

**BITPLANE IMARIS – END USER SOFTWARE LICENCE
AGREEMENT**

PLEASE READ THESE LICENCE TERMS CAREFULLY. THIS LICENCE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND US, BITPLANE INCORPORATED.

BY CLICKING THE “AGREE” BUTTON AND INSTALLING THE IMARIS SOFTWARE YOU ARE AGREEING TO THE TERMS OF THIS END USER SOFTWARE LICENCE AGREEMENT.

1. DEFINITIONS, INTERPRETATION AND SCOPE

1.1 In this Agreement, unless otherwise provided:

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| “Acceptance or Accepted” | means the successful completion of the Acceptance Tests or deemed acceptance in accordance with clause 4.6; |
| “Agreement” | means the terms of this agreement, the Quotation, and the Order Acknowledgement; |
| “Business Day” | means any day (other than a Saturday or Sunday) on which banks are generally open in Boston for non-automated normal business; |
| “Bitplane” | means Bitplane Inc., its employees, subcontractors and sub suppliers and its affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out herein; |
| “Bitplane’s Licensor” | means any licensor of Bitplane including a provider of software or third party libraries in object code or otherwise. |
| “Charges” | means any agreed or reasonable charges in addition to the Licence Fee and Support Fee which will be calculated (unless otherwise agreed) in accordance with Bitplane’s current standard rates notified to the Customer from time to time; |
| “Customer” | means the person or organisation that originally purchased the applicable licence(s) for the Software from Bitplane or the Distributor; |
| “Control” | means that a person owns directly or indirectly more than 50% of the shares or securities of the other person representing the right to vote on all or substantially all matters including the election of directors and Controls and Controlled shall be interpreted accordingly; |
| “Distributor” | means a distributor named on the Quotation who is duly authorised by Bitplane to distribute the Software and/or Support Services; |
| “Error” | means a verifiable and repeatable failure of the Software to conform with the Specification; |
| “Good Industry Practice” | means in relation to any undertaking and any circumstances, the exercise of that degree of care, and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances; |
| “Initial Term” | means the initial period of twelve (12) months from the date of purchase of the Software; |
| “Intellectual Property Rights” | means Patents, utility models, rights in inventions, copyrights and related rights, know-how, trade secrets, domain names, trademarks and trade names, service marks, design rights, rights in get-up, rights in computer software, database rights, chip topography rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world; |
| “Licence” | means the licence granted by Bitplane to the Customer in respect of the Software subject to the terms of the Agreement a copy of which is available via this link: |

<https://www.oxinst.com/assets/uploads/documents/Bitplane-Inc-EULA.pdf>;

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| “Licence Fee” or “Product Fee” | means the fees due by the Customer to Bitplane or the Distributor in respect of the Licence as set out in the Quotation; |
| “Order Acknowledgment” | means the acknowledgement of order issued by Bitplane or the Distributor to the Customer; |
| “Quotation” | means the quotation for the provision of the Software issued by Bitplane or the Distributor to the Customer; |
| “Renewal Term” | means the twelve-month period (or any other agreed period) after the expiry of the Initial Term and each subsequent twelve-month (or other agreed) period; |
| “Representatives” | means the employees, agents, contractors or representatives of the Customer and other persons duly authorised on its behalf in the using of the Software and/or receiving of the Support Services pursuant to the Agreement or SMA as the case may be; |
| “Software” | means the package of computer programs specified in the Quotation; |
| “Software Maintenance Agreement” or “SMA” | means the maintenance agreement for the Software between the Customer and Bitplane a copy of which is available via this link https://www.oxinst.com/assets/uploads/documents/Bitplane-Inc-Software-Maintenance-Agreement.pdf ; |
| “Specification” | means the specification of the Software set out in the Quotation; |
| “Support Fee” or “Maintenance Fee” | means the fees due by the Customer to Bitplane in respect of the Support Services as set out in the Quotation; |
| “Support Services” | means the support services provided by Bitplane to the Customer in accordance with clause 11 and the SMA; |
| “Update” | means a maintenance release, correction, amendment, or update of the Software provided to the Customer as part of the Support Services; |
| “Working Hours” | means the hours between 0900 and 1700 local time in Boston, Monday to Friday on Business Days. |

1.2 In the event of any inconsistency, the terms of the Quotation shall prevail, then the Order Acknowledgement; then these licence terms, and then the terms of the SMA, in that order

- 1.3 Unless the context otherwise requires:
- 1.3.1 each gender includes the others;
 - 1.3.2 the singular includes the plural and vice versa;
 - 1.3.3 references to clauses mean clauses of this Agreement;
 - 1.3.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations; and
 - 1.3.5 the words 'including' or 'includes' means including or includes without limitation.

2. GRANT OF LICENCE

- 2.1 In consideration of the mutual covenants contained herein, Bitplane grants to the Customer a non-exclusive, perpetual and non-transferable limited Licence to use the Software worldwide in accordance with the terms of the Agreement.
- 2.2 The Licence will commence on the date the Customer downloads the Software and will continue unless or until terminated under clause 13 or any other clause of this Agreement.
- 2.3 Customer shall be responsible at its expense for complying with all applicable laws and regulations and obtaining any applicable licences and consents, relating to the import, export, installation, or use of the Software. Notwithstanding the above the Customer shall not export, directly or indirectly, any technical data acquired from Bitplane under this Agreement (or any products, including the software,

- incorporating any such data) in breach of any applicable laws or regulations.
- 2.4 A Customer with an SMA may be eligible for a limited number of complementary satellite licenses for the Software ("Satellite Licence") as specified on Bitplane Customer portal. Each Satellite Licence granted will be valid for no more than 30 days (additional Satellite Licences may be purchased on request). A Satellite License may be used by the Customer for data analysis away from the site of Software usage (for example, from a home office, during conference attendance, or for a presentation). Satellite Licences shall not be used by the Customer at the main site of Software usage as a secondary license – such use shall constitute a material breach of this Agreement. The Customer agrees to Bitplane monitoring Satellite License usage and Bitplane reserves the right to suspend existing Satellite Licences of the issuing of further Satellite Licences to the Customer in the event of the Customer violating the provisions of this clause.
- 3. FEES AND PAYMENT**
- The following provisions of this clause 3 do not apply to Software purchases made by the Customer from a Distributor. The terms of payment for Software purchases made by the Customer from a Distributor shall be provided in the Distributor's Quotation or as otherwise provided by the Distributor.
- 3.1 The Customer shall pay to Bitplane the Licence Fee and any Charges which fall due under this Agreement within thirty (30) Business Days of receipt of Bitplane's invoice, or in the amounts and at the times specified in Bitplane's Quotation if earlier.
- 3.2 If any sum due to Bitplane under the Agreement (other than one which is the subject of a genuine dispute which is notified to Bitplane in accordance with clause 3.3 below) is in arrears for more than thirty (30) days after the due date, Bitplane may without prejudice to any other right or remedy:
- 3.2.1 charge interest on such overdue sum on a day-to-day basis from the original due date until paid in full at the rate of three (3) percentage points above Barclays Bank's base lending rate in force from time to time; and
- 3.2.2 suspend (without liability on Bitplane's part) the provision of the Support Services on five (5) Business Days' prior written notice.
- 3.3 The Customer must notify Bitplane in writing within five (5) Business Days of receipt of an invoice if the Customer considers such invoice incorrect or invalid for any reason and the reasons for withholding payment. Failure to so notify Bitplane of any such dispute will by default be deemed acceptance by Customer of the invoice amount.
- 4. DELIVERY, ACCEPTANCE, INSTALLATION & TRAINING**
- 4.1 With the exception of certain Customer countries (for example, India), Customers should have direct access to a customer online portal (via Bitplane's webpage) through which they will have authorised access to download the Software. Where customers are not so able to access the online portal, Bitplane or Distributor shall use all reasonable endeavours to deliver one (1) copy of the Software (either electronically or in disk or CD-ROM format) to the Customer at the specified address by the date specified in the Quotation or as soon thereafter as is possible.
- 4.2 The Customer shall be deemed to have accepted the Software when the Customer commences operational use of the Software.
- 4.3 Risk in any tangible media on which the Software is delivered shall pass on delivery.
- 4.4 Where payment of any part of the Licence Fee is due before delivery or installation of the Software or performance of any of the Support Services, Bitplane may withhold delivery or installation or performance until such payment has been received.
- 4.5 Unless otherwise specified in the Quotation, the Customer is responsible for installation of (i) the Software; and (ii) of any Updates.
- 4.6 If Bitplane is delayed from performing its obligations by reason of any fault or negligence of the Customer, then the Customer shall pay to Bitplane all reasonable and demonstrable costs attributable to such delay.
- 4.7 Training will be provided as required based upon an agreed schedule and costs.
- 5. PERMITTED USE**
- 5.1 The Customer's use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer.
- 5.2 The Customer shall not use or attempt to use the Software (whether on behalf of, or for the benefit of, itself or a third party) or permit or allow any third party to do so:
- 5.2.1 to distribute or resell the Software;
- 5.2.2 contrary to any restriction stated in the Agreement; or
- 5.2.3 unless otherwise expressly permitted by the Agreement.
- 5.3 The Licence shall include the right of the Customer's Representatives to use and have access to the Software to the extent that the Customer may use and have access to the Software provided that:
- 5.3.1 such use is controlled by the Customer; and
- 5.3.2 such use is otherwise subject to and in accordance with the terms of the Agreement.
- 5.4 The Customer shall procure that its Representatives:
- 5.4.1 are aware of the obligations or restrictions imposed on the Customer under the Agreement; and
- 5.4.2 shall use its reasonable endeavours to ensure that they comply with the provisions of the Agreement.
- 5.5 The Customer undertakes to be responsible and liable for all acts, omissions, fault, default or negligence of, or by, its Representatives arising in respect of, or in connection with, the obligations or restrictions imposed on the Customer pursuant to the Agreement, to the extent that it would be liable had such act, omission, fault, default or negligence been caused by Customer under this Agreement, and to indemnify Bitplane in respect of all losses, damages or expenses incurred by Bitplane as a result of any use of the Software in breach of this Agreement.
- 6. RESTRICTIONS ON USE**
- 6.1 Except to the extent required to be permitted by applicable law or as expressly allowed in this Agreement, the Customer shall not:
- 6.1.1 translate, adapt, disassemble, reverse engineer, decompile or copy the whole or any part of the Software, nor, without the prior written consent of Bitplane, arrange or create derivative works based on the Software (save in relation to XTensions to be used with Bitplane's XT module);
- 6.1.2 without the prior written consent of Bitplane, make for any purpose including (without limitation) error correction, any modifications, additions or enhancements to the Software (save in relation to XTensions to be used with Bitplane's XT module);
- 6.1.3 permit the whole or any part of the Software to be combined or merged with or become incorporated in any other program;
- 6.1.4 assign, distribute, licence, sell, charge or otherwise deal in or encumber the Software;
- 6.1.5 use the Software on behalf of or make it available to any third party nor allow or permit a third party to do so; or
- 6.1.6 remove or alter any copyright or other proprietary notice on any of the Software.
- 7. INTELLECTUAL PROPRIETARY RIGHTS ("IPR")**
- 7.1 The Customer acknowledges and agrees that all IPR in the Software belongs to Bitplane or Bitplane's Licensor (as the case may be), and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Licence. Nor shall it acquire in any way any

- title, rights of ownership, IPR of whatever nature in the Software or in any copies of it. All such interests and rights are and shall remain the exclusive and absolute property of Bitplane or Bitplane's Licensor as applicable.
- 7.2 The IPR and all other proprietary rights in any materials developed under this Agreement in connection with the Support Services (including Updates) will remain vested in and be the absolute property of Bitplane or Bitplane's Licensor. The Customer will do all such acts and things as Bitplane may reasonably require for the purpose of preserving or perfecting such vesting.
- 7.3 The Customer agrees not to conceal, modify, remove, or destroy in any way any proprietary markings of Bitplane or Bitplane's Licensor on or in the Software including without limitation any copyright notices or confidential legends placed upon or contained within the Software or any related materials and documentation. The Customer shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.
- 7.4 The Customer acknowledges and understands that the Software contains confidential and proprietary information and the Customer shall:
- 7.4.1 not provide or otherwise make any of the Software available for any reason to any third party except as permitted by the Agreement or otherwise in accordance with express written authority signed by an authorised signatory of Bitplane;
- 7.4.2 keep confidential the Software and limit access to the same to those of its Representatives who either have a need to know or who are engaged in the use of the Software;
- 7.4.3 maintain an accurate and up-to-date record of the number of instances of the Software installed which are in use by the Customer and of users and Representatives in each environment;
- 7.4.4 use its best endeavours to ensure that all relevant Representatives are advised that the Software constitutes confidential and proprietary information of Bitplane and/or Bitplane's Licensors and that all IPR therein are the property of Bitplane and/or Bitplane's Licensor and that they owe a duty of confidentiality to Bitplane and/or Bitplane's Licensor.
- 7.5 The Customer shall effect and maintain adequate security measures to safeguard the Software from unauthorised access, use or copying by any person.
- 7.6 The Customer shall notify Bitplane as soon as reasonably practicable if the Customer becomes aware of any unauthorised access to, use or copying of any part of the Software by any person.
- 7.7 Bitplane undertakes at its own expense to defend the Customer, or at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this Licence infringes the IPR of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For avoidance of doubt, Clause 7.7 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this Licence, use of the Software in combination with any hardware or software not supplied or specified by Bitplane if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 7.8 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, Bitplane's obligations under clause 7.7 are conditional upon:
- 7.8.1 As soon as reasonably practicable, giving written notice of the Claim to Bitplane, specifying the nature of the Claim in reasonable detail;
- 7.8.2 Not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Bitplane (such consent not to be unreasonably withheld or delayed);
- 7.8.3 Giving Bitplane and its professional adviser's access at reasonable times (and upon reasonable notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer so as to enable Bitplane and its advisers to examine them and to take copies (at Bitplane's expense) for the purpose of assessing the Claim; and
- 7.8.4 Subject to Bitplane providing security to the Customer's reasonable satisfaction against any claim, liability, costs, expense, damages or losses which may be incurred, taking such action as Bitplane may reasonably request to avoid, dispute, compromise or defend the Claim.
- 7.9 If any Claim is made, or in Bitplane's reasonable opinion is likely to be made, against the Customer, Bitplane may at its sole option and expense:
- 7.9.1 Procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this Licence;
- 7.9.2 Modify the Software so that it ceases to be infringing;
- 7.9.3 Replace the Software with non-fringing software; or
- 7.9.4 Terminate the Licence immediately by notice in writing to the Customer and refund any fees paid by the Customer as at the date of Termination (less a reasonable sum in respect of the Customers' use of the Software to the date of termination) on return of the Software and all copies thereof,
- 7.10 Notwithstanding any other provision in this agreement clause 7.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any third-party software or through the breach of any third party additional terms by the Customer.
- 7.11 This clause 7 constitutes Customer's exclusive remedy and Bitplane's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 9
- 8. ACKNOWLEDGEMENTS**
- 8.1 Customer acknowledges that the Software has not been prepared to meet the Customer's individual requirements and that it is the Customer's responsibility to ensure that the facilities and functions of the Software described in the Specification meet the Customer's requirements.
- 9. LIMITATION OF LIABILITY**
- 9.1 Nothing in the Agreement shall exclude or restrict either Party's liability for:
- 9.1.1 fraud;
- 9.1.2 death or personal injury resulting from the negligence of a Party or its employees while acting in the course of their employment; or
- 9.1.3 any other liability that cannot be limited or excluded by law.
- 9.2 Subject to clause 9.1, Bitplane's liability to the Customer in contract, tort (including negligence), misrepresentation (whether innocent or negligent) breach of statutory duty or otherwise arising out of or in connection with the Software, and the Services, or other performance or non-performance of Bitplane's obligations under the Agreement shall:
- 9.2.1 be limited to 150% of the aggregate of all Licence Fees, Support Fees and Charges paid by the Customer under the Agreement for the preceding twelve months in respect of any one incident or any series of connected incidents;

- 9.2.2 not extend to any:
- (a) loss of profits;
 - (b) loss of revenue;
 - (c) loss of business;
 - (d) loss of goodwill;
 - (e) loss of contracts;
 - (f) loss of anticipated savings;
 - (g) loss of production;
 - (h) loss of or corruption to data; or
 - (i) any other special, indirect or consequential loss or damage whatsoever, whether sustained by the Customer or any other person and even if foreseeable or if Bitplane has been advised of their possibility.

9.3 All advice and recommendations given by Bitplane and its representatives shall be made in good faith and in accordance with Good Industry Practice and on the basis of information provided to Bitplane and otherwise generally available. Where a piece of advice or recommendation does not form part of the Support Services, that advice or recommendation shall in no circumstances constitute a warranty by Bitplane as to the accuracy of such advice or recommendation and Bitplane shall not in any event be liable for any loss or damage that may be suffered whether directly or indirectly as a result of the Customer acting upon such advice or recommendation.

10. DISCLAIMER OF WARRANTY

10.1 The Customer acknowledges and agrees that use of the Software is at the Customer's sole risk. The Software is provided "AS IS" and without warranty of any kind and Bitplane and Bitplane's licensor(s) ("Bitplane's Licensor") EXPRESSLY DISCLAIM ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. THE LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, LICENSOR DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE SUPPLIER OR A SUPPLIER'S AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THE TERMS OF THIS DISCLAIMER DO NOT AFFECT OR PREJUDICE THE STATUTORY RIGHTS OF A CONSUMER ACQUIRING SUPPLIER PRODUCTS OTHERWISE THAN IN THE ORDINARY COURSE OF BUSINESS, NEITHER DO THEY LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY SUPPLIER'S NEGLIGENCE.

11. CUSTOMER'S OBLIGATIONS

11.1 The Customer undertakes to:

- 11.1.1 provide Bitplane with all necessary information, facilities, support and, services reasonably required by Bitplane for the performance of its obligations to the Customer under the Agreement, and where applicable full access to the areas in which the Services are to be performed at the Customer's premises;
- 11.1.2 take all reasonable steps to ensure the health and safety of Bitplane's representatives while they are at the Customer's premises;
- 11.1.3 ensure that the computer and operating system

and any other hardware or software which Bitplane is asked to use or modify for the purpose of the Services are either the property of the Customer or are legally licensed to the Customer;

11.1.4 ensure that its Representatives co-operate fully with Bitplane in relation to the provision of the Services;

11.1.5 ensure that the Software is used in a proper manner by competent trained employees only or by persons under their supervision; and

11.1.6 not request or permit or require anyone other than Bitplane or Bitplane's authorised sub-contractors to provide any Support Service in respect of the Software.

12. SOFTWARE SUPPORT SERVICES/MAINTENANCE AGREEMENT

12.1 If so stated in the Quotation, and subject to the Customer agreeing to the terms of the SMA, Bitplane shall provide the Customer with the Support Services free of charge for the Initial Term.

12.2 If following the Initial Term the Customer wishes to continue to receive Support Services, it shall purchase continued Support Services from Bitplane or Distributor. The provision of Support Services by Bitplane shall at all times be subject to the Customer agreeing to the terms of the SMA and the payment by the Customer of the applicable Support Fee.

12.3 Subject to receipt of the applicable Support Fee, Bitplane shall provide the Support Services to the Customer in relation to the Software for each Renewal Term unless or until the provision of Support Services is terminated in accordance with the terms of the SMA.

12.4 Bitplane shall use its reasonable endeavours to meet any response times and target resolution times quoted for commencement or completion of any part of the Support Services but time will not be of the essence.

12.5 Provision of the Support Services does not imply any guarantee or warranty that Bitplane will be successful in correcting Errors or that Bitplane will be able to assist the Customer in achieving any results from the Software which are not technically feasible.

12.6 If the Customer fails to comply with any of the provisions set out in clause 11, then Bitplane may on written notice require the Customer to remedy the same within ten Business Days or suspend the provision of Support Services after such notice period until such failure has been remedied.

12.7 Bitplane shall be under no obligation to provide services in relation to the Software additional to the Support Services, or which do not qualify under or are excluded from the Support Services but if it does so at the Customer's request, the Customer shall pay Bitplane the charges and expenses (if any) in accordance with clause 3.2 for those services.

12.8 If a reported problem is found upon investigation to be due to incorrect operation or unauthorised changes of the Software, the Customer is liable to Bitplane for the Charges and expenses (if any) in accordance with clause 3.2 for the Services in connection with that investigation.

13. TERMINATION

13.1 Bitplane may terminate this Agreement at any time forthwith by notice in writing to the Customer if the Customer or its Representatives:

13.1.1 infringe Bitplane's or Bitplane's Licensor's Intellectual Property Rights;

13.1.2 are in breach of any of the obligations specified in this Agreement and/or the SMA; or

13.1.3 a voluntary arrangement is approved, or an administration order is made, or receiver or administrative receiver is appointed over any of the Customer's assets or undertaking or resolution or petition to wind up the Customer is passed or presented (other than for the purposes of amalgamation or reconstruction) or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order.

13.2 Termination of this Agreement for any reason, shall be

- without prejudice to the rights and liabilities of either party which may have accrued on or at any time up to the date of termination nor affect the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 13.3 The provision of clauses 1, 3, 5, 6, 7, 8, 9, 15, and 16 shall continue in full force after termination of this Agreement.
- 13.4 In the event of termination of this Agreement by Bitplane pursuant to clause 13.1.1, the Licence granted under clause 2.1 shall immediately terminate and the Customer shall forthwith cease using the Software and shall remove or destroy forthwith all copies of the Software or, at Bitplane's request, return all copies of the same to Bitplane.
- 14. FORCE MAJEURE**
- 14.1 **Force Majeure** means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations hereunder. Inability to pay is not Force Majeure.
- 14.2 A party will not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
- 14.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 14.2.2 uses reasonable endeavours to minimise the effects of that event.
- 14.3 If, due to Force Majeure, a party:
- 14.3.1 is unable to perform a material obligation; or
- 14.3.2 is delayed in or prevented from performing its obligations for a continuous period of more than thirty (30) Business Days;
- the other party may within five (5) Business Days terminate this Agreement on notice or the parties will, within fourteen (14) Business Days, renegotiate the Agreement to achieve, as nearly as possible, its original commercial intent.
- 15. CONFIDENTIALITY**
- 15.1 The Customer will treat as confidential all information obtained from Bitplane under or in connection with this Agreement which is designated as confidential by Bitplane or which is by its nature clearly confidential including but not limited to each Specification, the Software and the Support Services. The Customer shall not disclose such confidential information to any person (except only to those employees, agents, sub-contractors, suppliers and other representatives who need to know it) or use such confidential information without Bitplane's prior written consent. This clause will not extend to information which:
- 15.1.1 was in the possession of the Customer (with full right to disclose) before receiving it;
- 15.1.2 is already or becomes public knowledge (otherwise than as a result of a breach of this clause);
- 15.1.3 is independently developed by the Customer without access to or use of such information;
- 15.1.4 is required to be disclosed by law or regulatory authority.
- 15.2 The Customer shall ensure that all persons to whom it discloses any confidential information in accordance with this clause 15 are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to Bitplane. These obligations of confidentiality will survive any termination of this Agreement.
- 15.3 The Customer shall not make or permit any person to make any public announcement concerning this agreement without the prior written consent of Bitplane.
- 16. GENERAL**
- 16.1 The Customer shall not be entitled to assign or sub-licence to any third party any of its rights or obligations under the Agreement without Bitplane's prior written consent.
- 16.2 If any part, term or provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the agreement. If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible achieves the intended commercial result of the original; provision.
- 16.3 This Agreement is the entire agreement between the parties in relation to its subject matter. To the fullest extent permitted by law no other terms apply.
- 16.4 Each party acknowledges that it has not relied or been induced by any statement or representation given by or for the other in entering into this Agreement (whether verbal or otherwise) and all terms and conditions that govern the parties respective positions are hereby incorporated in this Agreement, save that this shall not apply in the case of fraudulent misrepresentation.
- 16.5 Unless otherwise agreed in writing, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 16.6 Notices under this Agreement will be in writing and sent to the Party's address above. They may be given, and will be deemed received:
- 16.6.1 by first-class post: two Business Days after posting;
- 16.6.2 by airmail: seven Business Days after posting;
- 16.6.3 by hand: on delivery;
- 16.6.4 by email: on receipt of a read receipt.
- 16.7 The Agreement may be amended only in writing signed by both parties.
- 16.8 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided in this Agreement.
- 16.9 A person who is not a party to this Agreement shall not have any right to any benefit or to enforce any term of this Agreement.
- 16.10 The Agreement, including the rights duties and obligations of the parties, shall be construed and governed by the laws of the State of Massachusetts, and any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.