Software Licence and Maintenance Agreement



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1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following words and expressions shall have the following meanings:-

"Additional Upgrades"	means upgrades, enhancements, improvements and developments deemed at the discretion of the Licensor to be in addition to the Standard Upgrades.
the "Confidential Information"	means all information, data, drawings, specifications, documentation, software listings, source or object codes which the Licensor may have imparted and may from time to time impart to the Licensee, relating to the Software which is not already in the public domain.
"Dispute"	means any dispute or difference that arises out of, or in connection with this Agreement between the Licensor and the Licensee.
the "Dongle"	means the Software protection device or devices (if any) supplied by the Licensor to the Licensee.
"Employee(s)"	means for the purposes of this Agreement only employees, contractors, agents and/or sub-contractors.
"Enhancement"	means enhancements to the Software requested by the Licensee under clauses 6.13 and 6.14.
"Helpline"	means telephone support in matters relating to the functionality, scope and/or limitations of the Software described in clause 6.6.
"Intellectual Property Rights"	means any and all of the trademarks, trade names, copyrights, patents and other such intellectual property rights used or embodied in or in connection with the Software and/or the Product Manual.
the "Licence"	means the licence granted by this Agreement.
the "Licence Fees"	means the licence fees paid to the Licensor by the Licensee in respect of the Licence as referred to in the Software Agreement Certificate as the same may be adjusted from time to time in accordance with clause 2.2.
the "Licensee"	means the Licensee as named on the Software Agreement Certificate.
the "Licensor"	means the Licensor as named on the Software Agreement Certificate and includes such sub-contractor(s) as the Licensor may from time to time appoint to carry out the Services in accordance with clause 16 of this Agreement.

"Linkline"	means support for the Licensee provided through a modem or internet link and specialised communications software.
"Maintenance Fees"	in the case of a Perpetual Licence means the maintenance fees (if any) referred to in the Software Agreement Certificate and payable to the Licensor in advance, and in the case of a Rental Licence means the Licence Fees payable to the Licensor in respect of the Services as the same may be adjusted from time to time in accordance with clause 2.2.
the "Payer"	means the Licensee, or in the case of an end user purchasing through a reseller, the reseller.
"Payment Terms"	means the payment terms referred to in the Software Agreement Certificate.
"Period of Maintenance"	means the period of maintenance referred to in the Software Agreement Certificate relating to the relevant Maintenance Fees.
"Perpetual Licence"	means a licence in perpetuity (if any) as referred to in the Software Agreement Certificate.
"Personal Data"	means data which identifies an individual human being.
the "Premises"	means the premises (if any) detailed in the Software Agreement Certificate.
the "Privacy Policy"	means the WellXP privacy policy, a copy of which is available on the Licensor's website.
the "Product Manual(s) "	means the instructional and/or operational manual(s) designed for use with or as an integral part of the Software as the same may from time to time be varied.
"Rental Licence"	means a rented licence (if any) as referred to in the Software Agreement Certificate.
the "Services"	means the services (if any) described in clause 6.
the "Software"	means the software and/or the document and data management system described in the Software Agreement Certificate (as the same may be upgraded from time to time under the terms of this Agreement) and its/their accompanying Dongle(s) (if any).
the "Software Agreement Certificate"	means the software agreement certificate which accompanies these terms and conditions and which forms part of this Agreement.
"Software Malfunction"	means deviation from the published features of the Software.

"Special Conditions"	means the special conditions (if any) described in the Software Agreement Certificate.
"Standard Upgrades"	means the upgrades, enhancements, improvements and developments to the Software deemed at the sole discretion of the Licensor to be standard.
"Support-Related Communications"	means all faxes, telephone calls, letters and other communications sent by or received by the Licensor in relation to the Services provided by the Licensor to the Licensee.
the "System"	means any single computer or network of computers complying with the equipment specifications set out in the Software Agreement Certificate.
the "Term"	means the term of Licence detailed in the Software Agreement Certificate.
the "Territory"	means the territory (if any) described in the Software Agreement Certificate.
"Use"	means:-
"Using"	1.1.1. utilising the whole or any part of the Software in accordance with the Dongle by loading, transferring, copying or transmitting the same within the System for the processing of the system instructions or statements contained in such Software.
	1.1.2. merging the whole or any part of the Software in machine readable form into another software program.
	1.1.3. copying the whole of the Software which is in machine readable form into a machine readable copy for use by the Licensee solely for the System and for the purposes only of understanding the contents of such machine readable material and for back-up provided that no more than two (2) copies will be in existence under any Licence at any one time without prior written consent from the Licensor.
	1.1.4. storing the whole or any part of the Software on the System or other storage unit or disk.
	1.1.5. utilising (but not copying) the Product Manual(s).
"Warranty Period"	means the warranty period defined in the Software Agreement Certificate.

1.2. In this Agreement where the context admits, references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and

shall include references to any provisions of which there are re-enactments (whether with or without modifications).

1.3. In this Agreement references to clauses are references to clauses hereof, references to sub-clauses or paragraphs are, unless otherwise stated, references to sub-clauses of the clause or paragraphs in which the reference appears.

1.4. The headings herein contained are inserted for reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

PART 1 – THE LICENCE

2. GRANT OF LICENCE

2.1. In consideration of the payment on the Payment Terms by the Licensee to the Licensor of the Licence Fees and the Maintenance Fees, if any, the Licensor grants to the Licensee for the Term the non-transferable, non-exclusive right in the Territory to Use the Software on the System at the Premises on the terms of this Agreement.

2.2. The Licensor shall have the right to amend the terms of this Agreement including to adjust the Licence Fees and/or Maintenance Fees on giving to the Licensee notice of the said amendment.

3. INTELLECTUAL PROPERTY RIGHTS

3.1. The Licensee acknowledges that any and all the Intellectual Property Rights shall remain the sole property of the Licensor.

3.2. The Licensee shall not during this Agreement or at any time after the termination thereof howsoever caused in any way question or dispute or challenge the ownership by the Licensor of the Intellectual Property Rights.

3.3. The Licensee shall indemnify the Licensor fully against all liabilities, costs and expenses whatsoever which the Licensor may incur as a result of work done in accordance with the Licensee's specifications involving infringement of any copyright patent or other proprietary right of any third party.

3.4. The Licensee shall take all steps necessary to ensure that all documents produced by the Use of the Software shall bear in legible form the trademark (if any) identified in the Software Agreement Certificate.

3.5. In the event of the loss or destruction of the Dongle the Licensee shall be responsible for payment for a replacement Licence at the Licensor's prevailing rates unless otherwise agreed in writing with the Licensor.

4. CONFIDENTIALITY

4.1. The Confidential Information is proprietary and confidential.

4.1.1. The Licensee hereby agrees that it shall use the Confidential Information solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement, disclose the Confidential Information, whether directly or indirectly, to any third party without the Licensor's prior written consent.

4.1.2. The Licensee further agrees that it shall not itself or through any subsidiary, agent or third party modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements or upgrades thereof or have any software or other program written or developed based on the Confidential Information.

4.2. The Licensor will keep confidential any trade secrets of the Licensee which are disclosed to the Licensor pursuant to this Agreement.

5. LICENSEE'S UNDERTAKINGS

Save insofar as the Licensee is expressly permitted by this Agreement the Licensee undertakes:-

5.1. to supervise and control Use of the Software and the Product Manual(s) in accordance with the terms of this Agreement;

5.2. to ensure that its Employees who will Use the Software in accordance with the terms hereof are notified in writing of and accept the terms of this Agreement prior to such Employees Using the same;

5.3. where relevant to the Software, within 7 days after the date of termination of this Agreement for whatever reason, to return the Dongle (if any) relating to the Software (as the Licensor shall instruct), the Software and the Product Manual(s) and all copies in whole and in part in any form including partial copies or modifications of the Software received from the Licensor or made in connection with this Agreement and all documentation and disks relating thereto and to furnish the Licensor with a certificate, certifying that the same has been done, unless the Licensee has obtained the Licensor's prior written authorisation to retain one copy for archival purposes only;

5.4. that neither the execution nor delivery of this Agreement nor performance of its obligations will conflict with or result in a breach of any term condition or provision of any contract, covenant or instrument to which the Licensee is bound;

5.5. to ensure that the use of the Software is in compliance with all relevant and applicable laws and regulations without limitation. This includes any information that may be deemed to be controlled technology and/or subject to export restrictions.

5.6. not to:-

5.6.1. copy, reproduce, translate, adapt, vary, convey, sublicense, distribute, rent, decompile or modify the Software and the Product

Manual(s) nor to communicate the same to any third party without the Licensor's prior written consent;

5.6.2. provide or otherwise make available the Software in whole or in part, in any form to any person other than the Licensee's Employees without prior written consent from the Licensor;

5.6.3. reverse engineer, decompile or disassemble the Software;

5.6.4. use information from the Software in connection with sending unsolicited or unauthorised advertising promotional materials, junk mail, spam, chain letters, pyramid schemes or any other form of duplicative or unsolicited messages whether commercial or otherwise;

5.6.5. distribute or publish promotions, advertise or solicit for funds, goods or services without the express written consent of the Licensor;

5.6.6. harvest, collect, gather or assemble information or data regarding other users including email addresses without express written consent;

5.6.7. transmit through or post on the Software unlawful, harassing, libellous, abusive, tortious, defamatory, threatening, harmful, invasive of another's privacy, obscene or otherwise information or objectionable material of any kind or nature or which is harmful to minors in any way;

5.6.8. transmit any material that may infringe the Intellectual Property Rights or other rights of third parties including trademark, copyright or right of publicity;

5.6.9. transmit any material that contains software viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs or cancel bots;

5.6.10. interfere with or disrupt services or networks connected to the Software or violate the regulations policies or procedures of such networks;

5.6.11. attempt to gain unauthorised access to the Software, other Licensees' accounts, computer systems or networks connected to the Software through password mining or other means;

5.6.12. stalk or otherwise harass another Licensee;

5.6.13. interfere with another Licensee's use and enjoyment of the Software.

PART 2 – THE MAINTENANCE SERVICES

6. SERVICES

6.1. In consideration of the payment by the Licensee of the Maintenance Fees (if any) to the Licensor, the Licensor agrees to provide the Services for the Period of Maintenance to the Licensee in the Territory.

6.2. All reports of Software Malfunction shall be communicated in writing, either by post, email or by fax to the Licensor.

6.3. The Licensor reserves the right to assess the validity of each claim of Software Malfunction.

6.4. Subject to clause 6.3, the Licensor will endeavour to correct any Software Malfunctions reported to it as soon as possible. The Licensor will either replace or repair any Software that does not perform substantially in accordance with the specifications of the Software by delivering a corrected copy of the Software or the corrective code, on an exchange basis, within a reasonable period of time. An estimate of time required to carry out the necessary changes will be furnished as soon as reasonably practicable.

6.5. The Product Manuals are intended to serve the Licensee as a guide to the Software's features and functionality. Any valid error in the Product Manuals will be remedied by the Licensor in a reasonable period of time.

6.6. The Licensor will provide the Helpline during the normal office hours of the regional Licensor office, (9.00 am to 5.00 pm, Monday to Friday). The Helpline will only be available to the Licensee at other times and at additional cost by prior written arrangement with the Licensor. This service does not include configuration, training, consulting, document replication and migration services or custom development which may be provided by the Licensor at its sole discretion and subject to additional charges.

6.7. Where practical and appropriate the Licensor will also provide a Linkline to the Licensee, such Linkline to be provided at the Licensor's prevailing rates at the time of supply. Linkline services are available in two categories:-

6.7.1. Linkline will be the means of providing remote support by which the Licensor's personnel will be able to connect to and operate the computer belonging to the Licensee to obtain a better idea of the Software Malfunction and to provide on-screen assistance to the user by means of a modem link.

6.7.2. Linkline may be used to transfer Additional and Standard Upgrades to the Licensee and to transfer problematic data files from the Licensee.

6.8. Subject to payment in full of the Maintenance Fees (if any), the Licensor will provide the Licensee with Standard Upgrades free of charge and Additional Upgrades at the Licensor's prevailing rates at the time of supply.

6.9. The Licensor will provide a free estimate on linking the Software with other related systems currently in use or planned to be put into use by the Licensee.

6.10. Provision of the Services is subject to the Special Conditions shown in the Software Agreement Certificate.

6.11. The Licensor shall charge at its prevailing rates for services requested by the Licensee which are not specifically provided for by this Agreement.

6.12. Where the Software is dependent on other software or other products, the Licensee acknowledges that it cannot acquire the Services in respect of the Software without also acquiring such services with respect to the software or other products upon which it depends.

6.13. The Licensee may request Enhancements and the Licensor shall consider all such requests and if terms, conditions and pricing can be agreed the Licensor shall develop and implement each such Enhancement subject to clause 6.14.

6.14. The Licensee hereby acknowledges that:-

6.14.1. the timing of any Enhancement is subject to scheduling and prioritisation of the Licensor;

6.14.2. the Licensor may decline the request for any Enhancement which would, in the Licensor's sole discretion, materially and adversely affect the Licensor's operations;

6.14.3. any Enhancement is the property of the Licensor; and

6.14.4. the Licensor may supply the Enhancement to any of its clients regardless of whether payment has been made by the Licensee to the Licensor for the Enhancement.

7. HEALTH AND SAFETY

7.1. Where either party's Employees are admitted to the premises of the other pursuant to this Agreement, the party into whose premises those Employees are admitted undertakes that it will take such reasonable measures as are necessary to ensure that, so far as is reasonably practicable, its premises are safe and without risks to the health of those Employees.

7.2. The party into whose premises those Employees are admitted shall indemnify the other against the consequence of its failure to ensure such safety and shall also indemnify the other against all claims by third parties and any other claims at common law or by statute arising out of such failure.

PART 3 – GENERAL

8. LIMITED WARRANTY

8.1. The Licensee acknowledges that:-

8.1.1. software in general is not error-free and agrees that the existence of such errors in the Software shall not constitute a breach of this Agreement.

8.1.2. where the efficacy of the Software is dependent upon the use of the internet, the internet service and all communications so used are entirely beyond the control and responsibility of the Licensor.

8.2. Subject to clause 8.1, the Licensor warrants that:-

8.2.1. the Software will perform substantially in accordance with the Product Manual(s) for the Warranty Period;

8.2.2. it is authorised to license the Software;

8.2.3. the Services will be performed by qualified personnel in a workmanlike and professional manner.

8.3. This limited warranty is void if failure of the Software has resulted from accident, abuse, or misapplication thereof by the Licensee.

9. INDEMNITY

9.1. The Licensor agrees to protect and hold harmless and defend at the Licensee's expense the Licensee from and against any and all claims that the Intellectual Property Rights infringe third party rights PROVIDED THAT

9.1.1. the Licensee shall not have done, permitted or suffered to be done anything which may have been or become an infringement of any such rights (including but not limited to using the Software to perform the Licensee's or other party's applications or using the Software in combination or merged with other software programs or devices) without the prior consent of the Licensor; and

9.1.2. the Licensee shall have exercised a reasonable standard of care in protecting the same, failing which, the Licensee shall indemnify the Licensor against all actions, proceedings, costs, claims and expenses incurred in respect thereof.

9.2. The Licensee undertakes that the Licensor shall be given prompt notice of any claim specified in clause 9.1 above that has been made against the Licensee

and the Licensor shall have the right either itself or through a third party to defend any such claims and make settlements promptly thereof at its own discretion and the Licensee shall give such assistance as the Licensor may reasonably require to settle or oppose any such claims.

9.3. In the event that any such infringement occurs or may occur, the Licensor may at its sole option and expense:-

9.3.1. procure for the Licensee the right to continue Using the Software or the infringing part thereof; or

9.3.2. modify or amend the Software or the infringing part thereof so that the same becomes non-infringing; or

9.3.3. replace the Software or the infringing part thereof by other software of similar capability and functionality; or

9.3.4. repay to the Licensee the Licence Fees or the balance thereof relating to the whole or the infringing part of the Software.

9.4. The Licensor's entire liability under clause 9.3.4 shall at the Licensor's option, be limited to such equitable proportion of the Licence Fees as relates to the period prior to cessation owing to infringement.

10. LICENSEE'S REMEDIES

Subject to clause 11, the Licensor's entire liability and the Licensee's exclusive remedy shall be, at the Licensor's option:-

10.1. Return to the Licensee of the Licence Fees actually paid by the Licensee subject to the Licensee returning to the Licensor the Software which does not meet the limited warranty at clause 8.2; or

10.2. Repair and/or modification or replacement of the Software that does not meet the Licensor's limited warranty at clause 8.2 and which is returned to the Licensor with a copy of the Licensee's receipt provided that any replacement Software will be warranted for the remainder of the Warranty Period or thirty days, whichever is greater.

11. LIABILITY

11.1. Subject to clauses 8, 9 and 10 the following provisions set out the entire financial liability of the Licensor (including any liability for the acts or omissions of its Employees) to the Licensee in respect of:-

11.1.1. any breach of this Agreement;

11.1.2. any Use made by the Licensee of the Software or any product(s) incorporating or connected to the Software; and

11.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.

11.2. Save for the limited warranty in clause 8.2, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

11.3. Nothing in this Agreement excludes or limits the liability of the Licensor:-

11.3.1. for death or personal injury caused by the Licensor's negligence; or

11.3.2. for any matter for which it would be illegal for the Licensor to exclude or attempt to exclude its liability; or

11.3.3. for fraud or fraudulent misrepresentation.

11.4. The Licensee shall be solely responsible for its connections to and the use of the internet and all services relating thereto. Nothing in this Agreement shall render the Licensor liable in any way whatsoever for any failure or breakdown in the internet or the communications relating thereto or any services relating to the internet.

11.5. Subject to clause 11.1 and 11.3:-

11.5.1. the Licensor's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the Licence Fees actually paid hereunder; and

11.5.2. the Licensor shall not be liable to the Licensee for any loss of profit, loss of business, or depletion of goodwill whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement or in respect of any supporting or diagnostic software or hardware, its use, the System, the internet or any other equipment.

11.6. In the event that any exclusion or other provision contained in this Agreement shall be held to be invalid for any reason and the Licensor becomes liable for loss or damage that could otherwise have been lawfully limited such liability shall be limited to the total of the Licence Fees actually paid hereunder.

11.7. The Licensee and Licensor agree and recognise that the use of computer products entails a risk of loss of magnetically stored data. The Licensee therefore agrees that it will assume all risk of loss of its magnetically stored data in any way related to or resulting from provision of the Software and of the Services. The Licensee hereby releases the Licensor from any and all liability for loss of its magnetically stored data.

11.8. The Licensee acknowledges and agrees that the Licensor will not be responsible or liable for:-

11.8.1. the accuracy, usefulness or availability of any information transmitted or made available via the Software; and

11.8.2. any trading or investment decisions made based on such information.

12. DATA PROTECTION

12.1. The Licensee undertakes to:-

12.1.1. adhere to all legislation in whichever jurisdiction is relevant relating to the transmission, control, use and/or storage of Personal Data;

12.1.2. protect and hold harmless the Licensor from and against all claims of breach of data protection legislation howsoever arising including all costs of dealing with the same;

12.1.3. ensure that any Personal Data the Licensee provides to the Licensor is accurate and truthful to the best of the Licensee's knowledge;

12.1.4. adhere strictly to the Privacy Policy where the same is relevant to the Software;

12.1.5. not post or transmit any information through the Software which:-

12.1.5.1. infringes the rights of others or violates their privacy or publicity rights;

12.1.5.2. is protected by copyright, trademark or other proprietary right without the express written permission of the owner of such rights;

12.1.5.3. is used to unlawfully collude against another person in restraint of trade and competition;

12.1.5.4. contains or materially relates to any software device or routine that interferes or is intended to interfere with the normal operation of the Licensor's websites; and

12.1.5.5. impersonates any person or entity or otherwise misrepresents the Licensee's affiliation with a person or entity.

13. FORCE MAJEURE

The Licensor shall be under no liability to the Licensee in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of the Licensor which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Software, support materials, breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto or any other parties.

14. TERMINATION

14.1. Subject to clause 14.2, this Agreement shall come into force and shall continue for the Term.

14.2. The Licensor may by notice in writing to the Licensee terminate this Agreement immediately if any of the following events shall occur, namely:-

14.2.1. the Licensee is in breach of any term, condition or provision of this Agreement or required by law such breach continuing for a period of thirty days or more after delivery of a written notice from the Licensor specifying the breach or breaches; or

14.2.2. the Licensee fails to pay the Licence Fees and/or Maintenance Fees after receiving 7 days' notice demanding the same; or

14.2.3. the Licensee, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up or shall enter into liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) or shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be deemed by virtue of section 123 of the Insolvency Act 1986 to be unable to pay its debts.

14.3. On termination of this Agreement:-

14.3.1. the Licensee shall pay to the Licensor all costs and expenses including legal and other fees incurred by the Licensor in connection with the termination of this Agreement and all arrears of fees, charges or other payments arising in respect of the Software, any supporting or diagnostic software, its support, this Agreement or otherwise relating thereto; and

14.3.2. the Licensee's rights hereunder shall cease; and

14.3.3. the Licensor shall not be liable to refund any outstanding fees paid to the Licensor by the Licensee.

14.4. Any continuation of any part of this Agreement, after written notice of termination has been served, shall not constitute a waiver by the Licensor of any claims that the Licensor may have against the Licensee.

14.5. Termination, howsoever or whenever occasioned shall be subject to any rights and remedies the Licensor may have under this Agreement or in Law.

15. ASSIGNMENT

15.1. The Licensee shall not assign or otherwise transfer all or any part of the Software or this Agreement without the prior written consent of the Licensor.

15.2. The Licensor may assign or otherwise transfer any or all of its rights and obligations under this Agreement to a third party without the prior consent but following written notice to the Licensee. The provisions set out in this Agreement will be binding on all successors, administrators, receivers and executors and any other transferee of the parties.

16. SUB-CONTRACT

The Licensor may at its option sub-contract the provision of the Services.

17. WAIVER

Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that party's rights to take subsequent action.

18. RELATIONSHIP BETWEEN THE PARTIES

18.1. The Licensor and the Licensee acknowledge and agree that they are independent contractors and that they shall not be considered or represent themselves to be an agent, partner, employee, associate or joint venture party of the other.

18.2. Except as expressly provided in this Agreement, neither party shall have the authority or hold itself out as able to bind the other party to any contract or commitment, nor shall either party be responsible for the acts or omissions of the other vis a vis third parties.

19. SEVERABILITY

In the event that any of these terms and conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

20. SETTLEMENT OF DISPUTES

20.1. In the event of any Dispute the Licensor and the Licensee shall use their reasonable endeavours in good faith to resolve the Dispute by negotiation.

20.2. Save as otherwise expressly provided in this Agreement no party may commence any court proceedings in relation to any Dispute until they have attempted to settle it by following the procedures set out clauses 20.3 to 20.5 below.

20.3. The parties agree to attempt to mediate any Dispute.

20.4. To initiate mediation a party must give notice in writing to the other party to the Dispute requesting a mediation.

20.5. If the Dispute is not resolved to the satisfaction of both parties or the mediation as set out in clause 20.4 is otherwise terminated then the Dispute shall be determined in accordance with the then prevailing Chartered Institute of Arbitrators Rules by a single arbitrator to be agreed between the parties, or failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.

20.6. Nothing contained in clauses 20.1 to 20.5 shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary right or confidential information before any competent court in accordance with clause 24.

21. THIRD PARTIES

This Agreement is entered into solely for the benefit of the Licensor and the Licensee and shall not confer any rights upon any entity that is not a party to this Agreement.

22. NOTICES

22.1. Any notice to be given by either party to the other must be in writing and may be sent by facsimile or recorded delivery to the other party as appearing herein or such other address as such party from time to time has communicated to the other in writing and if so sent shall be deemed to be served in the case of facsimile immediately otherwise 48 hours following the date of posting.

22.2. All notices to be served on the Licensor under this Agreement shall be sent to the Licensor at the address identified on the Licensor's website from time to time.

23. ENTIRE AGREEMENT

This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties hereto prior to or simultaneously with this Agreement and constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by a director of each party.

24. LAW

The parties hereby agree that this Agreement shall be construed in accordance with the law of England and Wales and subject to clause 20 any disputes not amicably resolved between the parties shall be tried in the High Court in England.

Geologix Limited Registered Company Number: 2763820
Geologix Limited Registered Address:
Rosebery Court
St Andrews Business Park
Norwich
Norfolk
NR7 0HS
United Kingdom

Geologix Limited
Rosebery Court
St. Andrews Business Park
Norwich
NR7 0HS
United Kingdom
legal@geologix.com



www.geologix.com