INTERPRETATION

1. These terms and conditions shall be construed as if the words in the singular shall include the plural and in the plural shall include the singular;

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

3. Any words or phrases in the singular shall include the plural and in the plural shall include the singular;

4. A clause or paragraph head shall not affect the interpretation of this Agreement.

5. The Supplier does not warrant that the Software will be uninterrupted or error-free.

6. Maintenance Services:

7. The Customer shall be responsible.

8. The Customer may not use any such information provided by the Supplier or obtained by the Customer

9. Except as expressly stated in this clause 4, the Customer has no right (and shall not permit any third party to)

10. The Customer shall:

11. The Supplier shall:

12. The Customer supplies to the Customer; and

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11.2 the Supplier may at its sole option and expense:

11.2.3 replace the relevant Hardware with non-infringing hardware or software; or

11.2.4 terminate this Agreement immediately by notice in writing to the Customer and refund any of the Purchase Price paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer’s use of the Hardware or Software to the date of termination) on receipt by the Customer of the Hardware or Software and all copies thereof.

11.3 Termination of this Agreement will make the Customer liable for any outstanding Williams and other payments due under this Agreement.

12. DURATION AND TERMINATION

12.1 Subject to clauses 9.3, 11.2, 12.2 and 12.3, this Agreement shall continue indefinitely.

12.2 The provision of the Maintenance Services and the incurring of Maintenance Fees may be terminated upon either of the parties giving notice to the other to expire no earlier than the end of the Initial Term.

12.3 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement immediately by giving written notice to the Customer if:

12.3.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default of the same for more than 14 days after being notified in writing to make such payment;

12.3.2 the Customer commits a material breach of any other term of this Agreement which breach is irredeemable or (if such breach is remediable) fails to remedy that breach within a period of 14 days of the Customer’s receipt of the Supplier’s notice to that effect; or

12.3.3 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 the Customer; or

12.3.4 an administrator, receiver or administrative receiver is appointed in relation to the Customer;

12.3.5 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 12.3.3 or 12.3.4.

12.4 If the Supplier shall immediately return to the Supplier all Hardware and all copies of the Software then in possession, custody or control of the Software.

12.5 Termination of this Agreement shall not affect any other rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claims damages in respect of any breach of the Agreement that commenced or existed at or before the date of termination.

12.6 Any provision of this Agreement which expressly or by implication is intended to continue in force on or after termination of this Agreement, including clause 7, clause 8, clause 9.5, clause 10 and clause 12, shall remain in full force and effect.

13. ASSIGNMENT

13.1 Without prejudice to any other rights or remedies available to the Supplier, a Customer shall not:

13.1.1 sub-license, assign, novate or sub-contract the benefit or burden of this Agreement in whole or in part;

13.1.2 allow the Software to become the subject of any charge, lien or encumbrance; and

13.1.3 take any other manner of any of its rights and obligations under this Agreement.

13.4 The Supplier shall have no liability in any representation, statement, assurance or warranty and (in either case) the Supplier shall have no liability in respect of any representation, statement, assurance or warranty and (in either case) the Supplier shall have no liability in respect of such representation, statement, assurance or warranty, whether it was negligent or innocent, of any kind or of any person other than those expressly set out in this Agreement.

13.5 Notwithstanding clause 7.1, a party assigning any of its rights as permitted under this Agreement may disclose to that person any information in possession which relates to the Customer or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment.

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

14. WAIVER

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

15. ENTIRE AGREEMENT

These Terms and the Proposal and any documents referred to therein contain the whole Agreement between the parties and supersede any prior Agreements, arrangements and understandings between the parties relating to that subject matter.

16. VARIATION

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

17. SEVERANCE

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification thereby not less than the provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

17.6 It is a condition of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. THIRD-PARTY RIGHTS

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

19. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

20. NOTICES

20.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall:

20.1.1 be delivered by hand (including by commercial courier) at the address set out in the Proposal or such other address as is notified pursuant to this clause; or

20.1.2 be faxed to its main business address;

20.2 Any notice shall be deemed to have been received:

20.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

20.2.2 if sent by fax, at 9.00 am on the next business day after transmission.

20.3 This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, “service” shall not include e-mail.

21. GOVERNING LAW AND JURISDICTION

21.1 These Terms and any dispute or claim arising out of or in connection with their 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.

21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).