

FLOOD MODELLER END USER LICENCE AGREEMENT

This End User Licence Agreement (“EULA”) and the Quotation (as defined below) (together “**this Agreement**”) together set out the agreement between **HALCROW GROUP LIMITED**, (a Jacobs Engineering Group Inc. company), a company incorporated under the laws of England & Wales with registered No. 03415971, of Elms House, 43 Brook Green, London, W6 7EF, United Kingdom, and for any services using Flood Cloud, Parallel Works Inc., incorporated under the laws of the state of Delaware with and address at 222 Merchandise Mart Plaza, Suite 1212, Chicago IL 60654 collectively (the “**Supplier**”), and the person that placed the Order (as defined below) (the “**Customer**”), in relation to the licensing to the Customer of the use of the Supplier's software products details of which are set out in the Quotation (as defined below) (or the software product which is otherwise installed or used by the Customer) (the “**Software**”).

The installation of the Software by or on behalf of the Customer or the use of any Activation Key (as defined below) shall be deemed an acceptance of this EULA by the Customer.

During installation of the Software, the Customer may be required to indicate its acceptance of this EULA by clicking an "acceptance" or "I agree" button. Such acceptance shall be binding on the person on whose behalf the Software is being installed.

The Supplier grants a licence for the use of the Software subject to the terms of this EULA and the terms set out in the Quotation. A person shall have no right to use, download, copy, run an executable copy or otherwise exploit the Software unless such person accepts this EULA.

In the event that the terms of this EULA are inconsistent with the terms set out in the Quotation, the terms of the Quotation shall prevail.

1. INTERPRETATION

1.1 In this EULA and in the Quotation, the following words and expressions shall, unless the context otherwise requires, have the meaning given to them in this clause 1.1 below:

“**Activation Key**” means a code or digital key (which may be supplied electronically or on a physical device) which shall be supplied to the Customer by the Supplier or its Reseller and which protects the Software against unauthorised use or access and may be time limited.

“**Affiliate**” means a holding or subsidiary company of a party or a subsidiary of the holding company each having the meaning assigned to them by section 1159 of the Companies Act 2006.

“**Authorised User**” means an Employee who is authorised to access and use the Software in accordance with this Agreement.

“**Back-Up Media**” is defined in clause 4.1.4.

“**Business Day**” means a day other than Saturday or Sunday which is not a public holiday in England.

“**Commencement Date**” means the date on which the Software is installed on the Customer's equipment or (if earlier) the date on which a copy of the Software is delivered to the Customer whether such copy is delivered on Media, by downloading or by installation.

“**Confidential Information**” has the meaning given to it in clause 13.

“**Design Documents**” means technical documentation describing the structure and design of the Software code or its architecture.

“**Effective Date**” means the date specified in the Quotation as the date of the Agreement.

“**Employees**” means individuals who are engaged by the Customer or (where permitted under the Quotation) its Affiliates under an employment contract or as consultants working under the control of the Customer at the Customer's premises during the Term including the Customer's officers and directors.

“**Enterprise Licence**” means a licence allowing use of and access to the Software by a specified maximum number (or, as the case may be, unlimited number) of concurrent Authorised Users (as stipulated in the Quotation).

“**Free Version**” means a restricted version of the Software allowing use of and access to certain elements and functionalities (but not all functionalities) of the Software which is offered by the Supplier free of charge and may be available for downloading from the Supplier's website. The Free Version is subject to the terms of this EULA (except where indicated otherwise).

“**Group**” means any person and its Affiliates from time to time.

“**Intellectual Property Rights**” means all industrial and intellectual property rights including patents, petty patents, utility models, copyright, database rights, design rights, registered and unregistered designs, design patents, trade marks, trading names, internet domain names, rights in the get-up of products (including the screens and user interfaces of software products) and other signs and indications of origin, and rights in technical know-how, data and confidential information, in each case whether registered or not and including pending applications and the right to apply for any of the foregoing and other rights of the same or similar effect anywhere in the world.

“**IP Claim**” is defined in clause 9.4.

“**Licence**” is defined in clause 4.1.

“**Licence Fees**” means the fees payable by the Customer to the Supplier in consideration of the licence granted hereunder as specified in the Quotation.

“**Maintenance Agreement**” means the form of maintenance and support services agreement in relation to the Software as offered by the Supplier and as may be purchased by the Customer from time to time.

“**Major Release**” means a new version of the Software incorporating substantial modifications and which is released by the Supplier to its customers as a ‘major release’.

“**Malicious Code**” is defined in clause 10.2.2.

“**Media**” means the CD-ROM or other physical medium on which the Software is supplied to the Customer.

“**Named User Licence**” means a licence allowing use and access of the Software by specifically named Authorised Users (as stipulated in the Quotation).

“**New Releases and Updates**” means any new version, release or update of the Software which the Supplier or its Affiliate may release to its customers from time to time during the Term and which may be available to the Customer under a Maintenance Agreement.

“**Order**” means the acceptance by the Customer of a Quotation.

“**Parties**” means the Supplier and the Customer, and “**Party**” means either one of them.

“**Product Warranty**” is defined in clause 10.2.

“**Quotation**” means the quotation provided by the Supplier or its Reseller to the Customer in relation to the purchase of a licence for the Supplier's software product by reference to this EULA which was accepted by the Customer. The Quotation may include details regarding the type and number of licences purchased by the Customer, the fees payable by the Customer, the Effective Date and other commercial terms.

“**Reseller**” means a distributor or agent of the Supplier in relation to the Software.

“**Supplier's Brands**” means the brand names, trade marks and trading names “FLOOD MODELLER”, “FLOOD MODELLER PRO”, “FLOOD MODELLER FREE”, “FLOOD CLOUD”, “FLOOD MODELLER SUITE”, “FLOOD ALERT”, “FLOOD PORTAL”, “ISIS”, “CH2M”, “CH2M HILL”, “HALCROW”, “JACOBS” “PARALLEL WORKS”, and other trade marks or signs that may be adopted from time to time by the Supplier's Group (including any members of the Jacobs Engineering Group Inc.) in relation to its software products or services or which may from time to time appear on the Supplier's Group price list or featured on its website (or featured on any Jacobs Engineering Group Inc. price list or website) including any stylised representation of such words, associated logos, designs, get-up and slogans.

“**Supplier's IP**” means any Intellectual Property Rights in or relating to the Software, New Releases, the User Documentation, the Design Documents, the Source Code and the Supplier's Brands.

“**Source Code**” means the Software in human-readable form.

“**Technical Support**” means technical and support services relating to the Software (including installation of the Software, helpdesk services, troubleshooting and the provision of Updates and New Releases of the Software) which may be provided by the Supplier's Group or its Reseller or subcontractor to the Customer under the Product Warranty or where the Customer purchases such services under a Maintenance Agreement.

“**Term**” means 25 years, unless any shorter term is specified in the Quotation.

“**Territory**” means worldwide, unless any specific territory is specified in the Quotation.

“**User Documentation**” means the instruction manuals, user guides, training materials, 'Help' features and other information related to the use of the Software which may be provided or made available by the Supplier to the Customer in either printed or machine readable form, including embedded in the Software, and (where relevant) as amended or replaced by the Supplier from time to time under the Maintenance Agreement. Except where specifically agreed otherwise, the User Documentation which may be provided to the Customer under this Agreement or the Maintenance Agreement shall not include the Source Code or Design Documents.

1.2 A reference in this Agreement to:

1.2.1 “use” of software includes cloud computing, storing, loading (whether into temporary memory (i.e. RAM) or into permanent memory (i.e. hard Disk, CD-ROM or other storage device), installing, executing or displaying the software.

1.2.2 a “clause”, unless the context otherwise requires, is a reference to a clause in this EULA.

- 1.2.3 a “person” shall include bodies corporate an unincorporated associations, partnerships and individuals.
 - 1.2.4 “include” or “including” shall be construed without limitation.
 - 1.2.5 a document, agreement, statute, statutory provision, statutory instrument, European directive or other law, regulation or order is a reference to that document, agreement, statute, statutory provision or statutory instrument, European directive or other law, regulation or order as it may be amended, modified, re-enacted or replaced from time to time.
- 1.3 The headings in this Agreement do not affect its interpretation.

2. TITLE

By this Agreement the Customer acquires a limited licence to use the Software and the User Documentation (subject to the terms of this Agreement) solely for use in the Customer's business (which, unless otherwise agreed by the Supplier, excludes use of the Software in providing services to third parties). No other rights, title or interest in, to or under the Supplier's IP are granted to the Customer under this Agreement or should be implied. As between the Parties, all rights in the Supplier's IP are and shall remain the sole property of the Supplier.

3. CUSTOMER'S RESPONSIBILITIES

- 3.1 During the Term, and as a condition for the provision of the Software by the Supplier, the Customer shall:
- 3.1.1 properly implement and follow the instructions provided to it as part of the Technical Support and in the User Documentation as to the operation of the Software and as to the steps necessary to resolve faults, malfunctions or other problems;
 - 3.1.2 insofar as required under the User Documentation or as notified by the Supplier from time to time, purchase, install and run third party licensed software applications required for the proper operation of the Software;
 - 3.1.3 maintain accurate and up-to-date records of the number and location of any Activation Keys and any copy of the Software obtained from the Supplier (or which are otherwise in its or its Affiliate's possession or control) and provide the Supplier with a copy of such records on request;
 - 3.1.4 supervise and control the use of the Software by its Employees and Affiliates in accordance with the terms of this Agreement.
- 3.2 It shall be solely the Customer's responsibility to select the Software it deems appropriate to achieve the Customer's intended results, aims and goals. The Supplier disclaims all liability for any recommendations or advice that it or its Affiliates, Employees, representatives, agents, Resellers, or sub-contractors provide to the Customer or its Affiliates relating to the suitability of the Software for the Customer's Group's needs and the Customer on behalf of itself and its Affiliates hereby irrevocably waives any claim arising from or relating to or otherwise in connection with any such recommendation or advice. Nothing in the foregoing shall restrict the Supplier's liability in respect of any express warranties or indemnities given under this Agreement or any other written agreement nor does it limit any liability for fraud or fraudulent misrepresentation.
- 3.3 The Customer shall put in place at the site where the Software is installed and in relation to any Media or Back-Up Media appropriate physical, electronic and procedural security measures, in line with current

industry standards, to ensure that the Media and all copies of the Software and the Activation Key in the Customer's Group's possession or control are protected from any unauthorised access, use, loss or corruption and upon reasonable request by the Supplier, the Customer shall provide to the Supplier details of the security measures implemented and agrees to make any changes (as may be reasonably required and instructed by the Supplier) to its security measures within 7 (seven) days of the Supplier's request.

- 3.4 In using the Software, the Customer shall and shall procure that all Authorised Users comply with all laws and regulations, industry codes and generally acceptable standards in the Customer's industry or field of activity.
- 3.5 Insofar as the Software contains any third party Intellectual Property (including any open source software or third party licensed software), as may be specified in the User Documentation or otherwise notified to the Customer by the Supplier or the Reseller, insofar as any third party licence terms in relation to such Intellectual Property have been brought to the Customer's attention and are legally binding on the Customer, it shall be the Customer's responsibility to comply with such terms.

4. GRANT OF LICENCE

- 4.1 Subject to the full and prompt payment of the Licence Fees (which, in the case of the Free Version, shall be deemed to be nil) and the Customer's full and satisfactory compliance with the terms of this Agreement, the Supplier hereby grant the Customer, with effect from the Commencement Date, subject to any limitations set out in the Quotation, a limited, non-assignable, non-exclusive, revocable licence, for the Term, for the Territory (the "**Licence**"):
- 4.1.1 to access the Software via cloud computing, and/or to install and run the Software on the Customer's servers located at a site under the Customer's control, and to use the Software solely for the purposes of the Customer's business in the Territory in accordance with the User Documentation (which may include use of the Software in providing services to third parties, where the use of the Software is ancillary to the main service, but which may not include the sublicensing or renting of the Software to third parties or making available the Software to third parties for their own use, including the Customer's Affiliates);
- 4.1.2 to use the User Documentation which may be provided to the Customer by the Supplier insofar as reasonably required to install, operate and use the Software in accordance with clause 4.1.1;
- 4.1.3 to install and run New Releases and Updates (as may be received from the Supplier under the Product Warranty or under a Maintenance Agreement);
- 4.1.4 to create and keep back-up copies of the Software on hard media for back-up purposes only (the "**Back Up Media**") which shall remain in the exclusive possession and control of the Customer until the expiry or termination (whichever occurs earliest) of this Agreement upon which the Customer shall deliver the Back Up Media to the Supplier (and shall transfer to the Supplier all its rights, title and interest in it) or, at the Supplier's instructions, render it unusable;
- 4.1.5 to allow access to the functionalities of the Software for use by Authorised Users as permitted (and only as permitted) in the Quotation in accordance with clause 4.2; and
- 4.1.6 solely in respect of the Free Version (including any New Releases and Updates of the Free Version), to create, install and run any number of copies of the Free Version and to permit access to the Free Version and its use by any person.

- 4.2 Further details and restrictions on the Licence shall be specified in the Quotation including whether the Licence is granted as an Enterprise Licence or Named User Licence or otherwise and the number of Authorised Users permitted to access and use the Software.
- 4.3 The licence granted under clause 4.1 excludes any sublicensing right (notwithstanding the licence granted to the Customer to allow access to the Software for use by Authorised Users in accordance with the Quotation and to use the Software to provide services to third parties) and excludes the acts prohibited under clause 5.1 below.
- 4.4 From time to time during the Term, the Customer shall allow the Supplier or its Affiliates or representatives, upon reasonable notice (and subject to such reasonable confidentiality measures as the Customer may require), access to the Customer's site where the Software is installed or where Authorised Users access the Software or its functionality and to any computer equipment located at the Customer's Group's premises, at or on which the Software is being kept or used and any records kept pursuant to this Agreement, for the purpose of ascertaining that the Software is used by the Customer's Group and its Authorised Users strictly in accordance with this Agreement.

5. RESTRICTIONS

- 5.1 The Customer shall not, at any time during or after the expiry of the Term, without the Supplier's prior written consent, do any of the following (except as specifically authorised under clause 4 or permitted under clause 5.3 below):
 - 5.1.1 install, run or copy the Software or any part of it on any computer other than the Customer's server located at a site under the Customer's control as permitted in clause 4.1, including operating the software through any third party cloud-based service except where specifically agreed otherwise in the Quotation;
 - 5.1.2 use the Software for the benefit of any third party (except in providing services to a third party in which the use of the Software is ancillary to the main service), lend, lease or make available the benefit of the Software to any third party;
 - 5.1.3 cause or permit any use, display, assignment, transfer of possession, sublicensing, publication, distribution, sale, lease, rent, charging or other dealing with or encumbering of the Software, or other dissemination of the Software, in whole or in part, to or by any third party (and the Customer shall take all steps to prevent the Software being so used or dealt with by any third party);
 - 5.1.4 copy the Software (other than as permitted under clause 4.1), reproduce, translate, adapt, reverse engineer, decompile, disassemble (in whole or in part), vary, modify, develop, create derivative works, attempt to create or permit, or allow or assist others to create enhancements or modifications to the Software, or incorporate or merge the Software with any other computer program or device. The Customer shall have sole responsibility in relation to any loss or damage caused as a result of any unauthorised use of the Software;
 - 5.1.5 cause or permit any change to be made to the Software;
 - 5.1.6 remove or change any proprietary or copyright notices, trade marks or trading names or other indications of source or ownership (of the Supplier's Group or any third party) that are included in the Software or displayed on the Software screens;
 - 5.1.7 use or permit use of the Software or otherwise exploit Supplier's IP in any way other than as expressly authorised by this Agreement; or

- 5.1.8 tamper with, reproduce, replicate or attempt to circumvent the Activation Key or otherwise use it other than for the legitimate purposes of using the Software in accordance with clause 4.1, nor transfer possession or control of the Activation Key or make it available for use by any person other than its Employees.
- 5.2 Each restriction under this clause 5 shall be read and construed independently of the other restrictions. If any restriction is found to be void but would be valid and enforceable if some part of it were deleted, that restriction shall apply with such deletion as may be necessary to make it valid and enforceable.
- 5.3 The foregoing notwithstanding, the restrictions in this clause 5 shall not prevent the Customer, during the Term, insofar as the Territory is the United Kingdom, from doing the acts in relation to the Software as permitted under sections 50A, 50B, 50BA and 296A of the Copyright, Designs and Patents Act 1988 or, insofar as the Territory is elsewhere in the European Union, from doing such acts in relation to the Software as are permitted under European Union or national legislation in the Territory which cannot be restricted by contract, or, in other cases, from doing such acts as permitted under mandatory applicable laws in the Territory and which mandate that a licensed user of software must not be restricted from doing such acts.
- 6. SUPPLY OF ACTIVATION KEYS**
- 6.1 The Software shall be delivered to the Customer with an Activation Key. The Supplier reserves the right to withhold the Activation Key if the Customer commits any breach of the terms of this Agreement, including any delay in the payment of Licence Fees. Temporary Activation Keys may be issued to the Customer for testing or assessment purposes or pending full payment of the Licence Fees.
- 6.2 Any restrictions or limitations on the use of the Software incorporated in the Activation Key (whether or not set out in the Quotation or in this EULA) shall be deemed part of this Agreement.
- 6.3 Where the Activation Key is supplied on an electronic device (a "**Hardware Key**"), the device shall be provided to the Customer on loan for the duration of the Term. The Supplier shall retain all title, rights and interests in the Hardware Key. Risk in relation to the Hardware Key shall pass to the Customer upon delivery and the Customer shall remain responsible for the device until its return to the Supplier.
- 6.4 The Customer shall keep the Activation Key and any Hardware Key secure throughout the Term and shall not lend it, transfer it or otherwise make it available to any third party. Promptly upon the termination or expiry of this Agreement, the Customer shall return the Hardware Key at the Customer's expense to the Supplier, or (where the Activation Key is delivered electronically) shall destroy or delete it.
- 6.5 In the event the Activation Key or the Hardware Key is damaged or if data on the Hardware Key becomes corrupt, at the Customer's request, the Supplier shall supply to the Customer a new Activation Key (on loan, where it is supplied on a Hardware Key), provided that the damaged Hardware Key is returned to the Supplier and (unless damage occurs due to a malfunction during the first 3 months after supply which is not due to the Customer's mishandling of the Hardware Key) that the cost of the replacement Hardware Key is paid to the Supplier in accordance with the Supplier's price list.
- 6.6 If the Customer requests a replacement of a Hardware Key and the Customer does not or cannot (for whatsoever reason, including loss, theft or the permanent destruction of the device) return the damaged or corrupted Hardware Key, the Supplier shall be entitled to charge the Customer an amount equal to the cost of a Licence for the Software for the remaining Term in consideration of the supply of a replacement Hardware Key.
- 6.7 The Customer acknowledges and understands that the charges contemplated by clauses 6.5 and 6.6 are reasonable and necessary to ensure the protection of Supplier's IP.

7. **MAINTENANCE AND SUPPORT**

- 7.1 The Customer shall only be entitled to receive technical support in relation to the Software and to receive New Releases and Updates from the Supplier or its Reseller if it purchases such services from the Supplier or its Affiliate or Reseller under a Maintenance Agreement and subject to the full and prompt payment of the Licence Fees and any maintenance fees payable to the Supplier under the Maintenance Agreement and subject to the Customer's compliance with the terms of this Agreement and the Maintenance Agreement during the Term.
- 7.2 Notwithstanding anything to the contrary implied by the terms of the Maintenance Agreement (but subject to any terms that may be expressly agreed with the Customer) the Supplier shall not be obliged to support any versions of the Software except the then-current version and the latest version before the then-current version. ("**Supported Versions**"). New Releases and Updates and other maintenance services shall be provided (where the Customer is entitled to receive them) only in respect of Supported Versions.
- 7.3 If the Customer fails to purchase a recurring Maintenance Agreement, the Customer shall not be entitled to receive New Releases and Updates and may have to purchase a new Licence in order to have access to and the right to use the latest version of the Software.
- 7.4 The Supplier may offer from time to time Updates and New Releases of the Free Version which it may offer free of charge to any person using the Free Version.

8. **FEES AND PAYMENTS**

- 8.1 The Customer shall pay the Licence Fees in the amounts and in accordance with the terms hereunder and in accordance with such other terms of payment as set forth in the Quotation.
- 8.2 Unless specified otherwise in the Quotation, all sums payable under this Agreement shall be paid in British Pounds within 28 days of the date of invoice (or on the due date of payment if indicated in the Quotation) and payment shall be made by electronic transfer of funds to such bank account as the Supplier may from time to time notify the Customer. Any applicable charges for sending such payments shall be at the Customer's expense and any fees charged by the receiving bank shall be at the Supplier's expense.
- 8.3 Without prejudice to any other right or remedy available to the Supplier under this Agreement, if the Customer fails to pay the any amount due to the Supplier under this Agreement within the relevant time specified in this clause 8 or in the Quotation, then the Customer shall be liable to pay interest to the Supplier on the outstanding amounts at an annual rate equal to the three (3) month London Interbank Offered Rate (LIBOR) denominated in British pounds plus six per cent. (6%), calculated on a daily basis, from the date on which the payment originally fell due until the date of receipt of payment in cleared funds.
- 8.4 All amounts payable under this Agreement shall be paid in full without any withholding or deduction on account of any taxes, duties, levies or charges, unless the Customer (or its relevant Affiliate) is required by law to make such deduction or withholding. If any such withholding or deduction is required, the Customer shall make the withholding or deduction as required by law and shall, when making the payment to which the withholding or deduction relates, pay to the Supplier such additional amount as will ensure that the Supplier receives the equivalent total amount that would have otherwise been received if no such withholding or deduction had been required.
- 8.5 Neither Party shall be entitled to assert any credit, set-off or counterclaim against any payment obligations (or part thereof) under this Agreement, except undisputed amounts due from the other Party to the paying Party, if such undisputed debts are due and payable by the due date of payment of the amount due under this Agreement.

8.6 If a dispute arises in relation to all or any element of an amount payable under this Agreement, the Customer shall pay the undisputed part in accordance with this Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Except for the Licence expressly granted to the Customer under clause 4, this Agreement does not grant to the Customer and the Customer agrees and acknowledges that it shall not acquire (whether under this Agreement or as a result of the use of the Software in accordance with this Agreement) any right, title, interest or licence in or under any Supplier's IP.

9.2 In the event of any actual or suspected infringements of Supplier's IP anywhere in the world (an "**Unauthorised Use**"), the Supplier at its sole and unfettered discretion, shall decide whether to take any action or make any threats or statements in relation to such Unauthorised Use and if so what action to take. The Customer shall not take or threaten any action or legal proceedings and shall not make any threats, complaints or statements to any third party in relation to any Unauthorised Use.

9.3 The Customer shall promptly notify the Supplier (giving all relevant details) upon becoming aware of any Unauthorised Use by the Customer itself, its Group members, its Authorised Users or by any Employees or by any third party that obtained access to the Software or the Supplier's IP through any of the foregoing and, where such Unauthorised Use is under the Customer's control, shall immediately cause it to be discontinued. At the Supplier's request, the Customer shall certify to the Supplier in writing (insofar as it can ascertain using its best efforts) the date on which the Unauthorised Use commenced and the date it ceased and shall certify to the Supplier that any Unauthorised Use referred to in this clause 9.3 has ceased.

9.4 If any claim is brought or threatened by a third party against the Customer or its Group members, alleging that the Software (or any part thereof) infringes such third party's Intellectual Property Rights (an "**IP Claim**") the Customer shall immediately notify the Supplier in writing giving detailed particulars of the IP Claim. The Customer shall not make any comment or admission to any third party in respect of any IP Claim without the prior written consent of the Supplier (except, insofar as urgently necessary to maintain its legal position, to deny the claim).

9.5 The Supplier shall be entitled and, on the Supplier's request the Customer shall grant the Supplier such authority as required to allow the Supplier to assume control over the defence of any IP Claim and to settle such claim on the Customer's behalf (provided that such settlement does not impose any liability on the Customer other than restrictions on its use of the Software).

9.6 In the event that the Customer's use of the Software in accordance with this Agreement infringes a third party's Intellectual Property Rights or if any IP Claim is made or threatened, or in the Supplier's reasonable opinion is likely to be made or threatened against the Supplier's Group, its Reseller or the Customer's Group, the Supplier shall be entitled (but not obligated) at its sole option and expense to:

9.6.1 procure for the Customer the right to continue using or maintaining the Software (or any part thereof) in accordance with the terms of this Agreement; or

9.6.2 modify the Software so that it ceases to be infringing; or

9.6.3 replace the Software with non-infringing software; or

9.6.4 terminate this Agreement immediately by notice in writing to the Customer and refund the Licence Fees paid by Customer as at the date of termination in respect of any period after the effective date of termination (excluding a reasonable portion of the Licence Fees in respect of the Customer's use of the Software up to the date of termination) on return to the Supplier of all

copies of the Software held by the Customer (with the deletion or removal of any copies installed or saved on the Customer's equipment) and of all Activation Keys held by the Customer.

10. **WARRANTIES AND REPRESENTATIONS**

10.1 Each of the Parties warrants and represents to the other in the following terms:

10.1.1 Each of them has the right, power and authority and has taken all action necessary to execute, deliver and exercise its rights, and perform its obligations, under this Agreement;

10.1.2 Each Party's obligations under this Agreement are, or when the Agreement is executed will be, enforceable in accordance with its terms; and

10.1.3 Neither the execution nor the performance of this Agreement by either Party is prohibited or restricted by any provision of law and will not be in breach of any obligation by any Party to any third party.

10.2 The Supplier warrants to the Customer, for a period of thirty (30) days from the Commencement Date or such other period as may be specified in the Quotation (the "**Warranty Period**"), as set out below (the "**Product Warranty**"):

10.2.1 the Software will perform substantially in accordance with the User Documentation and free of material defects or malfunction.

10.2.2 Save for code and algorithms designed to protect the Supplier's IP or to secure the use of the Software in accordance with this Agreement, the Software as delivered to the Customer on the Commencement Date does not contain any viruses, Trojans, software locks, drop-dead devices, malicious logic or trap door, worms, time bombs, corrupted files or other computer programme routines that are intended to delete, disable, deactivate, damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another ("**Malicious Code**").

10.2.3 The copy of the Software delivered to the Customer on the Commencement Date and the media upon which it is supplied shall be free from defects in materials and workmanship.

10.3 The Supplier warrants further to the Customer that it has full title and rights to the copy of the Software supplied to the Customer and to the Media upon which the Software is supplied to the Customer.

10.4 If, during the Warranty Period, the Software fails to meet the Product Warranty in accordance with sub-clauses 10.2.1 or 10.2.2 above:

10.4.1 the Supplier shall use all reasonable efforts to provide the Customer with Technical Support and to provide software fixes and workarounds to address any technical problems as well as routine updates and releases which are delivered to its other customers that purchase maintenance and support services (but not any Major Releases which shall only be made available to the Customer under a Maintenance Agreement), insofar as necessary in order to ensure that the Software meets the Product Warranty;

10.4.2 the Supplier may (if it deems necessary) replace the copy of the Software installed by the Customer with a new copy meeting the Product Warranty; and

- 10.4.3 if the Supplier fails to substantially remedy any material non-compliance with the warranties in sub-clauses 10.2.1 and 10.2.2 in accordance with sub-clauses 10.4.1 or 10.4.2 above, the Customer shall be entitled, within no longer than sixty (60) days from the Commencement Date, by written notice in writing to the Supplier, to terminate this Agreement and to receive a refund of the Licence Fees.
- 10.5 The remedies set out in clauses 10.4.1 to 10.4.3 above shall be the sole remedies available to the Customer in relation to any breach of the warranties in sub-clauses 10.4.1 and 10.4.2.
- 10.6 Where the Media upon which the Software is supplied to the Customer fails meet the warranty in clause 10.2.3, the Customer may, within 30 (thirty) days from the date of installation of the Software on the Customer's computer, return the Media to the Supplier or its Reseller and the Supplier shall, as soon as reasonably practicable, following receipt by the Supplier or its Reseller of the non-complying copy or Media, deliver to the Customer (free of charge) a copy of the Software that is fully compliant with the warranty in clause 10.2.3. The foregoing shall be the sole remedy available to the Customer in relation to a breach of the warranty in clause 10.2.3.
- 10.7 The Customer warrants, covenants and represents to the Supplier as set out below:
- 10.7.1 The Customer shall not and shall procure that its Affiliates and their Employees and any other persons under the Customer's Group's control do not install, use, copy, adapt, modify, alter, combine, merge or otherwise use the Software or the Supplier's IP in any way, except as authorised by the Supplier on the terms hereunder and in accordance with the Quotation.
- 10.7.2 The Customer has not stopped or suspended payment of its debts, become unable to pay its debts or otherwise become insolvent in any relevant jurisdiction.
- 10.8 The warranties in clauses 10.1 and 10.3 shall continue to have effect throughout the Term. The warranty in clause 10.7 shall continue to have effect throughout the Term and shall survive the expiry or termination of this Agreement without limitation in time (until the date of expiry of all Intellectual Property in the Supplier's IP).
- 10.9 Other than the warranties, indemnities, covenants and representations expressly set out in this Agreement, the Supplier gives no warranty nor makes any representation in relation to the Software or the Supplier's IP and the Supplier hereby expressly disclaims to the fullest extent permitted by law and the Customer waives any representation or warranty relating to the Software and the grant of the Licence and otherwise in connection with the Software or the Supplier's IP that may be implied by this Agreement, by custom of trade or by law or otherwise and which is not expressly set out herein, including any implied warranties of quality, merchantability, title or entitlement, fitness for a particular purpose, or use, compliance with or performance in accordance with the User Documentation or any description, reasonable skill or care, the ability to achieve a particular result or functionality, that the operation of the Software will be uninterrupted or error free, absence of Malicious Code, or non-infringement of third party Intellectual Property Rights, and all such implied terms or warranties are excluded from this Agreement.
- 10.10 The Customer acknowledges and agrees that the Product Warranty and the remedies available under this Agreement in relation to any breach of the Product Warranty during the Warranty Period and the services offered by the Supplier under the Maintenance Agreement (where and for as long as the Customer chooses to subscribe to such services) are adequate and proportionate to provide the Customer such assurances as may be reasonable to require in relation to the functionality of the Software and its ability to perform in accordance with the User Documentation and in relation to the absence of Malicious Code.

11. **INDEMNITIES**

- 11.1 Subject to the Customer's full compliance with clauses 9.3 and 9.5, and subject to clause 11.3.3 below, the Supplier hereby indemnifies the Customer and shall keep the Customer indemnified, on demand, against any final award made against the Customer holding that the use of the Software during the Term in accordance with this Agreement infringed a third party's copyright, provided that the claim does not arise (in whole or in part) out of: (i) the combination by the Customer or its Group members of the Software (or any part thereof) with any other software, hardware, service or system (save where such combination is required by the User Documentation), (ii) the use of the Software (or any part thereof) in any manner other than in accordance with the terms of this Agreement, (iii) the use of a version of the Software which is no longer supported by the Supplier, (iv) the use of any modifications or adaptations to the Software made, required, or commissioned by the Customer, or (v) the use in connection with the Software of any software components obtained, licensed or purchased independently by the Customer or its Group members from a third party or developed independently by the Customer's Group. The foregoing shall be without prejudice to the Supplier's rights under clause 9.6.
- 11.2 The Customer hereby indemnifies the Supplier, its Affiliates, officers, directors, employees, agents and sub-contractors (the "**Indemnified Parties**"), and shall keep the Indemnified Parties indemnified on demand, against any loss, cost, damage, liability or expense (including reasonable legal costs) arising to the Indemnified Parties out of any claim, threatened claim or action, proceedings or allegation brought by a third party arising out of: (i) the use by the Customer of the Software, except where such claim is covered by the indemnity in clause 11.1, or (ii) the negligence or intentional misconduct of the Customer in relation to the use of the Software, or (iii) a breach by the Customer of any of clauses 3.4, 3.5, 5, 9.3, 9.4, 10.7.1 or 13.
- 11.3 The obligations of an indemnifying Party under clauses 11.1 and 11.2 above are conditional upon:
- 11.3.1 the other Party (the "**indemnified Party**") notifying the indemnifying Party in writing, as soon as reasonably practicable, of the claim or threat giving rise to the indemnity (the "**Relevant Claim**") of which it has notice;
- 11.3.2 the indemnified Party not making any admission as to liability or compromise or agreeing to any settlement of the Relevant Claim without the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld or delayed; and
- 11.3.3 the indemnified Party permitting the indemnifying Party (and providing it with all authority necessary) to assume, at the indemnifying Party's expense, the conduct of the Relevant Claim and the right to settle all negotiations and litigation arising from the Relevant Claim and giving the indemnifying party all assistance required in connection with those negotiations and such litigation at the indemnifying Party's reasonable request and expense.

12. **LIMITATIONS ON LIABILITY**

- 12.1 The Customer acknowledges, agrees and understands that:
- 12.1.1 in entering into this Agreement, save as expressly set out in this Agreement, it does not rely on any representations (whether written or oral) made by the Supplier, its Affiliates, Resellers or distributors, or any other person acting on its behalf, relating to the Licence or the Software and, subject only to clause 12.6, it irrevocably waives any claims in respect of any such representations;
- 12.1.2 it is the Customer's sole responsibility to ensure that its use of the Software does not cause any damage to its computer systems, fabrication equipment, or to products in production;

- 12.1.3 it is the Customer's sole responsibility to ensure that input is correctly fed into the Software and that the calculations, models or data produced by the Software are correct and proper for the Customer's purposes and that the Software is used correctly.
- 12.2 Subject to clause 12.6 and except as expressly provided in this Agreement, the Supplier shall not be liable to, and the Customer on behalf of itself and its Group members hereby irrevocably waives, any claim, threatened claim or allegation against the Supplier, its Group members, employees, officers, agents, representatives, Resellers or subcontractors, whether for breach of contract, misrepresentation, negligence or under any implied warranties or covenants, relating to or arising out of or otherwise in connection with the use of the Software by the Customer including:
- 12.2.1 any of the matters referred to in clause 12.1;
- 12.2.2 breaches of software security, interception of electronic communications, and any unauthorised access to or misuse of computer systems; or
- 12.2.3 damage caused by any Malicious Code that may affect the Customer or its Affiliates, subcontractors or service providers' computer systems as a result of the use of or access to the Software.
- 12.3 If the performance of the Supplier's obligations hereunder is prevented or delayed by any act or omission by the Customer, or its Employees, agents, sub-contractors or any person connected to the Customer, subject to clause 12.6, the Supplier shall not be liable and the Customer hereby waives any claim against the Supplier, its Group members, employees, agents, representatives, Resellers or subcontractors for any costs, charges, expenses or any loss arising from such prevention or delay.
- 12.4 Subject to clause 12.6, in no event shall a Party be liable to the other under this Agreement or in connection with its performance or breach, or in connection with any express or implied warranties or covenants, including as a result of misrepresentation or negligence: (i) for any indirect, incidental, consequential or special damages, including any loss of profits or savings or anticipated profits or savings, loss of data, loss of opportunity, loss or reputation, goodwill or business; or (ii) for damages of any kind (other than a refund of Licence Fees or under express indemnities given under this Agreement) in connection with any claim arising out of the performance or use of the Software, or its inability to perform, or as a result of the termination or expiry of this Agreement; in each case, even if the other Party has been advised of the possibility of such damages in advance.
- 12.5 Subject to clause 12.6 and save for a claim for the payment of Licence Fees or interest thereon, each Party's maximum aggregate liability for any single event (or a series of related events) giving rise to a claim in connection with this Agreement either for breach of contract, misrepresentation or negligence (excluding the indemnities under clause 11) shall be limited to the following: (i) where the Licence is granted for a one-off payment, a sum equal to the Licence Fees paid by the Customer to the Supplier or its Reseller under this Agreement, or (ii) where Licence Fees (or any Licence renewal fees) are paid on a periodical basis, a sum equal to the Licence Fees paid by the Customer to the Supplier or its Reseller under this Agreement in the 12 (twelve) month period before the occurrence of such event (or if less than 12 (twelve) months have elapsed, an amount equal to the fees payable for the first 12 (twelve) months of this Agreement).
- 12.6 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall operate to exclude or restrict a Party's liability for:
- 12.6.1 death or personal injury resulting from such Party's negligence, or
- 12.6.2 fraud or fraudulent misrepresentation, or

12.6.3 any liability that cannot be limited or excluded by law.

13. CONFIDENTIAL INFORMATION

13.1 The Customer shall, during the term of this Agreement and for an unlimited period of time thereafter, keep confidential all information (whether or not specifically marked as confidential) received from the Supplier, or which may be obtained by the Customer in connection with the performance of this Agreement or the Maintenance Agreement and which relates to the Supplier or its Group members, its business, financial, commercial and other affairs, or to the Software, the User Documentations, the Design Documents, the Source Code or otherwise to Supplier's IP ("**Confidential Information**") and shall not use any Confidential Information for its own purposes, or disclose it to any third party except as permitted in this clause 13 or with the prior written consent of the Supplier.

13.2 The Customer shall be entitled to use the Confidential Information provided to it solely for the purpose for which it was provided by the Supplier and shall be entitled to disclose it, solely for such purpose, on a need-to-know basis, to its Employees and Affiliates (in this clause 13.2, "**Recipients**"), provided that such Recipients are made aware of the confidentiality of the Confidential Information disclosed to them and that they agree to keep it confidential in accordance with the provisions hereof.

13.3 The requirements of clause 13.1 and 13.2 shall not apply:

13.3.1 to any information to the extent that it is generally available to the public (other than as a result of a breach of any obligation of confidentiality), however, information shall not be deemed to be generally available to the public by reason only that it is known to a limited number of persons, whether or not such persons are bound by duties of confidentiality;

13.3.2 to any information to the extent that it was held by the Customer (not under a duty of confidence) before the date hereof or to the extent it is independently received by the Customer (not under a duty of confidence) from a third party who is free to disclose such information without breaching any duty of confidence; or

13.3.3 to any disclosure of information required by operation of law or any binding judgment or order of a court of law, or by any requirement of any competent authority or governmental regulatory agency, subject where possible to reasonable prior consultation with the Supplier and provided that in the event that such disclosure is required, the Customer shall take reasonable steps to protect the confidentiality of the information and to limit the disclosure as much as possible.

13.4 Where the Customer is subject to a duty of confidentiality under this clause 13 it shall:-

13.4.1 procure that all Recipients observe the provisions of this clause 13 as fully as if they were parties to this Agreement; and

13.4.2 apply such standards of confidentiality in relation to the Confidential Information as it applies generally in relation to its own confidential information.

14. TERM AND TERMINATION

14.1 This Agreement shall commence on the Effective Date and shall continue in full force and effect (unless terminated earlier under this clause 14 or otherwise under this Agreement) until the expiry of the Term.

14.2 The Supplier may terminate this Agreement at any time on written notice to the Customer with immediate effect, if:

- 14.2.1 the Customer is in material or persistent breach of any of the terms of this Agreement and either the breach is incapable of remedy, or the Customer fails to remedy the breach within 30 (thirty) days after receiving written notice requiring it to remedy the breach; or
- 14.2.2 the Customer is unable to pay its debts when they become due, or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction; or
- 14.2.3 the Customer or any of its Affiliates challenges, opposes or seeks to invalidate or revoke any of the Supplier's IP or makes or threatens any claims relating to, or denies the Supplier's title or entitlement or licensed rights to the Supplier's IP, or assists another person to do any of the foregoing; or
- 14.2.4 the Customer or any of its Affiliates infringes or assists or knowingly enables another person to infringe the Supplier's IP (including by any use of the Software not in accordance with this Agreement or any misuse of the Activation Key), provided that, where such infringement is innocent, the Agreement shall not terminate if the Customer causes all infringing use of the Supplier's IP to be discontinued within seven (7) days of written notification.

15. **EFFECT OF TERMINATION**

- 15.1 Upon the expiry or termination of this Agreement:
 - 15.1.1 except as provided hereunder, this Agreement shall forthwith terminate and have no further effect, and no Party shall have any further rights, obligations or liabilities hereunder;
 - 15.1.2 the Licence granted to the Customer under clause 4 shall terminate with immediate effect and the Customer shall not do any act which, in the absence of such licence, would constitute an infringement of Supplier's IP;
 - 15.1.3 the Customer shall immediately pay to the Supplier any sums due to the Supplier under this Agreement;
 - 15.1.4 the Customer shall at its own expense return any and all Activation Keys to the Supplier forthwith or destroy or delete them (as required by the Supplier);
 - 15.1.5 the Customer shall cease any use of the Software and shall immediately, permanently and irreversibly destroy and remove from its computer systems, or return to the Supplier (as they shall instruct) all copies of the Software in its or its Group's possession or control and all copies (including electronic copies) of the User Documentation and any other user other documentation relating to the Software (including, if relevant, any copies of the Design Documents or the Source Code) in the Customer's group's possession or control, and shall irreversibly destroy or return to the Supplier (as they shall instruct) all Back-Up Media in its or its Group's possession or control and, in the case of destruction, certify to the Supplier that it has destroyed all Software, User Documentation and Back-Up Media and other materials relating to the Software and it shall not keep and shall procure that its Affiliates and Employees do not keep any copy of the Software, User Documentation or Back-up Media or other such materials or any part thereof; and

- 15.1.6 the Customer shall return to the Supplier all records of the Supplier's Confidential Information in the Customer's Group's possession or control and shall not and shall procure that its Affiliates do not retain any such copies or records of such Confidential Information (except to the extent reasonably required for compliance with legal and regulatory requirements regarding keeping records).
- 15.2 The Customer shall procure that all Authorised Users who had access to the Software or the User Documentation and all its Group members comply with the obligations under clauses 15.1.5 and 15.1.6 and shall, at the Supplier's request, certify in writing to the Supplier that such obligations have been duly complied with.
- 15.3 The termination or expiry of this Agreement shall not affect any accrued rights or liabilities of any Party.
- 15.4 Termination of this Agreement shall not affect any provision of this Agreement intended to have effect after termination or necessary for its interpretation and in particular it shall not affect the provisions of clauses 1, 2, 5, 9.1, 9.3, 9.4, 9.5, 10.7.1, 11, 12, 13, this clause 15, and the remaining provisions of this Agreement below.
- 15.5 The provisions of clauses 14 and 15 are without prejudice to any other remedies that a Party may be entitled to.
- 16. **LIMITED AUTHORITY OF RESELLER**
- 16.1 A Reseller appointed by the Supplier to distribute the Software may be authorised by the Supplier:
 - 16.1.1 to grant a Licence under this Agreement on behalf of the Supplier and to enter into this Agreement with the Customer on behalf of the Supplier;
 - 16.1.2 to accept payments of Licence Fees on behalf of the Supplier; and
 - 16.1.3 to issue Activation Codes to the Customer.
- 16.2 A Reseller is not authorised to do any of the following (except if specifically authorised in writing by the Supplier and confirmed by the Supplier to the Customer):
 - 16.2.1 to vary the terms of this Agreement;
 - 16.2.2 to offer a Licence for the use of the Software other than on the terms hereof;
 - 16.2.3 to settle any dispute between the Customer and the Supplier;
 - 16.2.4 to waive any rights on behalf of the Supplier in relation to the breach of this Agreement or the infringement of the Supplier's IP; or
 - 16.2.5 to take any legal action against any person (including the Customer) on behalf of the Supplier.
- 17. **ASSIGNMENT AND SUBCONTRACTING**
- 17.1 This Agreement and the rights and obligations hereunder are personal to the Parties. Except as provided in this clause 17, neither Party may assign or transfer any of its rights or obligations under this Agreement whether in whole or in part without the prior written consent of the other Party.

- 17.2 The Supplier may, without requiring the Customer's consent, transfer its rights and delegate its obligations under this Agreement to its Affiliate or assign its rights and obligations under this Agreement as part of a sale of all or substantially all its relevant business, provided that the person acquiring such business (in this clause, the "**Buyer**") is willing to sign an agreement with the Supplier and the Customer by which the rights and obligations of the Supplier under this Agreement shall be novated to the Buyer. Upon the request of the Supplier, the Customer shall enter into such novation agreement with the Supplier and the Buyer.
- 17.3 The Supplier shall be free to delegate its obligations under this Agreement to, and shall be entitled to exercise its rights through its Affiliates, sub-contractors, agents, Resellers or any other person without having to notify the Customer.
- 17.4 If by express agreement between the Parties, the Customer is permitted to use the Software through any subcontractor or service provider that is engaged by the Customer to perform services to the Customer, the Customer shall procure that the subcontractor or service provider complies with the provisions of this Agreement as if it were the Customer. Nothing in the foregoing shall be construed as granting the Customer the right to use the Software through a subcontractor or service provider and such right shall only be granted under an express agreement in writing signed by authorised representatives of the Parties.

18. NOTICES

- 18.1 A notice under or in connection with this Agreement (a "**Notice**"):
- 18.1.1 shall be in writing; and
 - 18.1.2 may be delivered personally or sent by first class post pre-paid recorded delivery (and air mail if overseas) or by fax to the Party due to receive the Notice to the address specified in the Quotation or to another address, person, or fax number specified by that Party by not less than 7 days' written notice to the other Party received before the Notice was despatched.
- 18.2 Unless there is evidence that it was received earlier, a Notice is deemed given:
- 18.2.1 if delivered personally, when left at the address referred to in clause 18.1.2;
 - 18.2.2 if sent by post except air mail, two Business Days after posting it;
 - 18.2.3 if sent by air mail, six Business Days after posting it; and
 - 18.2.4 if sent by fax on completion of its transmission (provided successful transmission is confirmed).

19. THE FREE VERSION

- 19.1 Except where expressly provided to the contrary, the terms of this EULA apply to the Free Version.
- 19.2 The Free Version is made available by the Supplier to Customers without an Activation Key or Hardware Key. Accordingly, the provisions of clause 6 shall not apply to the Free Version.
- 19.3 The conditions set out in clauses 3.1 and 3.3 and the restrictions on the Licence set out in clauses 4.2, 4.3, 4.4, 5.1.1 and 5.1.2 shall not apply to the Free Version.
- 19.4 The Free Version is issued without a Quotation. Accordingly, the provisions in this EULA relating to a Quotation do not apply to the Free Version.

19.5 Clauses 8 (*Fees and Payments*), 10.2, 10.4, 10.6 (*Warranties*), 11.1 (*Indemnities*) and 13 (*Confidentiality*) of this EULA shall not apply to the Free Version.

19.6 The Free Version and any New Releases and Updates to the Free Version are provided to the Customer 'as is' and the Supplier disclaims and the Customer agrees to waive any warranty or representation in relation to the Free Version.

19.7 Subject only to clause 12.6, the Supplier shall not be liable to the Customer in relation to any claim, liability or loss relating to the Free Version or its use by the Customer.

20. **THIRD PARTY SOFTWARE**

20.1 Where third party software is accessed by the Software then the use of that third party software is subject to the third party licence terms.

20.2 Access to the third party software is provided to the Customer 'as is' and the Supplier disclaims any warranty or representation in relation to the third party software.

21. **GENERAL**

21.1 Nothing in this Agreement shall create, or be deemed to create, a partnership between the Parties. Except as expressly provided herein, this Agreement shall not be construed as giving rise to the relationship of principal and agent or to any authority by a Party to represent or act on behalf the other.

21.2 The Customer shall not use the Supplier's name or the Supplier's Brands for any purpose without the prior written consent of the Supplier (except to indicate that it is using the Software under licence from the Supplier). The Supplier shall not use the Customer's name for any purpose without the prior written consent of the Customer (except to indicate that the Customer is using the Software under licence from the Supplier).

21.3 A person who is not a party to this Agreement shall have no rights to enforce the provisions of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

21.4 A waiver, express or implied, by either Party of any right under this Agreement or of any failure to perform or breach hereof by the other Party hereto shall not constitute or be deemed to be a waiver of any other right hereunder or of any other failure to perform or breach hereof by such other Party, whether of a similar or dissimilar nature thereto. No modification, alteration or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed on behalf of each of the Parties.

21.5 The rights and remedies herein provided are cumulative with and not exclusive of any right or remedies provided by law.

21.6 If at any time any provision of this Agreement is or is held to be illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction or any other jurisdiction of any other provision of this Agreement.

21.7 This Agreement together (where relevant) with the Maintenance Agreement constitute the entire agreement between the Parties and supersede all other agreements, statements, letters and other arrangements between the Parties in relation to the subject matter hereof. Each Party acknowledges that it has not relied on or been induced to enter this Agreement by a representation other than those expressly set out in this Agreement or in the Maintenance Agreement. This clause 21.7 does not affect a Party's liability in respect of a fraudulent misrepresentation.

- 21.8 This Agreement including any non-contractual claims relating to its subject-matter is governed by English law and the Parties submit to the exclusive jurisdiction of the courts of England in relation to any dispute between them arising out of the subject matter of this Agreement including as to its formation, interpretation and effect.
- 21.9 U.S. Government Restricted Rights. If the Software is acquired for or on behalf of the United States of America, its agencies and/or instrumentalities ("**U.S. Government**"), it is provided with RESTRICTED RIGHTS. The Software and accompanying documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and 227.7202, and "restricted computer software" pursuant to 48 C.F.R. 52.227-19(a), as applicable. Use, modification, reproduction, release, performance, display, or disclosure of the Software and accompanying documentation by the U.S. Government are subject to restrictions as set forth in this Agreement and pursuant to 48 C.F.R. 12.212, 52.227-14 (Alternate III), 52.227-19, 227.7202, and 1852.227-86, as applicable.