



SOFTWARE LICENCE (“LICENCE”) AND TERMS AND CONDITIONS FOR SUPPORT AND MAINTENANCE

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following words and expressions shall have the following definitions, and rules of interpretation:

Affiliate means any member of the Supplier’s group;

Business Day means a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;

Commencement Date has the meaning set out in clause 4.1;

Contract means the terms and conditions on which the Software and/or Services are supplied to the Customer, being the Terms, the EULA, the Quotation and the Purchase Order;

Customer means the person or legal entity who purchases the Software and/or Services from the Supplier, as detailed in the Quotation;

Delivery Date means the date specified for the delivery of the Software and/or Services in a Quotation or, if no date is specified, the date that delivery takes place or is deemed to take place in accordance with clause 11;

EULA means the End-User Software License Agreement for the Software entered into by the Customer and the Supplier or an Affiliate;

Good Industry Practice means standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstance;

Group means the Supplier and the Affiliates;

Intellectual Property Rights or IPRs means

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), know-how, trade secrets and moral rights and other similar rights or obligations whether registerable or not;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

Licence has the meaning given in clause 5.1;

Machine means the structural steel and plate fabrication equipment which the Software is to be used upon as supplied by the Supplier and as detailed in a Quotation;

Maintenance Release: a release of Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;

Maintenance Services: the provision of Maintenance Releases to the Customer in accordance with these Terms;

Mandatory Policies means the Supplier's policies in relation to health and safety, personal protective equipment, and safe working as provided to the Customer from time to time;

New Version means any version of the Software which from time to time is marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;

Price means the charges made by the Supplier for the Software and/or Services as detailed in a Quotation (or as otherwise indicated by the Supplier) in accordance with clause 6;

Purchase Order means the Customer's written acceptance of a Quotation;

Services means the Maintenance Services and/ or Support Services;

Standard Support Hours means 8.00 am to 6.00 pm, Monday to Friday, except on days which are bank holiday in England;

Software means the steel projects software to be provided by the Supplier to the Customer as set out in the Quotation;

Supplier Background IPRs means background IPRs of the Supplier;

Supplier means Ficep UK Limited ;

Support Services means the provision of support in relation to the Software as detailed in the Quotation.

Quotation means a detailed written description from the Supplier of the Software and/or Services and any applicable costs, special conditions and timescales;

Virus means any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose; and

Vulnerability means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

1.2 The headings in these Terms do not affect their interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses of these Terms.

1.3 Unless the context otherwise requires:

1.3.1 references to the Supplier and the Customer include their permitted successors and assigns;

1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted from time to time; and

1.3.3 references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.

- 1.4 Words in the singular include the plural and those in the plural include the singular.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

2. BACKGROUND

- 2.1. The Supplier is an approved seller of the Software, which is owned by its Affiliate. The Supplier, as set out in a Quotation, is willing to license the Customer to use the Software in accordance with these Terms.
- 2.2. Where Software is provided this is for the Price set out in a Quotation, and the Software is supplied directly to the Customer's server or computer as directed by the Customer.
- 2.3. If detailed in a Quotation, the Supplier shall provide Maintenance Services and / or Support Services for the Price detailed in that Quotation, in accordance with these Terms.
- 2.4. The Customer acknowledges that should the Maintenance Services not be purchased, the Software may eventually become outdated and not be fit for purpose.

3. FORMATION OF CONTRACT AND BASIS OF SUPPLY

- 3.1. The Quotation constitutes an offer by the Supplier to the Customer to purchase the Software and/or Supplies set out in that Quotation in accordance with these Terms and that Quotation. The Supplier's offer is accepted by the Customer providing a Purchase Order to the Supplier or otherwise confirming its acceptance in writing.
- 3.2. No terms within a Purchase Order other than the simple acceptance of the Quotation and these Terms shall apply to the Contract.

4. TERM

- 4.1. The Contract shall commence on the date the Purchase Order is signed or the date such other written confirmation is given to the Supplier (the "**Commencement Date**") and, unless terminated earlier in accordance with clause 17 (Termination), shall:
- 4.1.1. in respect of the Software, continue for the full period of copyright in the Software commencing on and including the Commencement Date, but the Customer acknowledges that should the Maintenance Services not be purchased by the Customer from the Supplier, the Software will eventually become outdated and may not be fit for purpose; and/or
- 4.1.2. in respect of the Services, continue for a 12 month period from the Commencement Date unless otherwise detailed in the Quotation (the "**Initial Period**"). The Services may be renewed for a further period as set out in a Quotation ("**Renewal Period**") (the Initial Period and any Renewal Period together being the "**Term**"). The Supplier will send a Quotation for the continuation of the Services for a Renewal Period one month prior to the expiry of the Initial Period or Renewal Period. If the Customer does not confirm in writing that it does not wish to enter into a Renewal Period prior to the end of the current Initial Period or Renewal Period as the case may be, the Services shall continue for the Renewal Period indicated in the Quotation.

5. LICENCE

This clause applies where Software is being purchased by the Customer as set out in a Quotation.

- 5.1. In consideration of the Price paid by the Customer to the Supplier for the Software, the Supplier grants to the Customer a non-exclusive licence for the Term to be used in accordance with the scope of use set out in clause 5.2 ("**Licence**"). One Licence is required per user.
- 5.2. The following provisions apply in relation to the Licence and the permitted scope of use of the Software:

- 5.2.1. use of the Software shall be restricted to its use in object code for the purpose of processing the Customer's data for the normal business purposes of the Customer in relation to the Machine (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer);
 - 5.2.2. "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is only permitted if this is explicitly agreed by the Supplier in writing whether in the Quotation or otherwise;
 - 5.2.3. the Customer may not use the Software other than as specified in clause 5.2.1 and clause 5.2.2 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier;
 - 5.2.4. the Customer may make backup copies of the Software for its lawful use provided that the Customer is acting in accordance with this clause 5 and the terms of the EULA and that any such copies bear the notice of the Affiliate's ownership of copyright and a notice stipulating that the Software contains information confidential to the Affiliate. The Customer shall comply with any directions of the Supplier as to the form of content of such notices . The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying Any breach of this clause will be a material breach in accordance with clause 18.1.1; and
 - 5.2.5. except as expressly agreed by the Supplier in writing whether in the Quotation or otherwise or as set out in clause 5.2.4, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer.
- 5.3. The Customer shall not:
- 5.3.1. sub-license, assign, transfer or novate the benefit or burden of the Licence in whole or in part;
 - 5.3.2. allow the Software to become the subject of any charge, lien or encumbrance; or
 - 5.3.3. deal in any other manner with any or all of its rights and obligations under these Terms,
- without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 5.4. The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under these Terms, provided it gives written notice to the Customer.
- 5.5. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

6. PRICE

- 6.1. Quotations are valid for 60 days.
- 6.2. In consideration of the Supplier providing the Software and/or the Services to the Customer, the Supplier shall pay the Price to the Supplier in accordance with clause 7 (Payment).
- 6.3. The Supplier reserves the right to increase the Price to cover any of the following circumstances:
 - 6.3.1. the cost of any additional Licences, Software or Services requested or agreed to be purchased by the Customer which were not detailed in the Quotation;

- 6.3.2. any increase in labour costs and/or material prices outside the control of the Supplier;
 - 6.3.3. any additional costs where Support Services required are not on a remote basis (such costs to be charged for on a time and materials basis);
 - 6.3.4. any additional costs where the Price or any element of it was indicated in the Quotation as being an estimate; and/or
 - 6.3.5. any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate instructions or information.
- 6.4. If orders for Software and/or Services are made without a Quotation being supplied the Price shall be verbally confirmed by the Supplier to the Customer.
- 6.5. Unless otherwise expressly agreed in writing, the Price is exclusive of value-added tax and any other taxes, duties and impositions which, if applicable, shall be paid by the Customer in addition to the Price.
- 6.6. Where applicable, the Price is exclusive of the costs of installation of the Software which shall be invoiced to the Customer in accordance with clause 7 (Payment).

7. PAYMENT

- 7.1. The Supplier will invoice the Customer as set out in the Quotation (which may include a deposit, advance payments or staged payments).
- 7.2. All Software or Services provided must be paid for in cleared funds and in full by the end of the calendar month following the date of the invoice, unless agreed otherwise in writing by a director of the Supplier. Each invoice shall quote the relevant order number.
- 7.3. All amounts due under the Contract from the Customer to the Supplier shall be paid in immediately available cleared funds, and in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier reserves the right to set off any sums due from the Customer to the Supplier against any sums due from the Supplier to the Customer.
- 7.4. All payments shall be made in United Kingdom sterling, unless the Company has stipulated for payment in another currency, and in immediately available cleared funds.
- 7.5. Time of payment is of the essence and if the Customer fails to make payment to the Supplier under the Contract by the due date set out in clause 7.2, then without limiting the Supplier's remedies under clause 17 (Termination), the Supplier may suspend the delivery of any further Services to the Customer and take steps to recover such unpaid sum and the Customer shall pay interest on the overdue sum from the date of the due date until payment of the overdue sum in accordance with clause 7.6.
- 7.6. The Supplier reserve the right to charge interest on any overdue amount which shall accrue each day following the day payment was due at 4% a year above the Bank of England's base rate from time to time, but at 4% for any period when the base rate is below 0%.
- 7.7. The Supplier reserves the right to apply monies received from the Customer to any outstanding invoice(s).

8. CUSTOMER OBLIGATIONS

- 8.1. The Customer shall:
- 8.1.1. comply with Mandatory Policies provided to the Customer from time to time;

- 8.1.2. co-operate with the Supplier in all matters relating to the Software and Services;
 - 8.1.3. provide the Supplier and its employees, agents, consultants and subcontractors with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services and install the Software;
 - 8.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and Software, and ensure that such information is complete and accurate in all material respects;
 - 8.1.5. prepare the Customer's premises for the supply of the Services and installation of the Software;
 - 8.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 8.1.7. comply with all applicable laws, including health and safety laws;
 - 8.1.8. keep any materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - 8.1.9. comply with all terms and conditions contained in the EULA; and
 - 8.1.10. comply with any additional obligations as set out in the Quotation.
- 8.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation or in accordance with clause 5.3 ("**Customer Default**") then:
- 8.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 8.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - 8.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default

9. **THE SERVICES**

- 9.1. Where detailed in the Quotation, the Supplier shall supply, and the Customer shall pay for the Services.
 - 9.2. The Services exclude work in relation to the Customer's servers or network.
- Support Services:**
- 9.3. The Support Services shall be provided during the Standard Support Hours and shall comprise:
 - 9.3.1. a telephone help desk to provide first-line technical support to the Customer and endeavour to fix issues to the

Solution within a 24 working hours . The Customer acknowledges that time is not of the essence in respect of this clause; and

9.3.2. remote diagnosis and, where possible, correction of faults using the software management software, all as more particularly detailed in the Quotation.

Maintenance Services:

- 9.4. **Maintenance Services:** The Supplier will make available to the Customer the Maintenance Releases..
- 9.5. The Supplier will ensure that each Maintenance Release shall mitigate against any known Viruses or Vulnerabilities affecting the Software since the last Maintenance Release provided.
- 9.6. The Customer shall provide details to the Supplier of any individual from whom the Supplier and its staff may take instructions in relation to the installation of the Software and the delivery of the Services.

New Versions:

- 9.7. The Supplier may offer New Versions from time to time and the Supplier will advise the Customer of the costs for migration if the Customer wishes to update to the New Version.
- 9.8. The Customer acknowledges that the Price paid for the Software and/or Services does not include migration to any New Version.
- 9.9. The Customer is under no obligation to migrate to a New Version, but if a New Version is released and the Customer elects not to migrate to it and continues to use a previous version of the Software ("Previous Version"), the Customer acknowledges that the Previous Version may become outdated and/or not fit for purpose and the Services available in relation to Previous Versions may be or become limited.

10. CANCELLATION AND RETURNS

- 10.1. In the event of cancellation of an order by the Customer before the delivery or provision of the Software and/or Services within that order, the Customer shall in accordance with clause 9 pay to the Supplier all costs reasonably incurred by the Supplier in relation to such order.

11. DELIVERY

- 11.1. Time in respect of delivering the Software and/or providing the Services is not of the essence.
- 11.2. The Supplier shall install the Software remotely or manually install the agreed number of copies of the Software (one per Licence) upon the Customer's server or computer, as detailed in the Quotation or agreed by the Supplier and at the address provided by the Customer for such installation (the "Delivery Location").
- 11.3. The time and date estimated for the Delivery Date or completion of Services is not of the essence although the Supplier will make reasonable efforts to make delivery or complete the Services within the time quoted. The Supplier shall not be held responsible or liable for any losses or damage caused to the Customer by late delivery or completion.
- 11.4. Delivery of the Software shall be completed on the completion of the installation of the Software on the Customer's equipment at the Delivery Location whether remotely or in person. Both the Supplier and the Customer will sign off on the installation and this shall be deemed acceptance of the Software.
- 11.5. If the Customer fails to take delivery of the Software either remotely, or manually when the Supplier attempts delivery to the Delivery Location in accordance with clause 11.1, or fails to give adequate delivery instructions or access to the Customer's systems within 14 days after being requested to do so by the Supplier, or fails to sign off on installation as set out in clause 11.4 once installation has taken place, the Software shall be deemed to have been delivered to the

Customer and installed on the Delivery Date. In the case of a failed delivery, installation or installation sign-off in such circumstances the Supplier may in each case, without prejudice to its other rights, charge the Customer the Price.

12. WARRANTIES

12.1. The Supplier warrants for a 12 month period where the Software is provided with a new Machine or for a 90 day period where the Software is provided on a stand alone basis, or as otherwise agreed in the Quotation and in each case commencing from the Delivery Date (**Warranty Period**), that the Software shall:

12.1.1. conform in all material respects with its description in the Quotation;

12.1.2. be compliant with all applicable laws (as amended from time to time);

12.1.3. be free from material defects in design, material and workmanship and be in accordance with Good Industry Practice; and

12.1.4. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

12.2. Subject to clause 12.3, the Supplier shall, at its option, repair, replace or re-install Software or refund the Price of the defective Software in full if:

12.2.1. the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the warranted Software does not comply with the warranty set out in clause 12.1; and

12.2.2. the Supplier is given a reasonable opportunity of examining the Software.

12.3. The Supplier shall not be liable for the Software's failure to comply with the warranties in clauses 12.1 if:

12.3.1. the Customer makes any further use of such Software after notice has been served in accordance with clause 12.2.1;

12.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the use or maintenance of the Software or (if there are none) good trade practice;

12.3.3. the Customer alters or repairs the Software without the written consent of the Supplier;

12.3.4. the defect arises as a result of wilful damage, negligence, misuse, neglect, or abnormal working conditions;

12.3.5. the Customer does not comply with clause 12.2; or

12.3.6. the Software is incorporated by the Customer or any third party into another unauthorised component, machine or piece of equipment.

12.4. The warranties do not include a migration to a New Version.

12.5. Except as provided in this clause 12, the Supplier shall have no liability to the Customer in respect of any warranted Software's failure to comply with the warranty in clause 12.1.

12.6. The provisions of this clause 12 shall apply to any repaired or replacement Software supplied by the Supplier but the Warranty Period in question shall expire upon the date the Warranty Period for the original Software would have expired.

13. VIRUS OR VULNERABILITY

The Supplier does not warrant, represent or guarantee that any Viruses or Vulnerabilities will not enter the Customer's network when providing the Software or while performing the Services but the Supplier shall take all reasonable steps to prevent such occurrence.

14. LIMITATION OF LIABILITY

14.1. References to liability include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.2. Without prejudice to Clause 14.5, the Supplier's total liability to the Customer shall not exceed the Price received from the Customer in the 12 months preceding any claim.

14.3. Subject to clause 14.5, the Supplier's liability to the Customer excludes:

- 14.3.1. any indirect losses or damages;
- 14.3.2. loss of profit;
- 14.3.3. loss of sales or business;
- 14.3.4. loss of agreements or contracts;
- 14.3.5. loss of anticipated savings;
- 14.3.6. any business interruption;
- 14.3.7. loss of business information or data;
- 14.3.8. any loss or damage suffered as a result or action brought by a third party; or
- 14.3.9. special or consequential loss

14.4. Advice and information in respect of the Customer's network or server, in whatever form it may be given, is provided in good faith by the Supplier only, and without liability, and the Customer shall have no claim against the Supplier for any loss, damage, costs or expenses arising out of the Customer or any other party relying upon such advice or information.

14.5. Nothing in the Contract shall exclude or limit the liability of the either Party for:

- 14.5.1. death or personal injury caused by negligence;
- 14.5.2. fraud or fraudulent misrepresentation; or
- 14.5.3. any matter for which liability cannot by law be excluded or limited.

14.6. This clause shall survive termination or expiry of the Contract.

15. FORCE MAJEURE

15.1. Force Majeure Event means any circumstance beyond the Supplier's reasonable control including but not limited to:

- 15.1.1. act of God, explosion, flood, tempest, earthquake or fire;
- 15.1.2. epidemic or pandemic;
- 15.1.3. war or threat of war, sabotage, insurrection, civil disturbance or requisition;

- 15.1.4. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 15.1.5. import or export regulations or embargoes;
 - 15.1.6. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a relevant third party);
 - 15.1.7. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 15.1.8. power failure or breakdown in machinery; or
 - 15.1.9. interruption of failure of utility service.
- 15.2. Provided that the Supplier has complied with clause 15.3, if the Supplier is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, the Supplier shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.3. The Supplier shall as soon as reasonably practicable after the start of the Force Majeure Event:
- 15.3.1. notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
 - 15.3.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.4. If the Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations in relation to Services for a continuous period of more than 12 weeks, the Customer may terminate the Contract in relation to those Services by giving one month's written notice to the Supplier.

16. TRAINING

- 16.1. Where agreed and as detailed in a Quotation, the Supplier shall provide training to the Customer in relation to the Software. The Customer acknowledges that it must exercise its own skill and judgement when using the information provided in relation to the Software and acknowledges that the Supplier has no liability for any damage or loss howsoever caused (including damage and loss caused by (but not limited to) any errors, loss of data, inaccuracies or omissions in any information, advice, instructions, content or scripts provided to the Customer) by its use or reliance on the training.
- 16.2. The Customer is responsible for ensuring that it and its staff follow and comply with training and that it has suitably trained and competent operatives. The Customer is responsible for ongoing training of its staff beyond any agreed to be provided by the Supplier.

17. TERMINATION

- 17.1. Without affecting any other right available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- 17.1.1. the Customer commits a material breach of any of the Contract and if such breach is remediable fails to remedy that breach within seven days after being notified in writing to do so;
 - 17.1.2. the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 17.1.3. the Customer repeatedly or persistently breaches the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Contract; or
 - 17.1.4. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business, having a monitor appointed with regards to a restructuring moratorium under Part A1 of the Insolvency Act 1986, having a restructuring plan implemented under section 901(c)(1) of the Companies Act 2006, provided that such right to terminate follows the exceptions permitting termination of the Contract as stipulated in section 233B(5) and (6) schedule 4ZZA of the Insolvency Act 1986.
- 17.2. Without affecting any other right or remedy available to it, if any of the provisions of clause 17.1 apply then the Supplier may, at its discretion and without prejudice to its other rights suspend any Services to be provided under the Contract and any other contracts with the Customer.
- 17.3. Without affecting any other right available to it, the Customer may terminate the Contract in respect of the Services without cause at any time by giving the Supplier 30 calendar days' notice to the Supplier. The Supplier's obligation to provide the Services will end on the date set out on the Customer's notice.

18. CONSEQUENCES OF TERMINATION

- 18.1. On termination of the Contract for any reason, each party shall as soon as reasonably practicable:
- 18.1.1. immediately stop using the Software;
 - 18.1.2. return, destroy or permanently delete (as directed in writing by the other party any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party;
 - 18.1.3. return all of the Supplier's equipment and materials, failing which, the Supplier may enter the Customer's relevant premises and take possession of them. Until these are returned or repossessed the Customer shall be solely responsible for their safe-keeping,

19. CONFIDENTIALITY

- 19.1. Each party shall, during the term of the Contract and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of these Terms) nor without the prior written consent of the other, disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party ("**Confidential Information**"), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of these Terms, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such Confidential Information.
- 19.2. Each party shall notify the other party if any of its staff connected with the provision or receipt of the Software and/or

Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

19.3. The provisions of this clause 19 shall remain in full force and effect notwithstanding any termination of the Contract.

20. **INTELLECTUAL PROPERTY RIGHTS**

20.1. The Customer acknowledges that all Intellectual Property Rights in the Software and any Maintenance Releases and New Versions and any documentation provided in connection with the Services belong and shall belong to the Supplier (or the relevant third-party owner licensing such Intellectual Property Rights to the Supplier) and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the Contract.

20.2. The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of the Licence infringes the UK Intellectual Property Rights of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, this clause shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of the Licence, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.

20.3. If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under clause 20.2 are conditional on the Customer:

20.3.1. as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

20.3.2. not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

20.3.3. giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

20.3.4. subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

20.4. If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

20.4.1. procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of the Licence;

20.4.2. modify the Software so that it ceases to be infringing;

20.4.3. replace the Software with non-infringing software; or

- 20.4.4. terminate the Licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof, provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 12 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the Commencement Date been references to the date on which such modification or replacement was made.
- 20.5. Notwithstanding any other provision in this agreement, clause 20.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any third-party software or through the breach of any terms and conditions of that third party by the Customer.
- 20.6. This clause 20 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of clause 20.2 Claims and, for the avoidance of doubt, is subject to clause 14.
21. **MISCELLANEOUS**
- 21.1. Dispute Resolution
- 21.1.1. If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute"), then, except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause:
- a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, a senior officer of each party shall attempt in good faith to resolve it; and
 - b) if the senior officers are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 45 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR Notice**") to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.
- 21.1.2. If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 90 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 22.
- 21.2. **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the Contract.
- 21.3. **Third party rights:** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 21.4. **Variation:** Except as set out in the Contract, no variation of these Terms or a Quotation shall be effective unless it is in

writing and signed by the parties (or their authorised representatives).

21.5. **Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21.6. **Authority:** The Customer warrants to the Supplier that it has the power and authority to enter into the Contract.

21.7. **Entire Agreement:**

21.7.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.7.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.7.3. Nothing in this clause shall limit or exclude any liability for fraud.

21.8. **Notices**

21.8.1. Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier or by email, to each party required to receive the notice or communication as set out in the Order Confirmation or as otherwise specified by the relevant party by notice in writing to each other party.

21.8.2. Any notice shall be deemed to have been duly received:

- a) if delivered personally, when left at the address and for the contact referred to in this clause;
- b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting;
- c) if sent by email, upon transmission of the email; or
- d) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

21.9. **Supplier Authority:** No employee or agent of the Supplier has any authority to give or make any representation or warranty relating to Software or Services provided or to be provided by the Supplier unless such representation or warranty is in writing and signed on behalf of the Supplier by a Director or a Manager of the Supplier.

21.10. The Contract applies to the exclusion of all other terms including, without limitation, any terms appearing on a Purchase Order or which the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealings.

22 **GOVERNING LAW AND JURISDICTION**

22.1 The Contract and any dispute or claim (including non-contractual disputes or claims) out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

22.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.