# Elecosoft®

## ShireSystem - Subscription Terms and Conditions

**You should print a copy of these Terms for future reference.**

**IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE INSTALLING, OPENING OR ACCESSING THE SOFTWARE:** The Contract has been entered into on the date that the Software was first installed, opened, or accessed.

**OPERATING SYSTEM REQUIREMENTS:** THIS SOFTWARE IS SUPPLIED AS HARDWARE AND OPERATING SYSTEM INDEPENDENT. PLEASE REFER TO OUR MINIMUM HARDWARE AND OPERATING SYSTEM REQUIREMENTS AS SPECIFIED IN OUR GUIDELINES MADE AVAILABLE TO YOU VIA OUR WEBSITE AT WWW.ELECOSOFT.COM OR VIA OUR SUPPORT DEPARTMENT.

**IMPORTANT NOTICE TO ALL USERS:** BY INSTALLING OR ACCESSING THE SOFTWARE YOU AGREE TO THE TERMS OF THE CONTRACT WHICH WILL BIND YOU AND YOUR EMPLOYEES. IF YOU DO NOT AGREE TO THE TERMS OF THE CONTRACT ELECOSOFT UK LTD WILL NOT MAKE THE SOFTWARE AVAILABLE TO YOU AND YOU MUST DISCONTINUE THE INSTALLATION PROCESS OR ACCESS THE SOFTWARE.

## AGREED TERMS

### 1.    DEFINITONS AND INTERPRETATION

1.1    In the Contract, unless the context does not so permit, the following words and expressions have the following respective meanings:

**Additional Licence Term:** has the meaning specified in Clause 15.1.

**Affiliate**: in relation to either Party, any legal entity controlling, controlled by or under common control with that Party, for which purpose, "control" means direct or indirect possession of the power to direct or to cause the direction of the management or policies of the Party or entity in question, whether pursuant to the ownership of voting securities, by contract or otherwise.

**Agreement:** the agreements between Elecosoft and the Customer for the provision of the Services, such agreement to comprise (1) these Terms; (2) the Agreement Details and (3) any other document which Elecosoft and the Customer agree shall form part of the Agreement and in the event of any conflict or inconsistency among the above they shall prevail over each other in the reserve of the order set out above;

**Subscription Agreement**: the information contained in the document entitled "Subscription Agreement."

**Authorised Users**: those employees and independent contractors of the Customer who are from time to time entitled to use the Software.

**Beta Test Data**: data that has been specifically constructed for use during testing to test the ability of the Software to respond to unusual, extreme, exceptional or unexpected input.

**Business Hours:** 08.30 to 16.30 on a Working Day.

**Charges**: the monies payable by the Customer to Elecosoft in consideration of the provision by Elecosoft of the Services, as set out in, or determined in accordance with the provisions of, the Agreement Details.

**Commencement Date**: the date specified as such in the Agreement Details.

**Confidential Information**: all technical or commercial know-how, specifications, inventions, processes or initiatives of either Party and any other information concerning that Party or its business, Customers, products or services which the other Party may obtain directly or indirectly, or which may come to the other Party's attention, from time to time, as a result of the parties having entered into the Contract, subject to Clause 11.1;

**Customer Data**: the data inputted into the information fields of the Software by the Customer, by Authorised Users.

**Data Protection Legislation**: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the Data Protection Act 2018 (DPA); UK GDPR (which expression has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

**Initial Term**: the period of twelve (12) months beginning on the Commencement Date.

**Intellectual Property Rights**: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

**Licence Term**: the Initial Licence Term or any Additional Licence Term, as the context permits.

**Live Data:** actual real world data, data that is relevant, of value, sensitive and essential to normal everyday business function of the Customer and which excludes Beta Test Data and Evaluation data.

**Party**: either or both, as the context permits, of Elecosoft and the Customer.

**Personal Data**: as defined in the Data Protection Legislation.

**Service Description**: the description of the Software more particularly set out in the Agreement Details.

**Services:** the provision of the Software and the Support Services.

**Site**: the premises from which the Customer carries out its business as stated above or as notified to Elecosoft in writing from time to time.

**Software**: the online software applications provided by Elecosoft as part of the Services, as listed in the Agreement Details.

**Software Specification**: such information regarding the functionality and performance of the Software, as may be provided by Elecosoft to the Customer from time to time including the information regarding the Software contained within the Service Description.

**Subscription Agreement**: the Subscription Agreement entered into between Elecosoft and the Customer for the provision to the Customer of the Services.

**Support Services:** any error corrections, updates, and upgrades that the Supplier may provide or perform with respect to the Software as well as any other support or training services provided to the Customer under the Contract, all as described in the Agreement Details.

**Term:** the duration of the Contract, as determined in accordance with Clause 15;

**URL: Uniform Resource Locator:** a reference to a web resource notified to the Customer by Elecosoft from time to time.

**Virus:** any device (including any software, code or programme) which is designed to or might have the effect of preventing, impairing or otherwise adversely affecting the operation of any computer software, hardware or system, and any telecommunication service, equipment or network or any other service or device, or preventing, impairing or otherwise adversely affecting access to or the operation or reliability of any programme or data (whether by altering or erasing the programme or data in whole or in part or otherwise) or otherwise adversely affecting the use of any software, hardware, system, service, equipment or network in question, and shall include in particular, but without limitation, worms, Trojan horses, viruses and all other similar devices;

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability; and

**Working Day:** Monday to Friday inclusive, with the exception of bank and public holidays in England and Wales.

1.2     Words and expressions defined or explained in the Subscription Agreement shall have the same respective meanings where used in these Terms.
1.3     Clause headings shall not affect the interpretation of these Terms.
1.4     Unless the context otherwise requires:
   1.4.1     words in the singular shall include the plural and, in the plural, shall include the singular.
   1.4.2     a reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time.
   1.4.3     a reference to one gender shall include a reference to the other genders: and
   1.4.4     any words following the terms "including," "include," "in particular," "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase, or term preceding those terms.
1.5     A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
1.6     References to Clauses are to the Clauses of these Terms.


## 2       PROVISION OF THE SERVICES

2.1     Elecosoft shall, with effect from the Commencement Date, provide the Services to the Customer on a non-exclusive basis for the Term, subject to and in accordance with the provisions of the Contract.
2.2     The right to use the Service is granted to the Customer only, and in particular is not to be regarded as having been granted to any Affiliates of the Customer.
2.3     Elecosoft shall use reasonable endeavours to make the Services available to the Customer at all times, subject to the other provisions of the Contract.
2.4     Elecosoft, acting reasonably and in good faith, reserves the right from time to time to make changes to the Services, provided that such changes do not give rise to any material change to the functionality, operation or performance of the Services.
2.5     In relation to Authorised Users:
   2.5.1     the Customer shall ensure that the Authorised Users use the Services in accordance with the provisions of the Contract and shall be responsible for any Authorised User's breach of the Contract.
   2.5.2     the Customer 's access to the Services shall be limited to the number of individual Authorised Users specified in the Agreement Details, as such number may be varied from time to time by written agreement between the Parties and the agreement of Elecosoft to any increase in the number of individual Authorised Users is conditional upon such increase in the Charges as Elecosoft shall reasonably consider necessary to reflect the increase in the number of Authorised Users; and
   2.5.3     the Customer shall ensure that each Authorised User keeps a secure password for their use of the Software and keeps that password confidential.


## 3       DELIVERY AND ACCEPTANCE OF THE SOFTWARE

3.1     Elecosoft shall be deemed to have delivered the Software once the Customer is able to access the Software online.
3.2     The Customer shall, within five (5) Working Days following the date of delivery of the Software (**Acceptance Period**), satisfy itself that the Software functions and performs in accordance, in all material respects, with the Software Specification. If the Software fails in any material respect so to conform, the Customer shall notify Elecosoft in writing, giving a detailed description of any such non-conformance (**Error**), in writing, before the end of the Acceptance Period. If the Customer gives no notification to Elecosoft before the end of the Acceptance Period (as to which time shall be of the essence) it shall be deemed to have accepted the Software.

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3.3 Elecosoft shall use reasonable endeavours to correct any Error notified to it by the Customer in accordance with Clause 3.2 within a reasonable time. Elecosoft shall notify the Customer in writing accordingly once the Error has been corrected, whereupon the procedure set out in Clause 3.2 shall be repeated, for which purpose the Acceptance Period shall begin upon the giving by Elecosoft of such notification to the Customer. The procedure set out in this Clause 3.3 may be repeated until such time as Elecosoft has corrected the Error provided that, if Elecosoft has been unable to correct the Error after the procedure has been repeated three times, either Party may terminate the Contract with immediate effect, without liability to the other Party, by giving notice to the other Party.

## 4 PROVISION OF HOSTING AND SUPPORT SERVICES

4.1 Elecosoft shall provide the Support Services.

4.2 Elecosoft hereby grants to the Customer a non-exclusive, non-transferable licence to allow Authorised Users to access the Software for the normal business purposes of the Customer from time to time, subject to and in accordance with the terms of the Contract.

## 5 GENERAL OBLIGATIONS OF ELECOSOFT

5.1 Elecosoft shall:

    5.1.1 provide the Services with reasonable care and skill; and

    5.1.2 use reasonable endeavours to ensure that the functionality and performance of the Software will conform, in all material respects, to the Software Specification.

5.2 Elecosoft shall, at its own expense, use reasonable endeavours to rectify any failure on its part to comply with its obligations under Clause 5.1 as soon as reasonably practicable, except to the extent that such failure arises as the result of:

    5.2.1 any use of the Software other than in accordance with Elecosoft's instructions or recommendations; or

    5.2.2 any modification or alteration of the Software by any person or organisation other than Elecosoft or its duly authorised contractors, agents or

The use of such endeavours by Elecosoft constitutes the Customer 's sole and exclusive remedy for any failure by Elecosoft to comply with its obligations under Clause 5.1.

## 6 GENERAL OBLIGATIONS OF THE CUSTOMER

6.1 The Customer shall:

    6.1.1 provide Elecosoft in a timely fashion with:

        6.1.1.1 such reasonable co-operation in relation to the Contract as Elecosoft might request from time to time.

        6.1.1.2 all reasonable access to such information including Customer Data, security access information and configuration services as may reasonably be required by Elecosoft from time to time for the purpose of performing its obligations under the Contract; and

        6.1.1.3 such other information as the Elecosoft may reasonably require from time to time in order for the purpose of performing its obligations under the Contract.

    6.1.2 comply at all times with Applicable Law with respect to its activities under the Contract.

    6.1.3 observe and perform all its other responsibilities under the Contract in a timely fashion, and in the event of any delays in the compliance by the Customer with its obligations under this Clause 6.1.3, Elecosoft shall be entitled to extend the time for the performance of any of its obligations or functions thereby affected by a period commensurate with the delay or such longer period as Elecosoft, acting reasonably, considers appropriate in all the circumstances;

    6.1.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Elecosoft, its contractors and agents to perform their obligations under the Contract, including the provision of the Services.

    6.1.5 ensure that its network and systems comply with such specifications and other requirements as Elecosoft, acting reasonably, may notify to the Customer from time to time; and

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6.1.6    be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Elecosoft's infrastructure, and for the resolution of all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

6.2    The Customer shall not store, distribute, introduce, or transmit through the Services:

6.2.1    any Virus.

6.2.2    any Vulnerability; or

6.2.3    any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.

6.3    The Customer shall not:

6.3.1    attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in the Contract or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties.

6.3.2    attempt to reverse compile, disassemble, reverse engineer, modify, vary, rent, lease, sub-licence, translate, merge, adapt or make error corrections to the Software or otherwise reduce to human-perceivable form all or any part of the Software, except to the extent that any reduction of the Software to human-perceivable form is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer or is otherwise allowed by any applicable law, unless Elecosoft is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request Elecosoft to carry out such action or to provide such information (and shall meet Elecosoft's reasonable costs in providing that information) before undertaking any such reduction.

6.3.3    use any such information provided by Elecosoft or obtained by the Customer during any such reduction permitted under Clause 6.3.2 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it;

6.3.4    attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this Clause 6.3;

6.3.5    use the Software in connection with life critical areas such as nuclear facilities, air traffic control or communication systems or any other purpose (whether of the kinds previously listed or otherwise) where the total or partial failure of the Software could lead directly to death, personal injury, or physical environmental damage. A failure to comply with this Clause 6.3.5 will be a material breach of the Contract not capable of remedy and no refund of any prepayment of Charges will be made; or

6.3.6    use the Software for the purposes of evaluation, on Live Data or in a live implementation. The Customer acknowledges it carries on such use of the Software entirely at its own risk.

6.4    The Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify Elecosoft promptly of any such actual or suspected unauthorised access or use.

# 7    CUSTOMER AND PERSONAL DATA

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

7.2    Elecosoft maintains no back-ups of Customer Data. Consequently, it is the responsibility of the Customer to maintain the security of Customer Data and Shire shall under no circumstances have any liability for any loss, destruction, alteration, or disclosure of Customer Data, howsoever caused.

7.3     Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 7 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation.

7.4     The individual functions undertaken by the Software will necessitate the processing of Personal Data comprising the names of individuals employed or engaged by the Customer together with business contact information for those individuals. Such processing shall be undertaken by Elecosoft solely in its capacity as the provider of the Software and such Personal Data will not actively be used or accessed by Elecosoft or any sub-processor.

7.5     Without limiting the generality of its obligations under Clause 7.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Elecosoft for the duration and for the purposes specified in the Contract.

7.6     Without limiting the generality of its obligations under Clause 7.3, Elecosoft shall, in relation to any Personal Data processed by it in connection with the performance of its obligations under the Contract:

    7.6.1     process that Personal Data only on the documented written instructions of the Customer except to the extent that Elecosoft is required by Data Protection Legislation or any other applicable law (**Applicable Law**) to process such Personal Data. Where Elecosoft is relying on the requirements of Applicable Law as the basis for processing Personal Data, Elecosoft shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Elecosoft from so notifying the Customer.

    7.6.2     ensure that all personnel who have access to or process Personal Data are under binding obligations of confidentiality with Elecosoft to keep the Personal Data confidential and to maintain the levels of security and protection as required under the Contract.

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

    7.6.4     not transfer any Personal Data outside the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

        7.6.4.1  the Customer or Elecosoft has provided appropriate safeguards in relation to the transfer.

        7.6.4.2  the data subject has enforceable rights and effective legal remedies.

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

        7.6.4.4  Elecosoft complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.

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

    7.6.6     notify the Customer without undue delay on becoming aware of a Personal Data breach.

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

    7.6.8     maintain complete and accurate records to demonstrate its compliance with this Clause 7 and allow for audits by the Customer or the Customer's designated auditor at reasonable

times upon reasonable prior notice having been given and immediately inform the Customer if, in the opinion of Elecosoft, an instruction infringes the Data Protection Legislation.

## 8 CHARGES AND PAYMENT

8.1 The Customer shall pay the Charges to Elecosoft for the Services and the Support Services in advance in accordance with the Agreement Details.

8.2 Each payment of the Charges shall become due on the date specified in or determined in accordance with the Agreement Details (in each case **the due date**).

8.3 Elecosoft shall issue invoices for each payment of the Charges and the Customer shall make each such payment in full, without deduction or set off, on or before the due date or, if later, within thirty (30) days of the date of the relevant invoice.

8.4 If Elecosoft has not received any individual payment of the Charges in full within five (5) Working Days following the due date, and without limiting any other rights and remedies of Elecosoft:

    8.4.1 Elecosoft may, without liability to the Customer, disable the Customer's access to all or part of the Services and in such event Elecosoft shall be under no obligation to provide any or all of the Services until the payment in question has been received; and

    8.4.2 interest shall accrue on a daily basis on such due amounts at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 commencing on the due date and continuing until fully paid, whether before or after judgment.

However, Clauses 8.4.1 and 8.4.2 shall not apply in relation to any part of the Charges which is the subject of a bona fide dispute between the Parties. If, pursuant to the resolution or determination of any such dispute, any payment is agreed or determined to be due to Elecosoft the provisions of this Clause 8.4 shall apply in full to that payment, for which purpose the due date shall be the seventh (7th) day following the date of such agreement or determination.

8.5 All Charges stated or referred to in the Contract:

    8.5.1 shall be payable in pounds sterling by electronic transfer into such bank account as Elecosoft shall specify from time to time.

    8.5.2 are non-cancellable and non-refundable; and

    8.5.3 are exclusive of value added tax, which Elecosoft shall include in its invoices at the rate from time to time in force.

8.6 Elecosoft shall be entitled to increase the Charges and the Support Charges, with effect from the beginning of any Additional Licence Term (as defined in Clause 15.1) by giving notice of such increase to the Customer.

## 9 CHANGE CONTROL

9.1 If either Party wishes to change the nature, extent, or scope of the Services (**Change**), it shall submit details of the requested change to the other Party in writing. Provided that the provisions of this Clause 9 shall not apply to any change to the Services made or proposed to be made by Elecosoft pursuant to Clause 2.4.

9.2 If either Party requests a Change Elecosoft shall, within a reasonable time of such request being made, provide written notification to the Customer of:

    9.2.1 (where the Change has been requested by the Customer) whether, in the reasonable opinion of Elecosoft, the making of the Change is commercially viable.

    9.2.2 the likely time required to implement the Change.

    9.2.3 any variations to the Charges arising as a result of the Change.

    9.2.4 the likely effect of the Change on the functioning and performance of the Services; and

    9.2.5 any other variations to the terms of the Contract which Elecosoft, acting reasonably, considers will be necessary as a consequence of the implementation of the Change.

9.3 If Elecosoft requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

9.4 If the Customer, following the receipt by it of the notification from Elecosoft in accordance with Clause 9.2 wishes Elecosoft to proceed with the Change then, unless Elecosoft has notified the Customer pursuant to Clause 9.2.1 that the making of the Change is not commercially viable, it shall request Elecosoft to do so in writing. Upon the receipt by Elecosoft of such request the Parties shall, in good

faith and a timely fashion, enter into and conduct negotiations for the purpose of reaching agreement as to the variations to the Charges and any other relevant terms of the Contract necessary to take account of the Change. Elecosoft is under no obligation implement the Change unless and until the Parties have agreed such variations in writing.

## 10    INTELLECTUAL PROPERTY

10.1    The Customer acknowledges and agrees that as between itself and Elecosoft all Intellectual Property Rights in the Services and the Documentation are vested in Elecosoft in their entirety. Except as expressly provided herein, the Contract does not grant the Customer any rights to, under or in, any Intellectual Property Rights or any other rights or licences of any kind in respect of the Services or the Documentation.

10.2    Elecosoft warrants that it holds all such rights in relation to the Services and the Documentation as are necessary to grant all the rights it purports to grant under, and in accordance with, the Contract.

## 11    CONFIDENTIALITY AND PUBLICITY

11.1    Each party (**Receiving Party**) may be given or acquire access to Confidential Information from the other party (**Disclosing Party**) in order to perform its functions and obligations or exercise its rights, under or in relation to the Contract. For the purposes of this Clause 11 Confidential Information shall not include information that:

11.1.1    is or becomes publicly known other than through any act or omission of the Receiving Party.

11.1.2    was directly in the Receiving Party's possession and at its free disposal before the disclosure.

11.1.3    was lawfully disclosed to the Receiving Party by a third party lawfully entitled to disclose the same, without any obligation of confidentiality being imposed on the Receiving Party in respect thereof; or

11.1.4    is independently developed by the Receiving Party.

11.2    Subject to Clause 11.4 each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the exercise of its rights, and the performance of its functions and obligations, under the Contract.

11.3    The Receiving Party shall, the provisions of Clause 11.2 notwithstanding, be entitled to disclose Confidential Information of the Disclosing Party to such of its employees, officers, agents, contractors or professional advisers who have a genuine need to know the same in order to be able to carry out their duties in relation to the Contract (in each case, **permitted individual**). The Receiving Party shall make each permitted individual aware of the obligations of confidentiality and non-use contained in this Clause 11, and use reasonable endeavours to ensure that each permitted individual observes and performs these obligations including, where the permitted individual is an agent, contractor or professional adviser of the Receiving Party, procuring that the permitted individual enters into a written confidentiality undertaking with Elecosoft in terms at least equivalent to those contained in this Clause 11.

11.4    The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.4 it takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

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

11.6    Elecosoft acknowledges that the Customer Data constitutes Confidential Information of the Customer.

11.7    Neither Party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including,

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without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## 12    EXPORT

12.1    Neither Party shall export, directly or indirectly, any technical data acquired from the other Party under the Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**) to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

12.2    Each Party undertakes:
12.2.1    contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
12.2.2    if requested, to provide the other Party, at the reasonable cost of the other Party, with such assistance as it may require to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 13    INDEMNITY

13.1    Subject to Clause 13.3, the Customer shall fully indemnify Elecosoft and keep Elecosoft fully indemnified from and against any and all actions, claims, demands, costs (including without limitation court costs and reasonable legal fees), expenses, losses, damages or liability suffered or incurred by Elecosoft and arising out of or in connection with the Customer's use of the Services.

13.2    Subject to Clause 13.3, Elecosoft shall fully indemnify the Customer and keep the Customer fully indemnified from and against any and all actions, claims, demands, costs (including reasonable legal costs), expenses, losses, damages or liability to the extent that the same arises or occurs as the result of any claim or allegation from any third party against the Customer that the use by the Customer of the Services infringes any copyright, trade mark or right of confidentiality of that third party.

13.3    The entitlement of either party (**Indemnified Party**) to an indemnity from the other party (**Indemnifying Party**) pursuant to Clauses 13.1 or 13.2 shall be conditional upon the following conditions being met:
13.3.1    the Indemnified Party shall notify the indemnity of the relevant claim or allegation (**Claim**) as soon as reasonably practicable and in any event no later than the second Working Day following the day on which the Indemnified Party first becomes aware of the Claim.
13.3.2    the Indemnified Party shall allow the Indemnifying Party to have full control of the defence or settlement of the Claim, and shall make no attempt directly or indirectly to settle the Claim; nor enter into any discussions or negotiations with any third party having as their object or intended effect the defence or settlement of the Claim, provided that the Indemnifying Party shall not settle the Claim on any terms which require the payment of money, or the incurring of any obligation or liability, by the Indemnified Party without the express prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld or delayed); and
13.3.3    the Indemnified Party shall provide to the Indemnifying Party in a timely fashion such assistance, co-operation and information as the Indemnifying Party might reasonably require from time to time in connection with the defence or settlement of the Claim.

13.4    In the defence or settlement of the Claim Elecosoft may procure the right for the Customer to continue using the Services, or replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract by giving not less than two (2) Working Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or any other form of redress to the Customer.

13.5    In no circumstances shall Elecosoft, its employees, agents or sub-contractors be liable to the Customer under Clause 13.1 to the extent that the alleged infringement arises as the result of:
13.5.1    the improper or unauthorised use or operation of the Services.
13.5.2    the use or attempted use of the Services by any individual who is not an Authorised User.

13.5.3 the previous failure of the Customer to implement or adopt recommendations or solutions for the correction of faults or defects in the Services previously recommended by Elecosoft.

13.5.4 any breach by the Customer of the Contract, or any act or omission on the part of any of the Customer's employees, officers, agents, contractors, or representatives, which act, or omission would, if committed by the Customer, constitute a breach of the Contract.

13.5.5 the use or attempted use of the Services for any purpose for which they were not intended; or

13.5.6 the use by the Customer, its employees, officers, agents, contractors, or representatives of the Services after the receipt by the Customer of a Claim.

## 14 LIMITATION OF LIABILITY

14.1 Except as expressly and specifically provided in the Contract:

14.1.1 Elecosoft shall have no liability for any damage suffered or incurred by the Customer arising from any failure in the Services to the extent that such defect in or failure of the Services arises as a result of any errors or omissions in any information, instructions or scripts provided to it by the Customer in connection with the Services, or any actions taken by Elecosoft at the Customer's discretion.

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

14.1.3 the Services are provided to the Customer on an "as is" basis.

14.2 Nothing in the Contract excludes or limits the liability of Elecosoft for:

14.2.1 death or personal injury caused by Elecosoft's negligence.

14.2.2 fraud or fraudulent misrepresentation.

14.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

14.2.4 any other matter liability for which cannot be limited or excluded as a matter of law.

14.3 Subject to Clauses 14.1 and 14.2:

14.3.1 Elecosoft shall not be liable, whether in tort, contract, misrepresentation, restitution, under any indemnity or otherwise for any loss of profits, loss of revenue, loss of business or of business opportunity, depletion or goodwill or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract and regardless of whether Elecosoft had prior notification of the possibility of such losses arising; and

14.3.2 the total aggregate liability of Elecosoft in contract, tort, misrepresentation, restitution, under any indemnity or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Charges paid by the Customer for the Services during the 12 months immediately preceding the date on which the event, matter or circumstance giving rise to the liability arose or occurred.

14.4 Elecosoft does not warrant:

14.4.1 that the Software or the Services will be free from Vulnerabilities or that the Customer's use of the Software and the Services will be uninterrupted or error-free or that the Services; or

14.4.2 that the Software or the information obtained by the Customer through the use of the Services will meet the Customer's requirements, or fulfil any specific commercial or operational objective of the Customer, even if Elecosoft had actual prior notification of such objective, and the Customer acknowledges that neither the Software or the Services have been developed to meet the specific requirements of the Customer.

14.5 All references to "Elecosoft" in this Clause 14 shall, for the purposes of this Clause 14 and Clause 21 only, be treated as including all employees, subcontractors and suppliers of Elecosoft and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with Clause 18.

## 15 TERM AND TERMINATION

15.1 The Contract shall come into effect on the Commencement Date. Unless terminated in accordance with Clauses 8.6, 13.4, 15.2, 18.5 or 22.3, the Contract will expire at the end of the Initial Licence Term, provided that the Customer may extend the duration of the Contract for further consecutive periods of one year (each, an **Additional Licence Term**) by giving written notice of extension to Elecosoft prior to the expiry of the Initial Licence Term or the current Additional Licence Term (as the case may be) provided that the Customer may rescind such notice of extension prior to the commencement of any Additional Licence Term if it does not wish to accept any increased Charges notified to it by Elecosoft in accordance with Clause 8.6.

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

15.2.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than ten (10) Working Days after receipt of notice from the terminating party requesting such payment.

15.2.2 the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five (5) Working Days after receipt of a notice from the terminating party identifying the breach in question and requiring it to be remedied.

15.2.3 the other party repeatedly or persistently breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to perform its obligations under the Contract.

15.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

15.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party.

15.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party.

15.2.7 an application is made to court or an order to made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party.

15.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver.

15.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party.

15.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days.

15.2.11 any event occurs, or proceedings are taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 15.2.4 to Clause 15.2.10 (inclusive); or

15.2.12 the other party suspends or ceases, or in the reasonable opinion of the terminating party is likely to suspend or cease, carrying on all or a substantial part of its business.

15.3 On termination of the Contract for any reason:

15.3.1 all rights granted to the Customer under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Services.

15.3.2 the Customer shall immediately pay all outstanding sums due to Elecosoft under the Contract.

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

15.3.4 Elecosoft may destroy or otherwise dispose of any of the Customer Data in its possession unless it receives, no later than ten (10) Working Days after the effective date of the termination of the Contract (that being the day on which a notice of termination served in compliance with the Contract expires), a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Upon receipt of such request Elecosoft shall use reasonable endeavours to deliver the back-up to the Customer within thirty (30) days, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Elecosoft in returning or disposing of Customer Data; and

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

15.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 16 FORCE MAJEURE

16.1 Neither party (in each case **affected party**) shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, matters or circumstances beyond its reasonable control.

16.2 In such circumstances the time for performance of any such obligation shall be extended by such period as shall be reasonable in all the circumstances and in any event at least equivalent to the aggregate period for which performance of the obligation has been delayed or failed to be performed.

16.3 If the period of delay or non-performance continues for a period of ninety (90) consecutive days, the other party shall be entitled to terminate the Contract with immediate effect by giving written notice to the affected party.

16.4 The provisions of this Clause 16 shall not apply in the case of any failure or delay in the performance of any obligation to pay money.

## 17 WAIVER

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

## 18 REMEDIES

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

## 19 SEVERANCE

19.1 If any provision or part-provision of the Contract 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 to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19.2 If any provision or part-provision of the Contract 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.

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## 20 ENTIRE AGREEMENT AND VARIATIONS

20.1 The Contract constitutes the entire agreement between the parties regarding, and supersedes and extinguishes all previous agreements, promises, representations, statements, understandings, and warranties between them, whether written or oral, relating to, its subject matter.

20.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any promise, representation, statement, or warranty that is not incorporated into the Contract by way of express provision.

20.3 Nothing in this Clause 19 shall limit or exclude the liability of either party for fraud or for fraudulent misrepresentation.

20.4 Without limiting the generality of Clause 20.1, the Contract applies to the provision of all Services by Elecosoft to the Customer and shall prevail over and apply to the exclusion of any terms or conditions contained or referred to at any time in any documentation tendered by the Customer, in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed in writing by an authorised representative of Elecosoft. Any purported provisions to the contrary at any time are hereby excluded.

20.5 Elecosoft reserves the right to vary this Agreement at any time to the fullest extent permissible by law and will notify the Customer in writing in advance of any such changes. If the Customer does not accept the proposed variation, it may terminate this agreement by giving Elecosoft not less than 30 days written notice of termination. If the Customer fails to give such notice within 30 days following the giving of notification by Elecosoft of the proposed change, it shall be deemed to have accepted the proposed variation.

## 21 ASSIGNMENT AND SUB-CONTRACTING

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

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

## 22 NO PARTNERSHIP OR AGENCY

22.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

22.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## 23 THIRD PARTY RIGHTS

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

## 24 NOTICES

24.1 Subject to Clause 24.5, where the Contract expressly requires one party to give notice to the other, such notice shall be in writing and shall be sent by electronic mail to the individual address specified by the other Party (**recipient**) for receipt of notices from time to time (and any changes to such address must be notified by the recipient using the process set out in this Clause 24.1). It is the responsibility of the recipient to ensure that any notice given in accordance with this Clause 24.1 is communicated to the appropriate representatives of the recipient and any failure to do so shall be entirely at the risk of the recipient.

24.2 Subject to Clause 24.3 any notice served in accordance with Clause 24.1 shall be deemed to have been given at the following respective times:

24.2.1 in the case of a notice delivered by post, on the third Working Day after the date of posting (as evidenced by the relevant postmark); and

24.2.2 in the case of a notice sent by electronic mail, at the date and time on which the notice is sent (as evidence by the date and time at which it is received into the recipient's Inbox).

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24.3    Where, pursuant to the provisions of Clause 24.2 a notice would be deemed to have been given on a day which is not a Working Day or where the actual time of receipt of a notice is later than 16:00 hours local time, that notice shall be deemed to have been given on the next following Working Day.

24.4    It shall be sufficient in proving service that the notice was correctly addressed to the recipient and, as the case may be, either delivered, committed to the post, or sent.

24.5    For the avoidance of doubt, this Clause 24 only applies to notices which the Contract expressly requires be given by one party to the other. In particular this Clause 24 does not apply to items of general correspondence, routine communications or notifications or updates of any kind, (whether technical or otherwise).

## 25    GOVERNING LAW AND JURISDICTION

25.1    The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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