may use Technical Preview Software in place of the Software for the relevant Licence in accordance with all this Agreement. Customer may install both Generally

Available Software and Technical Preview Software at the same time. Customer acknowledges that: (a) Technical Preview Software is experimental, may be substantially different from the Generally Available Software, may be incompatible with other versions of the Software and may not behave as expected; (b) Technical Preview Software may employ lesser or different privacy and security measures than those present in the Software; (c) Technical Support, Upgrades, Updates and Documentation in respect of Technical Preview Software are provided entirely at Supplier's discretion.

- 4.8 Notwithstanding anything to the contrary in this Agreement, Technical Preview Software is provided "as is" and no warranty, implied or express, applies to Technical Preview Software. Supplier is not responsible for any damage caused by or to Customer or a Customer Affiliate by Technical Preview Software.
- 4.9 Supplier may offer Customer Early Access Software. Early Access Software offers access to new features of the Software before those features are released in Generally Available Software. Access to Technical Support in relation to Early Access Software is solely at Supplier's discretion and subject to prior written agreement between the Parties. Use of Early Access Software by Customer must be in accordance with this Agreement.

## 5. Rights and Restrictions

- 5.1 During the Licence Period, Customer may, in accordance with and subject to Customer's and Customer's Affiliates' compliance with this Agreement:
- (a) download, install and use the Software for Customer's personal use if Customer is a Consumer or Customer's normal internal business purposes if Customer is a Business User;
  - (b) make one back-up copy of the Software; and
  - (c) receive and use any Upgrade or Update as may be made available by Supplier from time to time.
- 5.2 Customer is entitled to Technical Support.
- 5.3 Except as expressly set out in this Agreement, Customer undertakes:
- (a) not to copy the Software or any part of it except where such copying is necessary for the ordinary use of the Software;
  - (b) not to rent, resell, lease, sub-license, transfer, loan or permit the use of the Software by any third party or person, or in any other way part with the Software in whole or part;
  - (c) not to translate, merge, adapt, vary, or otherwise 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;
  - (d) 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 and/or installations of the Software;
  - (e) to supervise and control use of the Software in accordance with this Agreement;
  - (f) not to circumvent, remove or disable any copyright notices or protection mechanisms included with the Software; and
  - (g) not to use the Software or any information about the Software provided by Supplier to produce, improve or modify software to produce the same or similar functionality as the Software.

## 6. Usage Rights and Licence Editions

- 6.1 The following definitions shall apply

**Application Provider Use** means use of the Software within or from a computer program developed by Customer or for Customer or that Customer has the right to use and that makes use of the Software and that has significantly different functionality to the Software (**Application**) to provide services to Customer's customers or potential customers via the Application. Under no circumstances shall anyone other than Customer have access to the Software.

**Bureau Provider Use** means use of the Software for processing third-party data provided to Customer by or on behalf of that third party, either for Customer's own business purposes or those of the third party who engages Customer to provide this service (Bureau Provider Use).

**Evaluation Use** means evaluating the Software for use in the course of Customer's trade, business, profession or craft if Customer is a Business User or for Customer's personal purposes if Customer is a Consumer.

**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 in the event that Customer's production environment is unavailable until such time as Customer's production environment is restored and for reasonable periodic testing of that disaster recovery environment.

**Production Use** means use of the Software in Customer's production environment for the purposes of processing live or historic data.

6.2 Customer shall use the Software solely in accordance with the usage rights accorded to the Licence Edition(s) specified in the relevant Licence.

### 6.3 Academic Edition

An Academic Edition Licence is exclusively available to recognised not-for-profit academic or educational institutions (**Academic Institutions**) and Persons who are accredited or matriculated students or members of academic staff at an Academic Institution (**Academic**).

If Customer is an Academic Institution Customer 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 an Invoice.

If Customer is an Academic that has acquired an Academic Edition, Customer may use the Software for research or study in connection with Customer's role at the Academic Institution. If Customer ceases to maintain a role at an Academic Institution, this Agreement shall 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 <https://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". Supplier requires Customer to place any results of research into the public domain before or at the same time as Customer provides the results to commercial sponsors or other sources of research funding.

### 6.4 Application Provider Edition

An Application Provider Edition Licence entitles Customer to use the Software for Application Provider Use, Development and Testing Use and Production Use.

### 6.5 Community Edition

A Community Edition Licence entitles Customer to use the Software solely for Development and Testing Use and Production Use, in accordance with the terms set out in this Agreement.

If Customer is a Business User then each and every Person that uses the Software must personally register on Supplier's website for use of the Software on behalf of the Business providing that Person's name, personal work email address and business address, download the Software and obtain the Software Licence Key from Supplier's website and install the Software, accept the terms of this Licence Agreement and apply the Licence Key to the Software. Customer may not, however, permit any Affiliate or any Person on behalf of an Affiliate to use the Software. Customer is not entitled to acquire or use a Community Edition Licence if Customer has acquired any other Edition Licences or makes use of the Software under a Master Licence agreement.

Customer may not use or connect to WPS Hub software or services from the Software.

The Software may collect information about Customer's use of the Software and send the information to Supplier. Supplier may use this information to provide services and improve Supplier's products and services.

The Software is provided "as is". Supplier shall not provide any Technical Support.

To the extent that the terms of this section are more restrictive than terms elsewhere in this Agreement, these terms will prevail.

**6.6 Demonstration Edition**

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

**6.7 Development Edition**

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

**6.8 Evaluation Edition**

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

**6.9 Standard Edition**

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

**6.10 Platform Types**

**(a) Workstation**

In respect of Software licensed for use on a Workstation Customer may install one copy of the Software on each Workstation up to the maximum number of Workstations permitted by the Licence (each an **Authorised Workstation**). If the Software has been licensed to Customer for use in a VDI, Customer 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 the relevant Invoice.

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 Customer for use in a VDI in which case the Software shall only be installed on a Server within the VDI and shall only be used via Desktops in that VDI.

Only one Person shall use the Software on any one Authorised Workstation at any one time or in the case of a 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 the relevant Invoice) at any one time, Customer may transfer the Software from an Authorised Workstation to another Workstation. This Workstation becomes the Authorised Workstation provided that the Software is immediately removed from the original Authorised Workstation. Customer may not do this to share a licence between workstation computers or facilitate a multi-user environment for any single installation of the Software.

Any scheduled or automated use of the Software on a Workstation may only be under the direct control of and for the direct benefit of the single Workstation user of the Software in fulfilling their business tasks.

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 single Workstation user of the Software may access the Software on the Authorised Workstation via Remote Desktop Access. Customer may not do this to share a licence between workstation computers or facilitate a multi-user environment for any single installation of the Software.

**(b) Server**

Software licensed for use on one or more Server may be installed on a Server or workstation computer used as a Server (also a **Server**) in accordance with the specifications of a Licence that may include any of:

- i) Number of installations of the Software;
- ii) Size, capacity or specification of each Server;
- iii) Aggregate size, capacity or specification of the Servers;

- iv) Maximum concurrent users of the Software;
- v) Named users of the Software.

Scheduled or automated use of the Software and batch processing is permitted on Servers for the usage purposes permitted by the relevant Licence.

(c) **Cloud**

Software licensed for use in a Cloud environment may be installed and used within a Cloud environment according to the limitations specified in a Licence that may include any of:

- i) Maximum or measured number of virtual machines and/or containers on which Software is installed or used;
- ii) Maximum or measured size/capacity/specification of each virtual machine and/or container on which Software is installed or used;
- iii) Maximum or measured aggregate size/capacity/specification of all virtual machines and/or containers on which Software is installed or used;
- iv) Maximum concurrent users of the Software;
- v) Named users of the Software;
- vi) Maximum or measured deployed programs or models;
- vii) Maximum or measured aggregate workload by count and/or system utilisation;

Scheduled or automated use of the Software and batch processing is permitted in Cloud environments for the usage purposes permitted by the relevant Licence.

## **7. Commencement and Duration**

- 7.1 This Agreement shall commence upon the date upon which the Customer clicks through, accepting these terms or the date upon which the Customer starts to use the Software, whichever is the earlier and shall expire at the end of the Licence Period, unless terminated earlier in accordance with this Agreement.
- 7.2 Each Invoice shall form a part of this Agreement and shall not form a separate contract.

## **8. Intellectual property rights**

- 8.1 Customer acknowledges that all legal and beneficial rights, title, and interest in the Software and Documentation and all intellectual property rights in or relating to the Software and Documentation anywhere in the world belong to Supplier or Supplier's own licensor(s), that rights to use the Software are licensed (not sold) to Customer, and that Customer has no rights in, or to, the Software other than the right to use it in accordance with this Agreement.
- 8.2 Customer acknowledges that it has no rights to access the Software in source code form.
- 8.3 Customer shall under no circumstances deposit or disclose the source code of the Software. If at any time and for any reason Supplier is obliged to deposit or disclose the source code of the Software with/to Customer or any state, governmental or regulatory body by reason of Customer's or Customer's Affiliate's use or licensing of the Software then Supplier shall be entitled to immediately terminate this Agreement and Customer shall be entitled to a refund of any unused portion of the Licence Fees paid or payable by Customer in respect of the License Period during which the termination occurs.
- 8.4 If Customer wishes to achieve interoperability between the Software and another software program then upon Customer's written request specifying the purpose for which the information is required, Supplier will provide information necessary to achieve such interoperability to the extent required by applicable law. As such, Customer warrants and agrees not to disassemble, reverse engineer or decompile the Software for any purpose. Customer agrees to keep such information confidential and to use it solely for the purposes of achieving such interoperability.



## 9. Data Protection, Security and Integrity

- 9.1 The Parties shall comply with all requirements of the Data Protection Legislation which are applicable to each of them. This section is in addition to, and does not relieve, remove or replace, the Parties' respective obligations under the Data Protection Legislation.
- 9.2 Neither Party shall provide to the other Party any Personal Data other than is necessary for administration of this Agreement including sales, billing, customer service and technical support. Customer shall not provide to Supplier any Customer Data. The Supplier shall not be considered a processor of Customer's Personal Data or Customer Data. If Customer sends data to Supplier in connection with Technical Support then Customer shall send only anonymised data.
- 9.3 Each Party shall ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of Personal Data to the other Party for the duration of this Agreement so that receiving Party may fairly and lawfully use, process and transfer the Personal Data for the purpose of administering this Agreement.
- 9.4 Each Party acknowledges that, in relation to any Personal Data received from the other Party (the sending Party) and processed by the receiving Party:
- (a) the sending Party is the controller and the receiving Party is the processor for the purposes of the Data Protection Legislation; and
  - (b) the receiving Party shall process that Personal Data only for the administration of and duration of this Agreement and on the sending Party's written instructions unless the receiving Party is required by applicable law to process Personal Data.
- 9.5 The sending Party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the other Party for the duration and for the purpose of this Agreement so that the receiving Party may lawfully use, process and transfer the personal data in accordance with this Agreement.
- 9.6 The receiving Party shall, in relation to any Personal Data processed in connection with this Agreement:
- (a) Process that Personal Data only on the written instructions of the sending Party unless the receiving Party is required by law to process the Personal Data;
  - (b) ensure that it has 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, 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 it;
  - (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 the sending Party's prior written approval, nor transfer any Personal Data outside of the European Economic Area (EEA) unless the following conditions are fulfilled:
    - i) the receiving Party has put in place appropriate safeguards required under Data Protection Legislation in relation to the transfer;
    - ii) the data subject has enforceable rights and effective legal remedies; and
    - iii) the receiving Party complies with the sending Party's reasonable instructions notified to the receiving Party in advance with respect to the processing of the Personal Data;
  - (e) assist the sending Party, at the sending Party's cost, in responding to any request from a data subject and in ensuring compliance with the sending Party's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the sending Party without undue delay on becoming aware of a personal data breach;
  - (g) at the sending Party's written direction, delete or return Personal Data and copies thereof to the sending Party on termination of the Agreement unless required by applicable law to store the Personal Data; and

- (h) maintain complete and accurate records and information to demonstrate the receiving Party's compliance with this section.
- 9.7 Either Party may, at any time on no fewer than thirty (30) days' notice and upon mutual agreement, revise this section by replacing it with any alternative controller to processor requirements or similar terms forming part of an applicable certification scheme that shall apply when replaced by attachment to this Agreement.

## 10. Representations and warranties

- 10.1 Each Party warrants and represents to the other Party that it has the authority to enter into this Agreement and that the person signing this Agreement is duly authorised to sign it. Each Party indemnifies, holds harmless and agrees to defend the other Party in respect of any third-party claims, suits, demands, actions, damages, fines and reasonable fees, costs and expenses, excluding attorneys' fees, arising from the indemnifying Party's breach, if any, of this warranty.
- 10.2 **Limited Warranty.** Supplier warrants that it shall take reasonable commercial efforts to ensure that the Software, in the form and when provided to Customer, is free of viruses, malware or other harmful code.
- 10.3 **Supplier excludes all implied warranties, conditions and other terms, express or implied, whether by statute, common law, custom, usage or otherwise, including 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. Supplier does not warrant the performance or results Customer may obtain by using the Software nor that the Software is error-free.**
- 10.4 **Customer agrees that it is solely responsible for the suitability of the software and any data generated or processed by the Software for Customer's or Customer's Affiliates' intended use, and Customer will defend, indemnify and hold Supplier, its officers and employees harmless from any third-party claims, demands, or suits that are based upon any lack of suitability of the Software for Customer's use or any data generated by the software in Customer's use.**
- 10.5 **Limited Remedy.** If Supplier breaches the Limited Warranty it will, at its sole election, either (i) repair or replace the Software at no charge or (ii) accept return of the Software for a refund of the full amount paid, if any. These are Customer's only remedies for breach of the Limited Warranty.
- 10.6 **The limited warranties set forth in this section is the only warranties made by Supplier, and the limited remedies set forth in this section state Customer's sole and exclusive remedies against Supplier for breach of warranty.**

## 11. Intellectual Property Indemnity

- 11.1 Notwithstanding anything to the contrary in this Agreement Supplier undertakes at its own expense to defend Customer or, at Supplier's option and in Supplier's absolute discretion, settle any claim or action brought against Customer by a third party alleging that Customer's possession or use of the Software (or any part thereof) in accordance with this Agreement infringes that third party's intellectual property rights (**Claim**) and Supplier shall be responsible for any reasonable direct losses, damages and costs (including reasonable legal fees incurred by legal advisors appointed or approved by Supplier) incurred by or awarded against Customer as a result of or in connection with any such Claim. Supplier's indemnification obligations in this section are conditional on Customer:
- (a) as soon as reasonably practicable, giving written notice of the Claim to Supplier, 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 Supplier's prior written consent;
  - (c) not incurring any legal expenses in respect of the Claim without Supplier's prior written approval;
  - (d) allowing Supplier to, in its absolute discretion, assume conduct and control of any proceedings related to the Claim and to defend, avoid or compromise the Claim in whatever way Supplier sees fit with its own choice of legal advisers. Customer may, at Customer's sole expense, appoint additional legal advisers but Supplier shall have no obligation to indemnify Customer in respect of any fees or expenses incurred by such legal advisers;
  - (e) giving Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to Customer's premises, officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within Customer's possession, custody or control so as to enable Supplier and its professional advisers to examine them and to take copies (at Supplier's expense) for the purpose of assessing and/or defending the Claim; and

- (f) taking such action Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 11.2 If any Claim is made, or in Supplier's opinion is likely to be made, against Customer, Supplier may at its sole election (in so far as is permitted under applicable law) and expense:
- (a) procure for Customer the right to continue to use the Software (or any part thereof) in accordance with this Agreement and Customer's applicable Licence; or
  - (b) modify, repair or replace the Software with functionally equivalent non-infringing software if Supplier determines in Supplier's discretion that it is feasible to do so. Insofar as applicable law permits, Supplier shall have no other liability to Customer except as otherwise expressly provided in this section;
  - (c) if Supplier modifies, repairs or replaces the Software, the modification, repair or replacement shall comply with the warranties given in this Agreement;
  - (d) if Supplier determines in Supplier's discretion not to modify, repair or replace the Software with a functionally-equivalent non-infringing version, Supplier may terminate this Agreement and/or any Licence immediately by written notice to Customer and shall refund any remaining unused whole months of the Licence Fee paid by Customer for the applicable Licence Period.
- 11.3 Without prejudice to any warranties and/or liabilities that are binding under applicable law, this section constitutes Customer's exclusive remedy and Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to section 13.4.
- 11.4 Any indemnities Supplier provides, and any obligation on Supplier to modify, repair or replace the Software, shall not apply if the Claim results, in whole or in part, from Customer's conduct or the conduct of someone acting on Customer's behalf. In particular, but without limitation, Supplier shall have no obligation or liability to Customer if Customer or someone acting on Customer's behalf has altered, modified or amended the Software in any way or used it otherwise than in accordance with this Agreement or in combination with unsuitable or poorly maintained software or hardware.

## 12. Limitation of liability

- 12.1 Customer acknowledges that the Software has not been developed to meet any of Customer's individual requirements, and that it is Customer's responsibility to ensure that the features and operational capability of the Software, including any Updates or Upgrades, meet Customer's requirements before Customer licenses or uses the Software under this Agreement. Customer acknowledges that Customer has had the opportunity to test and evaluate the Software prior to purchase.
- 12.2 The Software is not fault-tolerant and is not designed, manufactured or intended for use with hazardous environments or high-risk activities requiring a fail-safe performance. Customer agrees 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. Supplier and its licensors specifically disclaim any express or implied warranty of fitness for high-risk activities.
- 12.3 **In the event that either Party seeks to claim damages from the other Party for any reason other than intellectual property infringement, they can recover from the other Party only direct damages up to the amount Customer has paid for the relevant Licence during the current Licence Period.**
- 12.4 **Neither Party shall under any circumstances whatever be liable to the other Party 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 may include:**
- (a) **loss of profits, sales, business, or revenue;**
  - (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 Supplier has been advised of the possibility that Customer might incur that loss or type of loss, or if repair, replacement or a refund for the Software does not fully compensate Customer for any losses.**

12.5 Nothing in this Agreement shall limit or exclude either Party's liability for:

- (a) intellectual property infringement;
- (b) wilful or grossly negligent conduct;
- (c) death or personal injury resulting from the other Party's negligence;
- (d) fraud or fraudulent misrepresentation; or
- (e) any other liability that cannot be excluded or limited by applicable law.

### 13. Termination

- 13.1 In the event that Customer commits a material or persistent breach of this Agreement that Customer fails to remedy within thirty (30) days after the service of a written notice requiring Customer to do so, Supplier may, at its option and immediately upon written notice, terminate this Agreement in its entirety (and all Licences shall terminate immediately) or terminate the Licence to which Customer's breach relates. No refund of any Licence Fees shall be payable.
- 13.2 Supplier may terminate this Agreement immediately upon written notice to Customer if Customer: ceases, or threaten to cease, to trade, or an order is made or a resolution is passed for the winding up of Customer; an order is made for the appointment of an administrator to manage Customer's 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; a receiver is appointed of any of Customer's assets or undertakings; if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of Customer; if another person takes possession of or sells such of Customer's assets or Customer make any arrangement or composition with Customer's creditors; if Customer makes an application to a court of competent jurisdiction for the protection of Customer's creditors in any way; in the event that there is a change in Customer's control; or if Customer takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt. If Supplier is legally required to write to Customer'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. No refund of any Licence Fees shall be payable.
- 13.3 Either Party may terminate this Agreement for any reason or no reason at all by giving the other Party sixty (60) days' written notice and Customer may continue to use the Software for any Licences granted under this Agreement until those Licences expire at which point this Agreement shall terminate. If Customer terminates this Agreement then no refund of any Licence Fees shall be payable.
- 13.4 Upon termination or expiry of this Agreement for any reason:
- (a) All rights granted to Customer under this Agreement shall cease;
  - (b) Customer must immediately cease all activities authorised by this Agreement; and
  - (c) Upon termination of this Agreement Customer shall immediately and permanently delete or destroy all copies of the Software from any and all computer systems or storage devices controlled by Customer or in Customer's possession or custody and certify to Supplier that Customer has done so.

### 14. Events outside Parties' control

- 14.1 The Parties shall use reasonable endeavours to meet their obligations under this Agreement despite any Events Outside the Parties' Control. However, neither Party shall be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under this Agreement that is caused by an Event Outside that Party's Control.
- 14.2 If an Event Outside a Party's Control takes place that affects the performance of that Party's obligations under this Agreement the Agreement will be suspended and the time for performance of those obligations shall be extended until the Event Outside that Party's Control ceases, but in any event no later than the expiry of the Licence Period in which the Event Outside the Party's Control commences.

## 15. Other important terms

- 15.1 Supplier may transfer its rights and obligations under this Agreement to another organisation, but this shall not affect Customer's rights or Supplier's obligations under this Agreement.
- 15.2 Customer may transfer its rights or obligations, or otherwise deal with its rights, under this Agreement with Supplier's prior written consent that may not be unreasonably withheld or delayed. Upon a change of Control of Customer Supplier may terminate this Agreement without notice unless the Supplier has agreed otherwise in writing, such agreement not to be unreasonably withheld or delayed.
- 15.3 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to its subject matter. Customer agrees that it shall have no remedies in respect of any statement, misstatement, representation, misrepresentation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Customer agrees that it shall have no claim for innocent, negligent misrepresentation or negligent misstatement based on any statement made to Customer prior to entering into this Agreement or included expressly or impliedly in this Agreement.
- 15.4 This Agreement shall apply to any use Customer makes of the Software at any time. No terms in any documents or other correspondence that Customer may send to the Supplier, including any terms in any Quotation Request, Renewal Request, Purchase Order or terms of business, shall apply.
- 15.5 Failure by either Party to demand the enforcement of any obligations imposed on the other Party by this Agreement, or any delay in doing so, shall not constitute a waiver of that obligation. A waiver of any default by Supplier will only be effective if it is in writing executed by one of Supplier's directors and will not constitute a waiver of any subsequent default by Customer.
- 15.6 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.
- 15.7 Supplier may modify the terms of this Agreement, at Supplier's sole discretion, providing that these modifications will not change the duration of this Agreement nor the principal characteristics of what is provided to Customer. Supplier shall notify Customer before Supplier makes any changes to these terms, in one of the following ways:
- (a) If Customer downloads 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 Supplier's website [worldprogramming.com](http://worldprogramming.com).
  - (c) Supplier may email Customer.
- Customer's continued installation and use of the Software after Supplier provides notice of any amended terms constitutes Customer's acceptance of the amended terms. In the event that Customer does not accept the changes to these terms, Customer shall immediately cease to use the Software provided to Customer under this Agreement, notify Supplier accordingly, and this Agreement shall terminate immediately. Customer shall be entitled to a refund of any unused portion of the Fees paid or payable by Customer in respect of the Licence Period during which the termination occurs.
- 15.8 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 15.9 Supplier may, at its option, refer to and use Customer's name and/or Customer's trademark or logo in any customer list or logo sheet included in Supplier's marketing materials.
- 15.10 If Customer provides Supplier with any feedback on the Software or Supplier's products or services, Customer grants to Supplier and its 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, Supplier, its Affiliates and its licensors may use information received from Customer to test, develop, improve and enhance its products and services.
- 15.11 Any notice given by either Party under or in connection with this Agreement shall be sent by email to the other Party's commercial or legal contact previously notified to that Party. Any notice shall be deemed to have been received at the time it is sent. This section does not apply to the service of any proceedings or other documents in any legal action.

- 15.12 The Parties agree that legal proceedings and associated documents shall be validly served on the other Party if they are delivered by hand to the registered office of the other Party.
- 15.13 If Customer is invoiced for the Licence Fees anywhere other than in the United States, this Agreement, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law and the courts of England and Wales shall have exclusive jurisdiction over all disputes, arguments and/or differences of opinion between the Parties arising out of or in connection with this Agreement.
- 15.14 If Customer is invoiced for the Licence Fees in the United States, 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 the Parties 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.
- 15.15 Nothing in this Agreement shall limit or exclude Supplier's right to enforce Supplier's rights in relation to Supplier's intellectual property that subsists in any territory where the Software is used (whether or not such use is authorised).

### Technical Support Schedule

Supplier provides technical support for Software defects that Customer reports.

The response times shown below indicate the target time within which Supplier aims to respond to Customer after Customer reports an issue. Supplier does not guarantee either the response time or the resolution time. Customer shall cooperate with Supplier in order to resolve issues in a timely manner. Technical Support is provided on the basis of the Standard Response times below unless Premium Support has been purchased.

**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.

Technical Support is accessed via online systems.

Premium Technical Support is an additional purchase option and includes access to the online system plus the option to use telephone for issues classified as Severity 1. A dedicated telephone number is available to Customer if Customer has purchased Premium Technical Support. All requests for assistance must first be raised electronically, including full details of the issue, before using the telephone.

When using the telephone for Premium Technical Support Customer 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.