



SOFTWARE SUPPORT TERMS AND CONDITIONS

1. Interpretation

The “Supplier” means the Numerical Algorithms Group Limited (Co. No. 01249803), the registered office of which is at Wilkinson House, Jordan Hill Road, Oxford, OX2 8DR, UK and the “Customer” is as referred to in the Order.

1.1 The other definitions and rules of interpretation in Schedule 1 apply in these terms and conditions.

2. Supported Software

2.1 The Supported Software is:

- (a) the Software; and
- (b) any Modification which is acquired by the Customer (whether under the Licence, this agreement or any other agreement between the Supplier and the Customer) during the course of the Licence and which accordingly becomes part of the software defined as the Software under the Licence.

2.2 In relation to Point Releases:

- (a) as part of the Updating Service, the Supplier shall from time to time make Point Releases available to the Customer without charge; and
- (b) if the Customer fails to acquire and install a Point Release within three months of the Supplier notifying the Customer that such Point Release is available for installation, the Supplier may terminate this agreement by giving one month's written notice to the Customer.
- (c) The Supplier does not commit to continuing to make updates to prior releases and the Services or the performance of the Supplier's obligations in relation to such prior releases under this agreement will be limited. Details can be provided on written request.

2.3 In relation to New Releases, if the Supplier releases a New Release and the Customer decides not to acquire and install such New Release, that decision shall not give rise to any right to terminate this agreement, nor shall it result in any adverse effect on the Services or the performance of the Supplier's obligations under this agreement. However, if the Supplier has released a New Release since the version which forms part of the Supported Software, and the Customer has not, within eighteen months of the Supplier having notified the Customer that a New Release is available, acquired and installed that New Release, the Supplier may terminate this agreement by giving one month's written notice to the Customer given at any time after the expiry of such period.

3. The Services

3.1 The Supplier shall supply, and the Customer shall take and pay for, the following Services:

- (a) the Standard Support Service and
- (b) the Updating Service.

3.2 In relation to the Standard Support Service:

- (a) the Standard Support Service shall be provided during the Standard Support Hours
- (b) where a fault is to be corrected in an upcoming Point Release, then for a reasonable period before the issue of such Point Release the Supplier may only provide a work-around and inform the Customer that a permanent solution will be included in the next Point Release.

3.3 In relation to the Updating Service:

- (a) the Supplier shall issue Modifications of the Software as and when required by way of a local fix or patch of the Software or a temporary by-pass solution in the absolute discretion of the Supplier;
- (b) the Updating Service shall include the supply to the Customer of regular known issue updates to provide work-arounds to known problems pending the next release;
- (c) for the avoidance of doubt, the cost of the Updating Service is included in the Fee payable for the Standard Support Service, but excludes any sum payable by the Customer in respect of the Licence of a New Release which the Supplier reserves the right to charge for; and
- (d) once any Modification has been installed by the Customer, the Customer shall destroy all copies of the Software or any part of the Software which is superseded by that Modification.

3.4 The Supplier may, on prior notice to the Customer, make changes to the Services, provided such changes do not have a material adverse effect on the Customer's business operations.

3.5 The Supplier shall have no obligation to provide the Services where faults arise from:

- (a) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;
- (b) failure to maintain the necessary environmental conditions for use of the Software;
- (c) use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
- (d) relocation of the Software by any person other than the Supplier or a person acting under the Supplier's instructions;
- (e) any breach of the Customer's obligations under this agreement howsoever arising or having the Software maintained by a third party;
- (f) any Modification not authorised by the Supplier; or
- (g) operator error.

4. Support Service

4.1 The Suppliers Technical Support Service shall be responsible for the co-ordination of all matters relating to the Services. All communications, documentation and materials relating to this agreement shall be sent as appropriate by the Technical Support Service to the Site Representative.

5. Fees

- 5.1 In consideration of the Services, the Customer shall pay the Fee set out in the Order. This Fee shall be paid annually in advance by the Customer to the Supplier within 30 days of the date of the Supplier's invoice.
- 5.2 Fees for any New Version for the Customer shall be determined in accordance with the Supplier's then current rates and shall be charged and invoiced to the Customer by the Supplier (and paid by the Customer) following acceptance by the Supplier of the Customer's written Order for such New Version.
- 5.3 The Customer shall pay all costs (at the Supplier's then prevailing rates) and all reasonable expenses (having regard to the complexity and urgency) incurred by the Supplier for work carried out by the Supplier in connection with any fault which is not covered by these terms and conditions.
- 5.4 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under Clause 16, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the base lending rate of Barclays Bank PLC in force from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer will pay that interest together with the overdue amount on demand. The Supplier reserves the right to suspend the provision of the Services in the event of non-payment.
- 5.5 All amounts payable under these terms and conditions shall be exclusive of VAT or relevant local sales tax (if any) which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 5.6 All amounts due under these terms and conditions shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual Property Rights

- 6.1 All Intellectual Property Rights in the Deliverables shall belong to the Supplier, and the Customer shall have no rights in respect of any of the Deliverables except as expressly granted under these terms and conditions.
- 6.2 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 use or possession of any of the Deliverables (or any part of them) 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, Clause 6.2 shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Deliverables (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Deliverables 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 Deliverables not so combined, or use of a non-current release of the Software.
- 6.3 Clause 6.2 is conditional on the Customer:
 - (a) as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

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

6.4 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:

- (a) procure for the Customer the right to continue using, developing, modifying or maintaining the Deliverables (or any part of them) in accordance with the terms of this agreement;
- (b) modify the Deliverables so that they cease to be infringing;
- (c) replace the Deliverables with non-infringing works; or
- (d) terminate this agreement immediately by notice in writing to the Customer and refund the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination.

6.5 Notwithstanding any other provision in this agreement, Clause 6.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software incorporated into the Software or through the breach of any third party licence relating to any Open-Source Software so incorporated howsoever arising.

6.6 This Clause 6 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to Clause 13.1.

7. The Customer's Responsibilities

7.1 The Customer shall provide the Supplier and all other persons duly authorised by the Supplier with full, safe and uninterrupted remote access to the Customer's systems and the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours.

7.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.

7.3 The Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Technical Support Service (the "Site Representative"). The Customer shall notify the Supplier in writing promptly if there is any proposed change to those appointed.

7.4 The Customer shall:

- (a) co-operate with the Supplier in performing the Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
- (b) report faults promptly to the Supplier; and
- (c) keep full backup copies of all of its data.

7.5 The Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

8. Virtual Meetings

For the duration of this agreement, the Site Representative and a member of the Technical Support Service shall on request of either of them hold a virtual meeting (by telephone, Skype, email exchange or similar) no more often than once in each three calendar month period during Standard Support Hours for the purpose of discussing provision of the Services and any other appropriate matters.

9. Non-solicitation

The Customer shall not, for the duration of this agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the Supplier who has been engaged in the provision, review or management of the Services or otherwise in connection with this agreement to leave the employment of the Supplier.

10. Confidentiality and Publicity

10.1 Each party shall, during the term of this agreement and thereafter, keep confidential, and shall not use for its own purposes (other than implementation of this agreement) 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 or any of its Affiliates ("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 this agreement, 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 information.

10.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the 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.

10.3 The Supplier may refer to the Customer as being a client of the Supplier in customer reference lists and sales presentations unless the Customer withdraws consent in writing.

10.4 The provisions of this clause shall remain in full force and effect notwithstanding any termination of this agreement.

11. Export

11.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any software, incorporating any such data) in breach of any applicable laws or regulations ("Export Control Laws"), including UK or United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

12. The Supplier's Warranties

12.1 The Supplier represents and warrants to the Customer that:

- (a) the Services will be performed:
 - (i) in accordance with all applicable laws and regulations; and
 - (ii) with all reasonable skill and care;
- (b) to the best of its knowledge and belief, the Deliverables will not infringe the UK Intellectual Property Rights of any third party; and
- (c) at the date of this agreement, the Supplier has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for the Supplier to perform the Services.

12.2 If, during the term of this agreement, the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in Clause 12.1 the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this Clause 12.2. This clause sets out the Customer's sole remedy and the Supplier's entire liability for breach of Clause 12.1.

12.3 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.

12.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

13. Limits of Liability

13.1 Except as expressly stated in Clause 13.2:

- (a) the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - (i) special damage, even if the Supplier was aware of the circumstances in which such special damage could arise;
 - (ii) loss of profits;
 - (iii) loss of sales or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of business opportunity;
 - (vi) loss of goodwill;
 - (vii) loss of, or damage to (including corruption of), data; or
 - (viii) any indirect or consequential loss or damage,

provided that this Clause 13.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of Clause 13.1(b);

- (b) the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to the lower of 300% of the Fee payable by the Customer, in relation to this Order in which the liability arises, or £500,000;
- (c) the Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall not in any circumstances have any liability otherwise than in accordance with the express terms of this agreement; and

13.2 The exclusions in Clause 12.4 and Clause 13.1 shall apply to the fullest extent permissible at law but the Supplier does not exclude liability for:

- (a) death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which cannot be excluded by law.

13.3 The Customer acknowledges that:

- (a) it is exclusively responsible for:
 - (i) reviewing any new Modifications in accordance with Clause 2;
 - (ii) ensuring that the staff of the Customer are trained in the proper use and operation of the Software;
 - (iii) ensuring the security, completeness and accuracy of all inputs and outputs;
 - (iv) making regular backup copies of its data to ensure recovery of its data if the Software malfunctions; and
 - (v) the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software;
- (b) the level of the Fee reflects the allocation of risk between the parties set out in Clauses 12 and 13; and
- (c) it is in a better position than the Supplier to assess and manage its risk in relation to use of the Software.

13.4 All dates supplied by the Supplier for the delivery of the Modifications or the provision of Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

13.5 All references to the Supplier in this Clause 13 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Associates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with Clause 23.

14. Assignment and Subcontracting

14.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

14.2 The Supplier may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Customer before or after the event.

14.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

15. Duration

15.1 Supply of the Services by the Supplier to the Customer shall commence on the date specified in the Order and, subject to termination in accordance with the provisions of this agreement, shall continue for a fixed term of 12 calendar months, unless otherwise stated in the Order. After expiry of the fixed term, the supply of the Services shall (subject to any such termination) continue under this agreement from year to year until terminated by either the Supplier or the Customer on three months' written notice to the other to expire at the end of the then current Contract Year.

16. Termination

16.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement 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 terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 16.1(d) to Clause 16.1(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

- 16.2 Either party may terminate this agreement in accordance with Clause 25.
- 16.3 The Supplier may, without prejudice to its other rights or remedies, terminate this agreement immediately by notice to the Customer if the Customer:
- (a) sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
 - (b) disputes the ownership or validity of the Supplier's Intellectual Property Rights.
- 16.4 This agreement shall automatically terminate on termination or expiry of the Licence, but expiry or any termination of this agreement (however caused) shall have no effect on the licences granted under the Licence.

17. Effect of Termination

- 17.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 17.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including Clause 1, 6, 10, 11 and 13 shall remain in full force and effect.
- 17.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 17.4 Notwithstanding its obligations in this Clause 17, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 17.5 On termination of this agreement for any reason, the Customer's right to receive the Services shall cease automatically and each party shall as soon as reasonably practicable:
- (a) return, destroy or permanently erase (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 (and such other material belonging to a party as that party may specify). If required by the other party, it shall provide written evidence no later than 14 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in Clause 11), provided that the Customer may retain copies of any Supplier Confidential Information incorporated into the Software;
 - (b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.
- 17.6 On termination of this agreement by the Customer under Clause 16.1, the Supplier shall promptly refund such portion of the Fee as relates to the period after expiry or termination on a pro rata basis.

17.7 On termination of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

19. Remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Entire Agreement

20.1 This agreement 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 of Software support.

20.2 Each party acknowledges that in entering into this agreement 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 this agreement.

21. Variation

No variation of this agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

22. Severance

22.1 If any provision or part-provision of this agreement 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 under this clause shall not affect the validity and enforceability of the rest of this agreement.

22.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. Third-party rights

23.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

23.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

24. No partnership or agency

24.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

24.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

25. Force majeure

25.1 Neither party shall be in breach of this agreement nor liable for any delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control ("force majeure"). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations]. If the period of delay or non-performance continues for six months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party (provided the force majeure does not cease during such notice period). The Supplier shall not be obliged to refund any of the Fee in such event.

26. Notices

26.1 Any notice given to a party under or in connection with this agreement (other than a notice in proceedings) shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to a published email address.

26.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) if sent by email, immediately on after transmission, provided the sender does not receive a non-delivery message.

27. Governing Law and Jurisdiction

27.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27.2 The Customer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims), but the Supplier shall be entitled to bring a claim before any court of competent jurisdiction.

This agreement for the Services will be legally binding on the Supplier and the Customer on the date on which the Order for the relevant Software is signed by both parties.

Schedule 1 : Definitions and Interpretation

A. In these Terms and Conditions

Affiliate: includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party or any business entity from time to time controlling, controlled by, or under common control with, either party.

Confidential Information: has the meaning given in Clause 10.

Deliverables: any Documentation, Software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Services.

Documentation: the documents provided by the Supplier for the Software, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual.

Fee: the total cost payable for the Services under these terms and conditions, being (where the context so requires) each or any of the following:

- a. the charges for the Standard Support Service as set out in the Order (which charges also include the Updating Service); and
- b. any charges agreed for New Releases;

in each case as the same may be amended from time to time in accordance with the provisions of Clause 5.6.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Licence: the licence of the Software made between the Supplier and the Customer to which these Support terms and conditions relate.

Modification: any Point Release or New Release which is acquired by the Customer.

New Release: any New Release of the Software which from time to time is publicly marketed and offered for licensing 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.

Open-Source Software: open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

Order: the order form setting out the products supported and the period of support.

Point Release: a release of the Software which corrects faults, adds functionality or upgrades the Software, but which does not constitute a New Release.

Services: includes (as appropriate) the Standard Support Service and the Updating Service.

Site Representative: the person appointed by the Customer from time to time in order to fulfil the role described in Clause 7.3.

Software: has the same meaning as in the Software Licence.

Specification: the specification of the Software referred to in the Order.

Standard Support Service: issuing new Licence keys when a New Release of Software is released, issuing replacement licence keys, assisting the Customer in finding the appropriate Software to download, assisting with Software installation (remotely), providing a telephone or email based help desk facility to assist the Customer with general enquiries regarding the Software and remote diagnosis and, where possible, correcting errors, bugs and failures of the Software to meet its Specification. The Standard Support Service does not include any on-site Services.

Standard Support Hours: the hours specified from time to time on the Supplier's website.

Supported Software: has the meaning set out in Clause 2.1.

Technical Support Service: the Supplier's support staff fulfilling the functions described in Clause 4.

Updating Service: the Service to be supplied by the Supplier to the Customer under Clause 3.1 and Clause 3.3.

Other defined terms in the Licence shall have the same meanings in these terms and conditions.

- B.** In these terms and conditions, the headings do not affect its interpretation; words in the singular include the plural and the opposite applies; a reference to one gender shall include a reference to the other genders; any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- C.** A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- D.** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.