

Light Blue software licence agreement – standalone version

IMPORTANT – PLEASE READ CAREFULLY. BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING LIGHT BLUE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS LICENCE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, DO NOT INSTALL, COPY, DOWNLOAD, ACCESS OR USE THE SOFTWARE.

The software and documentation accompanying this Licence (the Software) are licensed, not sold, to you by Light Blue Software Limited (we or us and our) for use under the following terms. We reserve any rights not expressly granted to you.

The Software incorporates other proprietary software and the rights granted are limited to our and our licensors' intellectual property rights in the Software and do not include any other intellectual property rights.

You own the media on which the Software is recorded or fixed, but we and our licensors retain ownership of the Software itself.

1 Your use of the Software

1.1 Installation

Except as permitted below, you may only install and use one copy of the Software on one computer at a time. If we provide you with both Windows and Macintosh versions of the Software in multiple languages, you may only use one version of the Software on one platform (ie the Windows or Macintosh version) in one language at a time. You may not use or run more than one instance of the Software from the same operating system (eg using virtualization or other technologies) at the same time.

1.2 Backup, Portable and Home Rights

You may make any back up copy of the Software which is necessary for the purposes of your lawful use. In addition, the primary user of the computer on which the Software is installed may make a second copy for his or her exclusive use on either a home or portable computer. You must reproduce on each copy any copyright notice and other proprietary notices that are on the original copy supplied by us.

1.3 Decompilation

You may not reverse engineer, decompile or disassemble the software, except and only to the extent expressly permitted by law.

1.4 Modification, adaption, translation and derivative works

You may not modify or adapt the Software except for the purpose of correcting errors in it. You may not translate the Software or any part of it. You may not create derivative works based on the Software or any part of it.

1.5 Transfer and loan

You may not transfer or assign your rights under this Licence to another party without our prior written consent. You may not rent, lease or loan the Software.

1.6 Trial software

The Software may not require a serial number to install or operate, for example, when configured to allow trial or tryout for a limited period of time or for a limited number of launches. You are not permitted to use the Software in a manner inconsistent with its design or documentation. For example, you may not use the Software after its tryout period has ended unless you input a valid Licence code. Access to any output files created with the Software used on a tryout or trial basis is entirely at your own risk.

1.7 Upgrades & Updates

If the Software is licensed to you as an upgrade or update, then you may only use the Software to replace a validly licensed version of the same Software. The upgrade or update does not constitute the granting of a second licence to the Software. You may not use the upgrade or update in addition to the software it is replacing.

1.8 Pre-release Software additional terms

If the Software is pre-commercial release or beta software (Pre-release Software) then this section applies. The Pre-release Software is a pre-release version, does not represent our final product, and may contain bugs, errors and other problems that could cause system or other failures and data loss. We may never commercially release the Pre-release Software. If you received the Pre-release Software pursuant to a separate written agreement, your use of the Software is also governed by that agreement. You will return or destroy all copies of Pre-release Software on our request or on our commercial release of such Software. We give no warranty in relation Pre-release Software and your use of it is at your own risk.

2 Termination

2.1 This Licence is effective until terminated. This Licence will terminate immediately without notice from us if you fail to comply with any provision of this Licence. Upon such termination you must destroy the Software, all accompanying written materials, and all copies of it. Sections 3, 4 and 5 will survive any termination of this Licence.

3 Warranty

3.1 Subject to the limitations set out in section 4 we warrant that:

3.1.1 the media on which the Software is stored will be free from defects in materials design and workmanship for a period of 90 days from the date of purchase; and

3.1.2 the Software will perform substantially in accordance with the accompanying documentation for a period of 90 days from your date of purchase.

3.2 Where our Software incorporates software licensed to us by any third party, we do not give any warranty that that software will be free from defects, but we will wherever possible assign to you the benefit of any warranty, guarantee or indemnity given by the person supplying that software to us.

3.3 Without prejudice to the foregoing we do not warrant that the use of the Software will meet your data processing requirements or that the operation of the Software will be uninterrupted or error free.

4 Limitation of liability

YOUR ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS IN THIS SECTION

4.1 This section 4 sets out our entire liability (including any liability for the acts and omissions of our employees agents and sub-contractors) to you in respect of:

4.1.1 any breach of our contractual obligations arising under this Licence; and

4.1.2 any representation statement or tortuous act or omission including negligence (other than for fraud) arising under or in connection with this Licence.

4.2 Our liability to you for:

4.2.1 death or personal injury resulting from our own or our employees' agents' or subcontractors' negligence; and

4.2.2 damage suffered by you as a result of any breach of the obligations implied by, section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 or section 8 of the Supply of Goods (Implied Terms) Act 1973, shall not be limited.

4.3 Subject to section 4.2 our entire liability and your sole remedy shall be limited to, at our option, replacement of the Software, refund of the purchase price, or repair or replacement of the Software.

4.4 Subject to section 4.2 we shall not be liable to you for any loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by you as a result of an action brought by a third party) even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring that loss.

5 General

5.1 This Licence is to be interpreted in accordance with the laws of England and will be subject to the jurisdiction of the English courts.

5.2 This Licence constitutes the entire agreement between the parties with respect to the Software licensed under its terms, and it supersedes any prior or contemporaneous agreements, arrangements or understandings in relation to the Software. You acknowledge and agree that you have not relied on any representations made by us. Nothing in this Licence shall limit or exclude liability for any representation made fraudulently.

5.3 No amendment to or modification of this Licence will be binding unless agreed in writing and signed by one of our directors.

5.4 If any provision of this Licence shall be held to be illegal or unenforceable, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Licence will remain in full force and effect.

5.5 No failure or delay by us in exercising our rights or remedies shall operate as a waiver unless made by specific written notice. No single or partial exercise of any right or remedy of us shall operate as a waiver or preclude any other or further exercise of that or any other right or remedy.

Light Blue software licence and hosting agreement – hosted version

IMPORTANT – PLEASE READ CAREFULLY. BY ACCESSING LIGHT BLUE AS A HOSTED SERVICE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS LICENSE.

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

“Acceptance Date”: means the date on which the Software is accepted or deemed to be accepted by You pursuant to clause 3;

“Agreement” means these terms and conditions for the supply of Software Materials and Hosting Services, as may be amended by Us from time to time. “Charges” means any charges due under this Agreement and includes the License Fee and the Hosting Fee;

“Commencement Date” means the date on which you register for the Software materials and Hosting Service.

“Documentation” means (where available) the operating manuals, user instructions, technical literature and other related materials We supply to You in any form pursuant to this Agreement for aiding the use of the Software, including any part or copy of them and any Third Party Software documentation;

“Group Company” means (in relation to each party) any subsidiary, group or parent company from time to time of a party (as such words are defined in the Companies Act 2006);

“Hosting Fee” means the annual, six monthly or monthly fee payable for the Hosting Services. “Hosting Services” means the service provided to allow You to access the Software Materials from a remote location;

“Initial Term” means the period of six (6) months from the Commencement Date unless specified otherwise in the Schedule or Project Proposal;

“IPR” means all intellectual property rights including, without limitation, all patents, copyright, design rights, database rights (including rights in the design or structure of any database) trade marks, confidential know-how, database rights and all other similar rights (whether registered or unregistered) and all applications for the same anywhere in the world;

“License” means the License specified in clause 2;

“License Fee” means the fee payable for the License as specified in the Schedule;

“Renewal Term” means the period defined in clause 12.1;

“Software” means the Light Blue: Photo computer programs including (where applicable and agreed) any software which is the subject of a previous licence between Us, and any copies of the same supplied by Us but excluding source code material and all preparatory design material;

“Software Materials” means the Software and any Third Party Software;

“Term” means the Initial Term and any Renewal Term;

“Third Party Software” means all software owned by a third party but legally licensed for use or distribution by Us or You (as the case may be) as part of or for use within the Software Materials or through the Hosting Services;

“Users” means any employee, temporary staff agent or contractor of Yours that accesses the Software Materials via the Hosting Services with Your permission;

2. Grant of License

2.1 Subject to the terms of this Agreement, in consideration of the payment to Us by You of the Licence Fee, We grant You a non-exclusive and non-transferable license (the License) during the Term to use and access the Software through the Hosting Services for Your internal business purposes only.

2.2 We may use a third party hosting service provider in order to provide the Hosting Services. If We do, then the standard terms and conditions of that third party hosting service provider will apply and will take precedence over the terms of this Agreement, except for clause 9, which shall take precedence over the standard terms and conditions of that third party hosting service provider. The terms of this Agreement will also apply to the extent that they do not directly conflict with the terms of the third party hosting service provider.

3. Acceptance

3.1 You will be deemed to have accepted the Software Materials on use of the Software Materials by You in a live environment.

4. Permitted Use

4.1 The License will be restricted to one User, unless on registration You elect to have a licence for more than one User or if You subsequently notify Us of additional Users.

4.2 If the number of Users changes during the Term of this Agreement, You must write to Us to request a change to them. You may increase the number of Users covered by the License at any time during the term of this Agreement and upon payment of any additional sums due for the remainder of the current invoicing period. If there is any change to the number of User licenses or variables relating to the Software Materials, Hosting Services, and/or the Charges due under this Agreement, We will confirm this to you You with a revised Schedule, and/or take any changes into account in the renewal invoice issued to You before the commencement of the Renewal Term.

4.3 You may access and use the Software via the Hosting Services for processing Your own data for Your own internal business purposes only.

4.4 You shall not:

- a) use or attempt to use the Software Materials or permit any third party to do so to provide a data processing service to any third party, or otherwise, or contrary to any other restrictions stated in this Agreement without Our prior written consent;
- b) translate or adapt the Software Materials for any purpose nor arrange or create derivative works based on the Software Materials without Our express prior written consent in each case;
- c) transfer or distribute (whether by license, loan, rental, sale or otherwise) or otherwise deal in, charge or encumber all or any part of the Software Materials to any other person or use the Software Materials on behalf of any third party or make available the same to any third party;
- d) make, or permit any third party to make for any purpose (including without limitation for error correction), any alterations, modifications, additions or enhancements to the Software Materials;
- e) yourself or permit any third party to, alter, adapt, make error corrections to, decompile, reverse engineer or disassemble the Software Materials or any part or permit the Software to be combined with any other programs.

4.5 You shall follow all lawful and reasonable instructions and directions given by Us from time to time in relation to the use of the Software Materials and Hosting Services.

4.6 You shall use appropriate hardware and software to access the Software Materials in accordance with the specifications notified to You and will take appropriate security precautions to prevent unauthorised access to Your computer systems.

4.7 You may not access or use the Software Materials other than as specified in this Agreement without Our prior written consent.

5 Hosting Services

5.1 We shall use reasonable endeavours to maintain twenty four (24) hour online presence for the Software Materials. However, we cannot guarantee continuous, uninterrupted use. There will be times when We will be required to interrupt the provision of the Hosting Services in order to carry out routine maintenance, repairs, reconfigurations or upgrades on a regular basis or in circumstances beyond Our control. We shall notify You in advance by email of any planned interruptions.

5.2 We may suspend the Hosting Services without notice and without any liability to You if:

- a) the Hosting Services or Software Materials are being used in breach of this Agreement (including without limitation failure to pay any Charges);
- b) there is a breach of security in respect of which We reasonably believe that the suspension of the Hosting Services is necessary to protect Your or Our network or a third party network;
- c) any third party networks and/or services, including without limitation telecommunications and ISP services are unavailable;
- d) required by law, regulation or court order or as compelled by a law enforcement or government agency or other relevant regulatory agency.

5.3 In the event the Hosting Services are suspended due to Your act or omission, We reserve the right to charge You for a reconnection fee prior to resuming provision of the Hosting Services.

5.4 We may from time to time upgrade Our hosting facility and it may become necessary to relocate the hosting equipment within the same location or to another location. In each such case, We shall give You reasonable advance notice and use reasonable endeavours to minimise the effect that any such change will have on the Hosting Services.

5.5 We shall use commercially reasonable efforts to safeguard and accurately maintain Your data stored on the Software in accordance with general industry standards.

6 Proprietary rights

6.1 All copyright, database rights and other IPR in the Software, Hosting Services or Documentation and rights in any copies of them shall belong to Us and You shall have no rights in respect of any of them except the right, as expressly granted under this Agreement, to use them in accordance with this Agreement. You shall do or procure to be done all such further acts and things and shall execute or procure the execution of all such other documents as We may from time to time require for the purpose of giving Us the full benefit of the provisions of this clause.

6.2 You shall notify Us immediately if You become aware of any unauthorised access to, or use of any part of the Software Materials, Documentation.

7 Support

7.1 In consideration of Your payment of the Hosting Fee and the performance of all Your other obligations pursuant to this Agreement, We agree to provide the Support in accordance with the terms of this Agreement.

7.2 Support covers assistance in relation to (i) availability of the Hosting Service and (ii) significant operational errors that make the Software unusable when operated in conformity with the online user instructions in the help function in the program or the Documentation (as the case may be). Such errors or unavailability shall be notified to us by email.

7.3 If You make unreasonable, excessive or inappropriate use of the Support, then We may at Our absolute discretion either suspend or charge extra for such Support and invoice You, and You agree to pay, for the additional Charges in respect of time spent supplying such Support at the then current rates.

8 Customer obligations

8.1 You undertake:

- a) to ensure that the number of Users does not at any time exceed the number previously notified to us.
- b) to maintain accurate and up-to-date records of the number and locations of all Users;
- c) to ensure each User keeps Your password for their use and access to the Software Materials and/or Hosting Services secure and does not disclose it to any third party not to store, distribute or transmit any viruses or unsolicited emails, or any material through the Hosting Services that are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitate illegal activity; depict sexually explicit images; or promote unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, breach third party intellectual property rights; include personal data of any person that was not collected or is not being stored in accordance with applicable legislation and guidance from regulatory authorities, breach third party confidentiality or privacy rights or any other illegal or actionable activities;

- d) to comply with the acceptable usage policy as may be notified to You by Us from time to time;
- e) to comply with all licensing terms in respect of any Third Party Software. You to allow Us to host such Third Party Software as part of the Hosting Services. You will indemnify Us for any breach of this clause (f);
- f) not to provide or otherwise make available the Software Materials in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) in any form to any person other than Your employees, temporary staff, agents or sub-contractors who need it for the purposes of this Agreement;
- g) to accept full responsibility for the acts or omissions of any of Your employees, sub-contractors, consultants and/or agents given access to the Software Materials as if they were Your acts or omissions;
- h) to comply with all applicable laws and regulations in relation to Your activities under this Agreement;
- i) to allow Us to study Your information and data used with the Software for the purpose of rectifying any problems with the Software in relation to provision of Support;
- j) to ensure that the operating system and compiler and any other software with which the Software will be used is either Your property or it is legally licensed to You for use with the Software. You will indemnify Us in respect of any claims by third parties and all related costs, expenses or damages in the event of any alleged violation of third party proprietary right which results in any claims against Us;
- k) not to bypass any security and/or access feature of the Hosting Services or Software Materials;
- l) to use reasonable endeavours to ensure that its own system or equipment does not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door or other common viruses.

8.2 You shall indemnify Us against any losses, damages, costs (including legal and other professional fees) and expenses incurred by or awarded against Us as a result of Your breach of this Agreement or any negligent or wrongful act by You or Your officers, employees, contractors or agents.

8.3 You accept and acknowledge that We are not responsible for the acts or omissions of any third party suppliers, including but not limited to telecommunications and internet service providers and/or Your third party suppliers.

8.4 You shall not re-sell or permit the resale directly or indirectly (whether or not for profit) of the Software Materials or Hosting Services (or any part of either) to any third party, or to allow any third party to receive or make use of the Software Materials or Hosting Services (or any part of either) directly or indirectly (whether or not for profit).

8.5 In the event of any loss or damage to Your data, Your sole and exclusive remedy shall be for Us to use reasonable endeavours to restore the lost or damaged data from the latest back-up of such data maintained by us in accordance with the archiving procedure. Subject to clause 11.1, We shall not be responsible for any loss, destruction, alteration or disclosure of Your data caused by any third party (except those third parties sub-contracted by Us to perform services related to Your data maintenance and/or back-up.)

9 Payment terms

9.1 You agree to pay Us the Charges not later than 30 days of the date of invoice and otherwise in accordance with this clause 9.

9.2 The charges of the Software Materials shall be payable on the Commencement Date.

9.3 The charges in respect of the Hosting Service for all subsequent months shall be payable in advance before the start of the period in which they relate

9.4 All amounts due under this Agreement are exclusive of VAT and any other taxes, duties or levies.

9.5 After the initial term we will be entitled to increase any Charges due under this Agreement by giving You thirty (30) days prior notice of such increase.

9.6 We will not activate the Hosting Services in respect of the Software Materials until payment of all Charges due under this Agreement have been received by Us in full and in cleared funds.

9.7 If any payment due under this Agreement or any other Agreement with Us is or are in arrears, We reserve the right without prejudice to any other right or remedy to:

- a) charge interest on such overdue sum on a daily basis from the original due date until payment is received in full as well as after any judgment at a rate of 3% per annum above The Co-operative Bank PLC's base lending rate in force from time to time and alternatively reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
- b) suspend the provision of the Hosting Services, under this Agreement on seven (7) days. prior notice to You; and/or
- c) withhold the activation of the Hosting Services until any outstanding payment is both received and cleared; and/or
- d) terminate this Agreement pursuant to clause 12.

9.8 You will notify Us in writing within fourteen (14) days of receipt of an invoice if You consider such invoice incorrect or invalid for any reason and the reasons for withholding payment, failing which such invoice will be deemed accepted and You will make full payment in accordance with it.

9.9 We reserve the right to refuse to provide the Hosting Services, at any time without refunding the Charges paid by You, if any attempt is made, other than by Us, to tamper with the Hosting Services or Software Materials, or if You have failed to pay an invoice from Us in accordance with this Agreement or where, in Our reasonable opinion, Your system and/or the equipment has ceased to be capable of receiving the Hosting Services and running the Software Materials successfully for any reason.

Warranty

10.1 We warrant the functionality of the Software, when properly used in conjunction with the Hosting Services and in conformity with the user guide in the help function in the Software and/or the Documentation, will, for a period of three (3) months from the Acceptance Date, operate substantially in accordance with the Specification or Documentation.

10.2 Our obligation and Your exclusive remedy under the warranty given in clause 10.1 is at Our option either repair within a reasonable period of time, or replace the Software in whole or in part, and in the case of Third Party Software the supply of a corrected version where available from the supplier of the same. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated in this Agreement whether by statute, common law or otherwise, are hereby excluded including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

10.3 We will have no liability or obligation under clauses 10.1 or 10.2 unless prior written notice of any alleged default is received from You within fourteen (14) days of the Acceptance Date in the case of Software. The warranty in clause 10.1 shall not apply to any Software developed or modified under the Agreement or in respect of any previous software licensed by Us to You in respect of which the originally agreed warranty period has expired.

10.4 You acknowledge that it is Your responsibility to ensure that the facilities and functions of the Software Materials meet Your requirements and that We will not be liable for any failure of the Software Materials to provide any facility or function not described in the Specification or Documentation or for any failure of the Software Materials attributable to any modification to the Software or the equipment by persons other than Our staff or combination of the Software Materials with other software or equipment without Our express prior written consent, or for the results of, loss or damage arising from any Support We have given to help You to develop or implement back-up routines.

10.5 We will use reasonable care and skill in performing and providing the Hosting Services.

10.6 We will investigate any problem or error in any provision of Hosting Services, or provided that You notify Us in writing within seven (7) days following performance or delivery giving Us all necessary information to be able to investigate the problem, breach or error and limit Our liability to the right to re-submit the Deliverable or re-perform the Hosting Service.

10.7 We will not be liable for breach of the warranties in clause 10.5 unless You notify Us in accordance with clause 10.6 or if the error or failure has been caused by incorrect use or abuse or corruption of the Software Materials or Hosting Services.

10.8 Except as provided in this Agreement no further warranty, condition, undertaking or term, express or implied, statutory or otherwise as to the condition, quality, availability, reliability, suitability, performance or fitness for purpose of the Support or Hosting Services and Professional Services provided hereunder is given or assumed by Us.

11 Liability

11.1 Nothing in this Agreement shall in any way exclude or limit Our liability for death or personal injury caused by negligence, or liability for fraudulent misrepresentation, or for any breach of Our obligations as to title under section 12 of the Sale of Goods Act 1979 or section 2 of Supply of Goods and Services Act 1982 or for any other liability which by law it is not possible to exclude or limit.

11.2 Our liability for the loss or damage to tangible property, during the repair or upgrade of the Software Materials whether or not the same are under warranty, shall be limited in accordance with clause 11.3 of this Agreement.

11.3 Subject to sub-clause 11.6 below, Our total liability for direct losses in contract, tort, misrepresentation or otherwise in connection with this Agreement or the provision of the Software Materials or Hosting Services, or for any one event or a series of related events shall be limited to the total Charges and resulting sums paid (excluding VAT and expenses) by You to Us in the 12 months before the event(s) complained of.

11.4 We shall have no liability to You in respect of defaults covered by clause 11.3 unless You notify Us within six (6) months of the date You became aware of the circumstances giving rise to the event(s) complained of. We shall have not less than ninety (90) days following written notice by You) or such other notice period notified to You in which to remedy any default.

11.5 In no event will We be liable to You in contract, tort, misrepresentation or otherwise, for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, nor for any direct or indirect loss of profit, loss of anticipated profits, loss of revenue, loss of anticipated revenue, loss of savings or anticipated savings, loss of business opportunity, increases in cost of working whether anticipated or not, loss or corruption of data, loss of use or loss of operating time and any costs and expenses associated therewith, loss or damage to Software or data which it contains during repair or upgrade whether or not the same are under warranty, the cost of purchasing elsewhere, depletion of goodwill or reputation or otherwise which arise out of or in connection with this Agreement and whether or not foreseeable or made known to Us.

11.6 We shall indemnify You against any claim that the normal use or possession of the Software or Documentation infringes the intellectual property rights of any third party which are effective in the UK provided We are notified promptly of any claim, We are given control of any claim, You do not prejudice Our defence of any claim and You give Us all reasonable assistance (at Our reasonable cost) and that the claim does not arise as a result of (a) the use of the Software or Documentation in combination with equipment or software not approved by Us, (b) by reason of alteration or modification not approved by Us or (c) where the claim arises because of a feature specified and requested by You. We shall have the right to procure the continuing use of the infringing part, modify or replace the infringing part or refund an equitable proportion of the Hosting Fee provided that exercise of any of these options shall operate as an entire discharge of Our liability to You under this sub-clause.

11.7 You will indemnify and keep Us indemnified against any loss, damage, claim or expense arising out of (i) the physical injury of or death of any of Our consultants, employees, agents or authorised representatives arising by reason of defective equipment supplied by You, Your failure to provide a safe place of work or otherwise by reason of any negligent act or default on Your part or Your employees, agents or authorised representatives; (ii) Your failure to comply with the terms and conditions governing the use of any Third Party Software; (c) any claim that the storage of Your data via the Hosting Services and/or Software Materials by Us infringes the intellectual property rights of any third party.

Term & Termination

12.1 This Agreement will commence on the Commencement Date. The License and Hosting Services will continue for the Initial Term and unless terminated earlier in accordance with these terms, shall automatically renew on expiry of the Initial Term for subsequent periods of one month ("Renewal Term") provided that You have not breached this Agreement. You will pay any Charges due to Us in respect of such Renewal Term in accordance with Our invoice and sub-clause 12.3 below.

12.2 We may terminate this Agreement (or at Our discretion, the supply to You of any Software Licenses, Hosting Services, Support, (a) immediately if You fail to pay any sum due to Us under this Agreement and such sum remains unpaid for fourteen (14) days after notice has been given to You that such sum has not been paid or (b) on sixty (60) days prior written notice provided that We refund to You pro rata any monies paid by You in advance.

12.3 You may only terminate this Agreement by giving not less than thirty (30) days. prior written notice to take affect after the expiry of the Initial Term.

12.4 Either party shall be entitled to terminate this Agreement forthwith by notice in writing to the other if the other:

a) is in material breach of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy the breach within thirty (30) days of receipt of written notice setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement;

b) becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986, or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or notice has been received of a pending appointment of or the appointment of a receiver, manager, administrator or administrative receiver over all or any part of its undertaking, assets or income, intends to pass or has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order, or has ceased or threatened to cease to trade.

12.5 Termination of the Agreement, however caused, shall not affect the rights of either party under this Agreement which may have accrued up to the date of termination.

12.6 On termination of this Agreement however caused the License shall terminate and accordingly Your right to use the Software Materials via the Hosting Services will automatically cease. If the Agreement is terminated by You pursuant to clause 12.4(a), We will, at Our sole discretion, either make Your data available to You in standard readable form via email, CD-ROM or DVD or allow You 30 days. access to the Hosting Services following such termination to retrieve and store a read only copy of Your data. If the Agreement is terminated by Us or by You under any other clause, then We reserve the right to make a reasonable charge for such service or access.

13 Force majeure

13.1 No party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its control. For the avoidance of doubt, nothing in this clause 13 shall excuse You from any payment obligations under this Agreement. If any such event continues for more than ninety (90) days and provided substantial performance is still impeded either party may terminate this Agreement forthwith by prior written notice without prejudice to the accrued rights of either party.

14 Assignment

14.1 We may assign, sub-contract or otherwise transfer any of Our rights or obligations under this Agreement without Your consent. You may only assign, sub-contract or otherwise transfer any of Your rights or obligations with Our prior written consent.

15 Notices

15.1 Any notice required to be given pursuant to this Agreement shall unless otherwise stated in it, be in writing, sent to the other party marked for the attention of the person at the address specified in this Agreement (or to such other address as either party may from time to time notify to the other in writing in accordance with this clause).

15.2 For the purpose of notices to be given by Us in writing, the expression "writing" or "written" shall be deemed to include email communications or facsimile transmissions. At Our option, We may send You written notice addressed to the facsimile number or by email at the email address You supply to Us. specified in the Schedule .

15.3 A correctly addressed notice sent by first-class post shall be deemed to have been delivered 72 hours after posting, correctly directed faxes shall be deemed to have been received instantaneously on transmission, and correctly addressed emails shall be deemed to have been delivered 24 hours after sending.

16 Severability

16.1 If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

17 Waiver

17.1 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

18 Entire Agreement

18.1 This Agreement and any document expressly incorporated in it contains the entire and only agreement between the parties and supersedes all previous agreements between the parties with respect to the subject matter hereof. Each party acknowledges that in entering into this Agreement, it has not relied on any representation, undertaking, promise or statement whether oral or in writing which is not expressly set out in this Agreement. Except as expressly provided in this Agreement all conditions, warranties, stipulations and other statements whatsoever that would otherwise be implied or imposed by statute, at common law, or otherwise howsoever are excluded to the fullest extent permitted by law. Nothing in the foregoing shall however affect any liability for fraudulent misrepresentation.

19 Third party rights

19.1 A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20 Data Protection

20.1 Each party shall comply with the Data Protection Act 1998 ("Act"). Neither party shall by any act or omission, put the other party in breach of the Act and each party shall do and execute, or arrange to be done and executed each act, document and thing necessary or desirable to ensure that it does not put the other party in breach of the Act. You shall indemnify Us for any breach by You of this clause 20.1.

20.2 You have a right at any time to stop Us from contacting You for direct marketing by writing to Us at Our registered office.

21 Confidentiality

21.1 Both parties agree not to use or disclose confidential information relating to or owned by the other, received or disclosed to it by the other party during the term of this Agreement, save for use or disclosure required in order to perform their respective obligations under this Agreement. Disclosure shall be limited to such of the receiving party's employees, officers, agents or contractors directly involved in performing the receiving party's obligations.

21.2 The parties agree that information is not to be regarded as confidential and that the receiving party will have no obligation regarding confidentiality where that information is already in the public domain or enters the public domain through no fault of the receiving party, or is received from a third party without any obligations of confidentiality, or is used or disclosed with the prior written consent of the owner of that information, or is disclosed in compliance with a legal requirement, or is independently developed by the receiving party.

21.3 Any confidential information will be returned or destroyed by the receiving party forthwith at the prior written request of the owner.

21.4 In the event that the parties execute a separate confidentiality agreement, the terms of that agreement shall prevail.

22 Governing law

22.1 This Agreement shall be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales.