Terms and Conditions for the Supply of HydraFLASH

Hydrafact Limited

1 Interpretation

1.1 In these Conditions, the following definitions apply:

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when the clearing banks in Edinburgh are open for business;

"Claim" shall have the meaning set forth in clause 3.3;

"Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with clause 18.10;

"Contract" means the contract between the Supplier and the Customer for the sale and purchase of the right to use the Software in accordance with these Conditions, which incorporates these Conditions, the Supplier's Acceptance, the Quotation and the Order (as appropriate);

"Contract Date" shall have the meaning set forth in clause 2.5;

"Customer" means the person, or firm who orders the right to use the Software from the Supplier, as specified in the Quotation;

"Delivery Costs" means packaging, insurance and transport costs and charges;

"Delivery Location" means the location set out in the Order (as amended by the Supplier's Acceptance) or such other location as the parties may agree;

"Despatch Date" shall have the meaning set forth in clause 4.2;

"Due Date" shall have the meaning set forth in clause 13.3;

"Duties" means export and import charges, duties and taxes, customs charges and any charges levied by any governmental or regulatory authority relating to the supply of the Software by the Supplier to the Customer (other than VAT and the Delivery Charges);

"Force Majeure Event" has the meaning given in clause 16.2;

"Licence" means a non exclusive licence to install and operate the Software upon equipment held by the Customer for the Customer's internal business purposes only, limited to the territory, duration and the number of permitted users, and subject to such other restrictions, are set out in the Quotation;

"Order" means the Customer's order for the Software, referring to a Quotation, whether in the form of a purchase order or otherwise;

"**Price**" means the price for the right to install and operate the Software specified in the Contract;

"**Quotation**" means the Supplier's quotation for the supply of the right to use the Software to the Customer, as appended to these conditions;

"**Software**" means the software solution of the Supplier (or any part of it) as set out in the Contract;

"**Software Documentation**" means the user manuals, guides and other materials whether in paper or electronic form supplied by the Supplier to enable the installation and operation of the Software;

"**Supplier**" means Hydrafact Limited a company registered in Scotland with company number SC294883 whose registered office is at Institute of Petroleum Engineering, Heriot Watt University, Riccarton, Edinburgh, EH14 4AS;

"**Support Period**" means a period of one (1) year from the first date of delivery of the Software by Supplier to the Customer;

"**Supplier's Acceptance**" means the Supplier's written acceptance of an Order; and

"**VAT**" means value added tax or any similar sales tax.

"**Trial Period**" means the period of time that the Software is delivered by the Supplier to the Customer for the purposes of evaluation.

1.2   In these Conditions, the following rules apply:

- ✓   a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- ✓   a reference to a party includes its personal representatives, successors or permitted assignees;

- ✓   a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

- ✓   any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

- ✓   a reference to writing or written includes faxes and e-mails; and

- ✓   all references to times are to times in Edinburgh, United Kingdom.

2   Basis of contract

2.1   These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (whether referenced in the Order,

correspondence or otherwise), or which are implied by trade, custom, practice or course of dealing.

2.2 In the event of a conflict between the parts of the Contract the following order of precedence shall apply:

- ✓ the Supplier's Acceptance;

- ✓ the Quotation;

- ✓ these Conditions; and

- ✓ the Order.

2.3 The Order constitutes an offer by the Customer to purchase the right to install and operate the Software in accordance with these Conditions.

2.4 The Customer shall ensure that the terms of the Order and the Quotation are complete and accurate for its purposes.

2.5 The Order shall only be deemed to be accepted when the Supplier issues the Supplier's Acceptance of the Order, at which point the Contract shall come into existence (the "**Contract Date**").

2.6 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the products, software or services described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the sale of the Software.

2.7 Quotations shall not constitute an offer. Quotations shall only be valid for a period of twenty (90) Business Days from their date of issue.

3 Licence

3.1 In consideration of the payment of the Price, paid by the Customer to the Supplier, the Supplier grants to the Customer the Licence, subject always to the terms of the Contract. The Customer undertakes at all times to maintain only up to a maximum of such number of copies of the Software as are reasonably required by it to permit the number of users stated in the Quotation to use the Software and no more. Accordingly, should the Customer replace its information technology facilities (or any part thereof) resulting in any equipment upon which the Software is employed being replaced then (provided that such equipment is not employed to enable access to the Software by another permitted user) then the Customer shall ensure that the Software is deleted from such equipment.

3.2 The Customer acknowledges that all intellectual property rights in the Software belong and shall belong to the Supplier, and the Customer shall have no rights in or to the Software other than the right to install and operate it in accordance

with the terms of the Contract.

3.3   The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession, use or maintenance of the Software (or any part thereof) in accordance with the terms of the Licence infringes the United Kingdom intellectual property rights of a third party (a "**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, this clause 3.3 shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Software (or any part thereof) by the Customer other than in accordance with the terms of the Licence, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software or version of the Software to which updates supplied by the Customer have not been applied.

3.4   If any third party makes a Claim, or notifies an intention to make a Claim, against the Customer the Supplier's obligations under clause 3.3 are conditional on the Customer:

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

✓   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);

✓   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

✓   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.

3.5   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:

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

✓   modify the Software so that it ceases to be infringing;

- ✓ replace the Software with non-infringing Software; or

- ✓ terminate the Contract immediately by notice in writing to the Customer and refund any part of the Price paid by the Customer in respect of the period following the date of termination on return of the Software and all copies thereof,

    provided that if the Supplier modifies or replaces the Software the modified or replacement Software must comply with the warranties contained in clause 5 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to relevant dates been references to the date on which such modification or replacement was made.

3.6 This clause 3 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 15.

3.7 All software licenses will expire on 31st of January every year for all types of licenses, including:

- ✓ Lease (Single or Network)

- ✓ Perpetual

- ✓ Hard key (dongle) or Soft key

    Hydrafact will contact the clients by email (please inform us if you change your email address and/or if you do not receive an email from us by mid-December) informing them of the expiry date and offering options for renewal. The renewal update will be provided based on client choice at least two weeks before the expiry date.

3.8 Customers will require to contact Hydrafact Ltd. if there are any issues with the licenses. Depending on the issue, there may be an extra cost involved to resolve the issue.

3.9 Customer undertakes to inform Hydrafact prior to changing or updating the operating system, or formatting the machine where HydraFLASH is installed. Hydrafact takes no responsibility with respect to delays and/or costs associated with re-installing HydraFLASH if the above measures are not followed.

4 Delivery

4.1 The Customer undertakes to supply to the Supplier all information that the Supplier requires from the Customer to allow the Supplier to ascertain the necessary documentation required by any relevant customs or other regulatory or governmental authority to allow delivery of the Software to the Customer. The Customer further undertakes to provide all assistance required by the Supplier to ensure the delivery of the Software to the Customer, including all assistance required in relation to ensuring customs clearance in relation to the Software.

4.2 The Supplier shall deliver the Software to the Delivery Location at any time after

the Supplier notifies the Customer that the Software is ready for delivery. The date upon which the Supplier despatches the Software for delivery to the Customer shall be referred to as the "**Despatch Date**". The Customer shall be entitled to request an amendment to the Delivery Location at any time before the Despatch Date. In such an event the Supplier shall have the right to amend the Delivery Costs, VAT and Duties as may be required. If such amendment is requested after the Contract Date the Supplier shall additionally have the right, at its sole option, to terminate the Contract without liability to the Customer.

4.3 Other than as expressly stated hereunder delivery of the Software shall be completed on the Software's arrival at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay or failure in delivery of the Software that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions, any other instructions that are relevant to the supply of the Software, or any other information required hereunder.

5 Updates

5.1 During the Support Period the Supplier shall make available to the Customer such updates to the Software as it generally makes available to its customers.

5.2 The Customer undertakes to install any updates provided by the Supplier to the Customer from time to time without delay.

5.3 Any updates to the Software provided to the Customer shall be deemed to form part of the Software for the purposes of the Contract.

6 QUALITY

6.1 THE SUPPLIER WARRANTS THAT ON DELIVERY, AND FOR THE SUPPORT PERIOD, THE SOFTWARE SHALL FUNCTION IN ACCORDANCE WITH ITS DOCUMENTATION AND BE FREE FROM MATERIAL ERRORS.

6.2 SUBJECT TO CLAUSE 6.3, IF:

- ✓ THE CUSTOMER GIVES NOTICE IN WRITING TO THE SUPPLIER DURING THE SUPPORT PERIOD WITHIN TEN (10) BUSINESS DAYS OF DISCOVERY THAT SOME OR ALL OF THE SOFTWARE DOES NOT COMPLY WITH THE WARRANTY SET OUT IN CLAUSE 6.1; AND

- ✓ THE SUPPLIER IS GIVEN ACCESS TO THE SOFTWARE,

THE SUPPLIER SHALL, AT ITS OPTION, REPAIR OR REPLACE THE DEFECTIVE SOFTWARE, OR REFUND THE PRICE PAID FOR THE DEFECTIVE SOFTWARE IN FULL.

6.3 THE SUPPLIER SHALL NOT BE LIABLE FOR SOFTWARE FAILING TO COMPLY WITH THE WARRANTY SET OUT IN CLAUSE 6.1 IF:

- ✓ THE CUSTOMER MAKES ANY FURTHER USE OF SUCH SOFTWARE AFTER

GIVING NOTICE IN ACCORDANCE WITH CLAUSE 6.2;

- ✓ THE DEFECT OR ERROR ARISES BECAUSE THE CUSTOMER FAILED TO FOLLOW THE SUPPLIER'S ORAL OR WRITTEN INSTRUCTIONS AS TO THE COMMISSIONING, INSTALLATION, USE AND MAINTENANCE OF THE SOFTWARE OR (IF THERE ARE NONE) GOOD TRADE PRACTICE;

- ✓ THE CUSTOMER ALTERS OR REPAIRS THE SOFTWARE WITHOUT THE WRITTEN CONSENT OF THE SUPPLIER;

- ✓ THE CUSTOMER FAILS TO INSTALL ANY UPDATE TO THE SOFTWARE PROVIDED BY THE SUPPLIER TO THE CUSTOMER; OR

- ✓ THE DEFECT OR ERROR ARISES AS A RESULT ABNORMAL OPERATING CONDITIONS.

6.4   EXCEPT AS PROVIDED IN THIS CLAUSE 6, THE SUPPLIER SHALL HAVE NO LIABILITY TO THE CUSTOMER IN RESPECT OF ANY FAILURE TO COMPLY WITH THE WARRANTY SET OUT IN CLAUSE 6.1

6.5   EXCEPT AS SET OUT IN THESE CONDITIONS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.

7   Maintenance

In respect of any defects in the Software arising following expiry of the Support Period, or any defects in the Software for which the Supplier is not liable under clause 6, the Supplier shall remedy such defects following a request by the Customer to do so within a reasonable period of such request and subject to payment by the Customer of the Supplier's standard charge for the provision of annual maintenance services, as generally made available from time to time by the Supplier. Any further defects in the Software arising thereafter during the year to which such annual maintenance charge relates shall be remedied by the Supplier within a reasonable period following a request by the Customer without additional charge by the Supplier.

8   Results

8.1   Where the Customer intends to publish any results or data generated by the Software, the Customer undertakes to notify the Supplier and (prior to such publication) provide the Supplier with the opportunity to analyse the validity and correctness of the results.

8.2   Where the Customer publishes any results or data generated by the Software, the Customer undertakes to cite (as part of such publication) that such results or data were created through use of the Software made available under licence by the Supplier.

9   Customer Undertakings

9.1   The Customer undertakes:

- ✓ to comply with all applicable laws, regulations and applicable guidance in connection with its installation, operation or use of the Software;

- ✓ to ensure that the number of persons using the Software does not exceed the number specified in the Quotation;

- ✓ not to use the Software other than in accordance with any instructions notified to it by the Supplier;

- ✓ to use the Software at all times in a safe and secure manner and in accordance with best practice and to store any device or activation code required to enable the installation and/or operation of the Software provided by the Supplier to the Customer at all times in a safe and secure manner;

- ✓ not to reverse engineer, translate, disassemble, decompile or copy the Software unless expressly permitted to by the Supplier, or manufacture or have manufactured for its own account or for the account of others software the same as the Software or software similar thereto;

- ✓ not to take any action prejudicial to any intellectual property rights held by or accruing to the Supplier;

- ✓ not to sub-license, assign or novate the benefit or burden of the Licence in whole or in part;

- ✓ not to allow the Software to become the subject of any charge, lien or encumbrance;

- ✓ not to deal in any other manner with any or all of its rights and obligations under the Contract;

- ✓ to ensure that any person to whom it provides access to the Software abides by the provisions of the Contract in respect of such access (and any use of the Software arising pursuant thereto); and

- ✓ to indemnify and keep indemnified the Supplier from any loss, cost, expense, damage or other liability arising from its failure to adhere to the terms of the Contract.

10 Academic Institution or Non-profit Organisation

10.1 The Academic Institution or Non-profit Organisation undertakes:

- ✓ to produce an annual report (for any and all subsequent years), summarising academic usage of the software.

- ✓ to not use the Software commercially or for any commercial gain.

- ✓ to provide the Supplier with Draft manuscripts, prior to any publication.

11 Repair and Replacement

11.1 Where the Supplier provides to the Customer any activation code required to enable the installation and/or operation of the Software and such activation code becomes damaged so that it no longer allows the Software to be installed or operated, the Customer undertakes to notify the Supplier without delay. The Supplier undertakes to provide to the Customer within a reasonable period of any such notification a replacement for such activation code.

11.2 Where the Supplier provides to the Customer any device or hardware key, required to enable the installation and/or operation of the Software and such device or hardware key becomes damaged so that it no longer allows the Software to be installed or operated, the Customer undertakes to notify the Supplier without delay. The Supplier undertakes to provide to the Customer within a reasonable period of any such notification a replacement for such device or hardware at the cost of the device or hardware medium and any postage costs incurred. If a replacement is required, the Customer undertakes to provide the Supplier with the original device or hardware key. The Supplier undertakes to provide the Customer with a replacement device or hardware key upon receipt of the original device or hardware key.

11.3 Where the Supplier provides to the Customer any device or hardware key required to enable the installation and/or operation of the Software and such device or hardware key malfunctions, so that it no longer allows the Software to be installed or operated, the Customer undertakes to notify the Supplier without delay. The Supplier undertakes to investigate the malfunction and if required, provide to the Customer within a reasonable period of any such notification, a replacement for such device or hardware key. If a replacement is required, the Customer undertakes to provide the Supplier with the original device or hardware key. The Supplier undertakes to provide the Customer with a replacement device or hardware key upon receipt of the original device or hardware key.

11.4 Where the supplier provides to the Customer any device or hardware key and the device or hardware key is lost or stolen, the Customer undertakes to notify the Supplier without delay. The Supplier undertakes to provide the Customer within a reasonable period of any such notification with a replacement device or hardware key at 100% of the original cost, as stated in the Quotation.

11.5 These Conditions shall apply to any repaired or replacement Software supplied by the Supplier.

12 Title and risk

12.1 Risk in the Software shall pass to the Customer on completion of delivery in accordance with clause 4.3.

12.2 Title to the Software shall not pass to the Customer and shall remain with the Supplier at all times and specifically for the duration of the Contract.

13 Price and payment

13.1 The Supplier shall invoice the Customer for the Price and any other sums due in

relation to the use and supply of the Software on the date(s) specified in the Quotation. The Price is exclusive of all VAT, Duties and Delivery Charges, (which shall be specified in the Quotation, but in so far as the Supplier is reasonably able to ascertain the amount of such) which shall be paid by the Customer when it pays the Price.

13.2 The Customer shall pay any invoices submitted by the Supplier in full and in cleared funds within thirty (30) Business Days of the date of the invoice. Payment shall be made to the bank account specified in the Quotation. Time of payment is of the essence of the Contract.

13.3 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (the "**Due Date**"), then the Customer shall pay interest on the overdue amount at the rate of four percent (4%) per annum above HBOS plc's base lending rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

13.4 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. In the event that the Customer is required to withhold any sums payable to the Supplier, the Customer shall pay such additional amount to the Supplier so that the Supplier actually receives such an amount as it would have received but for such withholding The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

14   Cancellation & Suspension

14.1 If the Customer becomes subject to any of the events listed in clause 14.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend the performance of its obligations under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums due to the Supplier shall become immediately due and payable.

14.2 For the purposes of clause 14.1, the relevant events are:

- ✓ breach by the Customer of a material term of the Contract;

- ✓ the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due;

- ✓ the Customer admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act

1986, or (being a partnership) has any partner to whom any of the foregoing apply;

✓ the Customer 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;

✓ (being an individual) the Customer is the subject of a bankruptcy petition or order;

✓ a creditor or encumbrancer of the Customer 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 ten (10) Business Days;

✓ (being a company) 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 Customer;

✓ (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;

✓ a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

✓ any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 32896.0⬚ to clause 32896.0⬚ (inclusive);

✓ the Customer suspends, threatens to suspends, ceases or threatens to cease carrying on all of its business, substantially the whole of its business, or the part of its business to which the Software relates;

✓ (being an individual) the Customer dies or by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

✓ a Force Majeure Event persists in excess of ten (10) Business Days.

15   LIMITATION OF LIABILITY

15.1   NOTHING IN THESE CONDITIONS SHALL LIMIT OR EXCLUDE THE SUPPLIER'S LIABILITY FOR:

✓ DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR THE NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS (AS APPLICABLE);

✓ FRAUD OR FRAUDULENT MISREPRESENTATION; OR

✓ ANY MATTER IN RESPECT OF WHICH IT WOULD BE UNLAWFUL FOR THE SUPPLIER TO LIMIT OR EXCLUDE LIABILITY.

15.2 SUBJECT TO CLAUSE 15.1 THE SUPPLIER SHALL NOT BE LIABLE TO THE CUSTOMER, WHETHER IN CONTRACT, DELICT (INCLUDING NEGLIGENCE), THROUGH BREACH OF STATUTORY DUTY OR OTHERWISE, FOR:

✓ ANY LOSS, COST, EXPENSE OR DAMAGE ARISING AS A CONSEQUENCE OF ACTIONS TAKEN OR DECISIONS MADE BY THE CUSTOMER BASED UPON RESULTS OR INFORMATION NORMALLY GENERATED BY THE SOFTWARE;

✓ LOSS OF, DAMAGE TO OR FAILURE OF OPERATION OF ANY OF THE CUSTOMER'S EQUIPMENT OR THE EQUIPMENT OF ANY THIRD PARTY, INCLUDING ANY LOSS, DAMAGE OR FAILURE OF OPERATION ARISING DUE TO THE NORMAL INTEROPERATION OF THE SOFTWARE WITH SUCH EQUIPMENT;

✓ THE COST OF ANY WORKING OR STAFFING REQUIREMENTS (INCLUDING THE ENGAGEMENT OF THIRD PARTY SERVICE PROVIDERS) ARISING DIRECTLY OR INDIRECTLY AS A CONSEQUENCE OF THE CUSTOMER'S USE OF THE SOFTWARE;

✓ ANY LOSS OF PROFIT OR DECREASE IN TURNOVER;

✓ ANY LOSS OF ANTICIPATED SAVINGS;

✓ ANY LOSS OF GOODWILL;

✓ ANY LOSS OR CORRUPTION OF DATA; OR

✓ ANY INDIRECT OR CONSEQUENTIAL LOSS (INCLUDING ANY SUCH LOSS THAT MAY RESULT FROM A DELIBERATE BREACH OF THE CONTRACT BY THE SUPPLIER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS);

ARISING UNDER OR IN CONNECTION WITH THE CONTRACT.

15.3 SUBJECT TO CLAUSE 15.1 AND CLAUSE 15.2 THE SUPPLIER'S TOTAL LIABILITY TO THE CUSTOMER IN RESPECT OF ALL LOSS, COST AND EXPENSE ARISING UNDER OR IN CONNECTION WITH THE CONTRACT, WHETHER IN CONTRACT, DELICT (INCLUDING NEGLIGENCE), THROUGH BREACH OF STATUTORY DUTY OR OTHERWISE, INCLUDING ANY LOSS CAUSED BY A DELIBERATE BREACH OF THE CONTRACT BY THE SUPPLIER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS SHALL NOT EXCEED THE PRICE PAID BY THE CUSTOMER TO THE SUPPLIER.

15.4 THE CUSTOMER ACKNOWLEDGES THAT THE RESTRICTIONS PROVIDED IN THIS CLAUSE 15 ARE REASONABLE IN THE CIRCUMSTANCES.

16 Force Majeure

16.1 The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused

by a Force Majeure Event.

16.2   A "**Force Majeure Event**" means any event beyond the Supplier's reasonable control which by its nature could not have been foreseen or, if it could have been foreseen was unavoidable, and shall include strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, import, export and other trade restrictions, sanctions, action or likely action of any governmental or regulatory authority, action or likely action of any pressure group, lobbying group or other organised or disparate coalition of persons which may (through proposed activities) have a detrimental impact upon the business of the Supplier, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or adverse weather conditions, or default of suppliers or subcontractors.

17   Trial Period

17.1   During the trial period, the Customer shall:

✓   not use the Software commercially or for any commercial gain.

✓   not use or publish any results or data generated by the Software without the Suppliers written permission.

✓   only use the software for the purpose of evaluation.

✓   only use the Software during the initial Trial Period, unless otherwise agreed with the Supplier.

✓   not distribute or transfer the Software.

18   General

18.1   The Supplier may at any time assign, novate, transfer, charge, subcontract or otherwise deal in any other manner with all or any of its rights or obligations under the Contract without a requirement of prior notice to the Customer.

18.2   The Customer may not assign, novate, transfer, charge, subcontract or otherwise deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

18.3   Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause 18.3 and shall be delivered personally or sent by commercial courier, fax or e-mail.

18.4 A notice or other communication shall be deemed to have been received if delivered personally when left at the address referred to in clause 18.3, if sent by commercial courier on the date and at the time that the relevant delivery receipt is signed by or on behalf of the relevant party, if sent by fax at the date and time indicated in the transmission confirmation relating to the fax, or if sent by e-mail at the date and time indicated in the read receipt (failing which the successful routing receipt) relating to that e-mail.

18.5 The provisions of this clause 18 shall not apply to the service of any proceedings or other documents in any legal action.

18.6 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18.7 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were modified, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.8 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

18.9 A person who is not a party to the Contract shall not have any rights under or in connection with it.

18.10 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier and the Customer.

18.11 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 Scots law, and in respect of the determination of which the parties submit to the non-exclusive jurisdiction of the courts of Scotland.