ASTA POWERPROJECT SOFTWARE AS A SERVICE (SaaS) TERMS AND CONDITIONS

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1. Definitions:

App

The "Asta SiteProgress" application software developed for operation on Windows, iOS and Android provided by Elecosoft as part of the Services

App User Agreement

the end user agreement for the App as notified to the Authorised User upon downloading the App from the relevant app store.

Authorised Users

those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2(d)

Business Day

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Change of Control

shall be as defined in section 1124 of the Corporation Tax Act 2010, and controls, controlled and the expression change of control shall be construed accordingly.

Conditions

these terms and conditions as amended from time to time in accordance with clause 17

Confidential Information

information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.5 or clause 12.6

Contract

the contract between Elecosoft and the Customer for the supply of Services in accordance with these Conditions.

Customer

the person or firm who purchases the Services from Elecosoft.

Customer Data

the data inputted by the Customer, Authorised Users, or Elecosoft on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Legislation

all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)

Documentation

the document made available to the Customer by Elecosoft online via support.elecosoft.com or such other web address notified by Elecosoft to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Elecosoft

Elecosoft UK Limited incorporated and registered in England and Wales with company number 2021387 whose registered office is at Parkway House, Pegasus Way, Haddenham Business Park, Haddenham, Bucks, HP17 8LJ.

Initial Subscription Term

the initial term of the Contract as set out in the online order pages (where the Customer places the Order online) or as set out in Elecosoft's proposal (where the Customer does not place the Order online)

Normal Business Hours

9.0 to 5.00 local UK time, each Business Day Monday to Thursday and 9.00am to 4.30 pm on Fridays.

Order

the Customer's order for the Services associated User Subscriptions as set out in the online order pages (where the Customer places the Order online) or as set out in Elecosoft's proposal which is accepted orally or in writing by the Customer (where the Customer does not place the Order online)

Renewal Period

the period described in clause 15

Services

the subscription services provided by Elecosoft to the Customer under the Contract via support.elecosoft.com or any other website notified to the Customer by Elecosoft from time to time, as more particularly described in the Documentation.

Software

the online Asta Powerproject software applications and the App provided by Elecosoft as part of the Services.

Subscription Fees

the subscription fees payable by the Customer to Elecosoft for the User Subscriptions, as set out in the Order

Subscription Term

has the meaning given in clause 15 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy

Elecosoft's policy for providing support in relation to the Services as made available at support.elecosoft.com or such other website address as may be notified to the Customer from time to time.

User Agreement

the user agreement stipulated by Elecosoft's third party processor referred to in clause 6.9 as made available at support.elecosoft.com or such other website address as may be notified to the Customer from time to time.

User Subscriptions

the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with the Contract.

Virus

any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2. Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.

1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.

1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

1.9. A reference to writing or written includes e-mail.

1.10. References to clauses are to the clauses of these Conditions.

1.11. Elecosoft's main trading address is Parkway House, Pegasus Way, Haddenham Business Park, Haddenham, Bucks, HP17 8LJ. Our VAT number is GB 736 5634 15 and we operate the website www.elecosoft.com. To contact us telephone our customer service team at +44 1844 261700 or email info@elecosoft.com. How to give us formal notice of any matter under the Contract is set out in clause 17.12.

2. PLACING AN ORDER

2.1. The Order constitutes an offer by the Customer to purchase User Subscriptions in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when Elecosoft issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. USER SUBSCRIPTIONS

3.1. Subject to the Customer purchasing the User Subscriptions in accordance with clause 4.3 and clause 10.1, the restrictions set out in this clause 2 and these Conditions, Elecosoft hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

3.2. In relation to the Authorised Users, the Customer undertakes that:

1) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

2) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

3) each Authorised User shall keep a secure password for his use of the Services and Documentation and that each Authorised User shall keep his password confidential;

4) it shall maintain a written, up to date list of current Authorised Users and provide such list to Elecosoft within 5 Business Days of Elecosoft's written request at any time or times;

5) it shall permit Elecosoft to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at Elecosoft's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

6) if any of the audits referred to in clause 4) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Elecosoft's other rights, the Customer shall promptly disable such passwords and Elecosoft shall not issue any new passwords to any such individual; and

7) if any of the audits referred to in clause 4) reveal that the Customer has underpaid Subscription Fees to Elecosoft, then without prejudice to Elecosoft's other rights, the Customer shall pay to Elecosoft an amount equal to such underpayment as calculated in accordance with the prices set out in the Order within 10 Business Days of the date of the relevant audit.

3.3. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

 a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

 b) facilitates illegal activity;

 c) depicts sexually explicit images;

 d) promotes unlawful violence;

 e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

 f) is otherwise illegal or causes damage or injury to any person or property;

 and Elecosoft reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

3.4. The Customer shall not:

 a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:

  i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

  ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

 b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

 c) use the Services and/or Documentation to provide services to third parties; or

 d) subject to clause 17.8, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

 e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; and

3.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Elecosoft.

3.6. The terms of the User Agreement shall apply to the Customer and the Authorised Users such that it creates a legal agreement between them and Elecosoft's the third party processor referred to in clause 6.9.

3.7. The terms of the App User Agreement shall apply to the Authorised Users' use of the App.

3.8. The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless Elecosoft agrees otherwise in writing.

4. ADDITIONAL USER SUBSCRIPTIONS

4.1. Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order and Elecosoft shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Contract.

4.2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Elecosoft in writing. Elecosoft shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where Elecosoft approves the request, Elecosoft shall activate the additional User Subscriptions within 2 Business Days of its approval of the Customer's request.

4.3. If Elecosoft approves the Customer's request to purchase additional User Subscriptions, the relevant fees for such additional User Subscriptions as set out in the Order (if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such

fees shall be pro-rated from the date of activation by Elecosoft for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable)) and either:

a) the Customer shall authorise Elecosoft to bill the additional User Subscriptions on such credit card; or

b) where the Customer has been approved for a credit account, the Customer shall pay to Elecosoft the relevant fees, within 30 days of the date of Elecosoft's invoice.

5. SERVICES

5.1. Elecosoft shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to these Conditions.

5.2. Elecosoft shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

a) planned maintenance carried out during the maintenance window of 19.00-23.00 Monday to Thursday and 19.00 Friday to 23.00 Sunday; and

b) unscheduled maintenance performed outside the hours referred to in clause 5.2a), provided that Elecosoft has used reasonable endeavours to give the Customer at least 24 hours notice in advance.

5.3. Elecosoft will, as part of the Services and at no additional cost to the Customer, provide the Customer with Elecosoft's standard customer support services during Normal Business Hours in accordance with Elecosoft's Support Services Policy in effect at the time that the Services are provided. Elecosoft may amend the Support Services Policy in its sole and absolute discretion from time to time.

6. CUSTOMER DATA

6.1. The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

6.2. Elecosoft shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at support.elecosoft.com or such other website address as may be notified to the Customer from time to time, as such document may be amended by Elecosoft in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Elecosoft shall be for Elecosoft to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Elecosoft in accordance with the archiving procedure described in its Back-Up Policy. Elecosoft shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Elecosoft to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 6.9).

6.3. Elecosoft shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at support.elecosoft.com or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Elecosoft in its sole discretion.

6.4. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

6.5. The parties acknowledge that:

a) if Elecosoft processes any personal data on the Customer's behalf when performing its obligations under the Contract, the Customer is the data controller and Elecosoft is the data processor for the purposes of the Data Protection Legislation (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

b) the scope, nature and purpose of processing by Elecosoft, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject are as follows:

i) Elecosoft is providing the Services to the Customer through an online platform, operated by a third party provider.

ii) Personal Data will be processed for the duration of the Contract.

iii) Elecosoft will process the Personal Data in order to identify an authenticate Authorised Users, give the Customer and Authorised Users access to the Services.

iv) Data to be processed will be name, business email address, personal email address.

v) The Data Subjects will be employees, agents and independent contractors of the customer authorised to use the Services.

c) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Elecosoft's other obligations under the Contract.

6.6. Without prejudice to the generality of clause 6.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Elecosoft for the duration and purposes of the Contract so that Elecosoft may lawfully use, process and transfer the Personal Data in accordance with the Contract on the Customer's behalf.

6.7. Without prejudice to the generality of clause 6.1, Elecosoft shall, in relation to any Personal Data processed in connection with the performance by Elecosoft of its obligations under the Contract:

a) process that Personal Data only on the written instructions of the Customer unless Elecosoft is required by the laws of any member of the European Union or by the laws of the European Union applicable to Elecosoft to process Personal Data (Applicable Laws). Where Elecosoft is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Elecosoft shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Elecosoft from so notifying the Customer;

b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

c) not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled:

i) the Customer or Elecosoft has provided appropriate safeguards in relation to the transfer;

ii) the data subject has enforceable rights and effective legal remedies;

iii) Elecosoft complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

iv) Elecosoft complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

e) notify the Customer without undue delay on becoming aware of a Personal Data breach;

f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

g) maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and allow for audits by the Customer or the Customer's designated auditor provided that such audits shall be carried out during normal business hours, on at least 10 Business Day's notice and not more than once in any 12 month period. Audits shall be conducted in a manner that is limited to that which is reasonably required to demonstrate compliance with Elecosoft's obligations under the Data Protection Laws and this clause 6, without access to Elecosoft confidential information unrelated to the Contract (including information relating to other customers of Elecosoft.

6.8. Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

6.9. The Customer consents to Elecosoft appointing Microsoft or any such third party as it shall appoint from time to time as a third-party processor of Personal Data under the Contract. Elecosoft confirms that it has entered

or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and Elecosoft, Elecosoft shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.

6.10. Either party may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to these Conditions).

7. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access other website content and that it does so solely at its own risk. Elecosoft makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Elecosoft. Elecosoft recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Elecosoft does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8. ELECOSOFT'S OBLIGATIONS

8.1. Elecosoft undertakes that the Services will be performed substantially in accordance with the Documentation (provided that they are properly used with the recommended system requirements for which it was designed) and with reasonable skill and care.

8.2. The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Elecosoft's instructions, or modification or alteration of the Services by any party other than Elecosoft or Elecosoft's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Elecosoft will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, Elecosoft:

a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.3. The Contract shall not prevent Elecosoft from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

8.4. Elecosoft warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

9. CUSTOMER'S OBLIGATIONS

9.1. The Customer shall:

a) provide Elecosoft with:

i) all necessary co-operation in relation to the Contract; and

ii) all necessary access to such information as may be required by Elecosoft;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

b) comply with all applicable laws and regulations with respect to its activities under the Contract;

c) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Elecosoft may adjust any agreed timetable or delivery schedule as reasonably necessary;

d) ensure that the Authorised Users use the Services and the Documentation in accordance with the Contract and shall be responsible for any Authorised User's breach of the Contract;

e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Elecosoft, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;

f) ensure that its network and systems comply with the relevant specifications provided by Elecosoft from time to time; and

g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Elecosoft's (or its subcontractor's) data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

10. CHARGES AND PAAYMENTS

10.1. The Customer shall pay the Subscription Fees to Elecosoft for the User Subscriptions in accordance with this clause 10 and the Order.

10.2. The Customer shall on the Effective Date provide to Elecosoft valid, up-to-date and complete credit card details or (subject to passing Elecosoft's credit application process) approved purchase order information acceptable to Elecosoft and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

a) its credit card details to Elecosoft, the Customer hereby authorises Elecosoft to bill such credit card:

   i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; subject to clause 15, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period; and

   ii) any additional User Subscriptions.

b) its approved purchase order information to Elecosoft, Elecosoft shall invoice the Customer:

   i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

   ii) subject to clause 15, at least 7 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

10.3. If Elecosoft has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Elecosoft:

a) Elecosoft may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Elecosoft shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and contining until fully paid, whether before or after judgment.

10.4. All amounts and fees stated or referred to in the Contract:

a) shall be payable in pounds sterling;

b) are, subject to clause 14.3.a), non-cancellable and non-refundable;

c) are exclusive of value added tax, which shall be added to Elecosoft's invoice(s) at the appropriate rate.

10.5. If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, Elecosoft shall charge the Customer, and the Customer shall pay, Elecosoft's then current excess data storage fees. Elecosoft shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3, the support fees payable pursuant to clause 5.3 and/or the excess storage fees payable pursuant to clause 10.5 at the start of each

Renewal Period upon 30 days' prior notice to the Customer and the Contract shall be deemed to have been amended accordingly.

11. PROPRIETARY RIGHTS

11.1. The Customer acknowledges and agrees that Elecosoft and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

11.2. Elecosoft confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the Contract.

11.3. The Services and the Software makes use of 3rd party components and artwork as specified in the End User Licence Agreement.

12. CONFIDENTIALITY

12.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

a) is or becomes publicly known other than through any act or omission of the receiving party;

b) was in the other party's lawful possession before the disclosure;

c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

d) is independently developed by the receiving party, which independent development can be shown by written evidence.

12.2. Subject to clause 12.3, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract. Each party may disclose the other party's Confidential Information to its employees, agents, contractors or sub-contractors engaged by the receiving party in connection with the implementation of the Contract.

12.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees, agents, contractors or sub-contractors in violation of the Contract.

12.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

12.6. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Elecosoft's Confidential Information.

12.7. Elecosoft acknowledges that the Customer Data is the Confidential Information of the Customer.

12.8. No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12.9. The above provisions of this clause 11.3 shall survive termination of the Contract, however arising.

13. INDEMNITY

13.1. The Customer shall defend, indemnify and hold harmless Elecosoft against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

a) the Customer is given prompt notice of any such claim;

b) Elecosoft provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

c) the Customer is given sole authority to defend or settle the claim.

13.2. Elecosoft shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

a) Elecosoft is given prompt notice of any such claim;

b) the Customer provides reasonable co-operation to Elecosoft in the defence and settlement of such claim, at Elecosoft's expense; and

c) Elecosoft is given sole authority to defend or settle the claim.

13.3. In the defence or settlement of any claim, Elecosoft may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

13.4. In no event shall Elecosoft, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

a) a modification of the Services or Documentation by anyone other than Elecosoft; or

b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Elecosoft; or

c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Elecosoft or any appropriate authority.

13.5. The foregoing and clause 14.3.a) state the Customer's sole and exclusive rights and remedies, and Elecosoft's (including Elecosoft's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. LIMITATION OF LIABILITY

14.1. Except as expressly and specifically provided in these Conditions:

a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Elecosoft shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Elecosoft by the Customer in connection with the Services, or any actions taken by Elecosoft at the Customer's direction;

b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and

c) the Services and the Documentation are provided to the Customer on an "as is" basis.

14.2. Nothing in the Contract excludes the liability of Elecosoft:

a) for death or personal injury caused by Elecosoft's negligence; or

b) for fraud or fraudulent misrepresentation.

14.3. Subject to clause 14 and clause c):

a) Elecosoft shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

b) Elecosoft's total aggregate liability in contract (including in respect of the indemnity at clause c)), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total

Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

15. TERM AND TERMINATION

15.1. The Contract shall, unless otherwise terminated as provided in this clause b), commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

a) either party notifies the other party of termination, in writing, at least 14 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

b) otherwise terminated in accordance with the provisions of the Contract;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

15.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

a) the other party fails to pay any amount due under the Contract 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 other term of the Contract which breach is irremediable or (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 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;

d) 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;

e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in 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;

f) 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;

g) 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;

h) 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;

i) 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 the other party's assets and such attachment or process is not discharged within 14 days;

j) 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 15.2.b) to clause 15.2.h) (inclusive);

k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

l) there is a change of control of the Customer.

15.3. On termination of the Contract for any reason:

a) all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

c)   Elecosoft may destroy or otherwise dispose of any of the Customer Data in its possession unless Elecosoft receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Elecosoft shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Elecosoft in returning or disposing of Customer Data; and

d)   any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. FORCE MAJEURE

Elecosoft shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Elecosoft or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17. GENERAL

17.1. **Variation**. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17.2. **Waiver**. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.3. **Rights and Remedies.** Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

17.4. **Severance**. If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.5. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17.6. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Order.

17.7. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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

17.9. **Assignment**. The Customer shall not, without the prior written consent of Elecosoft, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.10.   Elecosoft may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.11.   **No Partnership or Agency**. Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17.12.   **Third Party Rights**. The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

18. NOTICES

18.1. Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes.

18.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

19. GOVERNING LAW & JURISDICTION

19.1. The Contract 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.

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