

INTEGRATED ENVIRONMENTAL SOLUTIONS LIMITED SOFTWARE MAINTENANCE & SUPPORT AGREEMENT

IMPORTANT: The following is a legal agreement between IES and you.

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS. BY PAYING YOUR ANNUAL MAINTENANCE INVOICE YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS WHICH WILL BIND YOU AND YOUR EMPLOYEES AND OTHER USERS AS AGREED WITH IES. IF YOU DO NOT AGREE TO THE TERM AND CONDITIONS OF THIS AGREEMENT, YOU SHOULD CONTACT IES IMMEDIATELY. PLEASE NOTE THAT IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT THEN YOU SHALL NOT BE ENTITLED TO RECEIVE THE SERVICES FROM IES.

TERMS AND CONDITIONS

Any maintenance and support services to be provided to you (“you” or the “Customer”) by Integrated Environmental Solutions (“IES”) are provided under the terms and conditions of this agreement and any annual maintenance invoices (the “Invoices”) you may receive from IES (together this agreement and the Invoices form the “Agreement”).

The software as set out in the Agreement together with any new features including, without limitation, performance components incorporated into such software (and any amendments made thereto) whether by us, you or a third party, Scripts (“**Scripts**”) specifically identified as written and validated by IES, and any other associated physical media, manuals, documentation, printed materials and/or online documentation (“**Documentation**”) (together the (“**Software**”). Software specifically excludes the Excluded Scripts (“**Excluded Scripts**”), even where validated by IES and including without limitation all Scripts not specifically identified as written and validated by IES, including all Scripted Profiles, which act to input software code, data source, or co-simulation sources and other such third party information sources into the Software via the Application Programming Interface (“**API**”).

1. SCOPE OF THE SERVICES

1.1 In consideration of payment by the Customer of the charges set out in the Invoices in accordance with Clause 4 and the Customer agreeing to abide by the terms of this Agreement, IES hereby agrees to provide the Customer with the maintenance and support services as described in the Invoices (the “Services”).

1.2 IES shall provide such Services in relation to the software licensed to the Customer by IES (the “Software”) and any:

1.2.1 release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software (“Maintenance Release”);

- 1.2.2 any new version of the Software which from time to time is publicly marketed and offered for purchase by IES in the course of its normal business, being a version which contains such significant differences from previous versions of that Software (“New Version”); or
- 1.2.3 installed or downloads Scripts
- (together any “Software”, “Maintenance Releases” and “New Versions” shall form the “Supported Software”).
- 1.3 IES shall from time to time make Maintenance Releases available to the Customer without charge. If the Customer fails to make arrangements for the installation of a Maintenance Release within three (3) years of IES notifying the Customer that such Maintenance Release is available for installation, IES shall at its discretion be entitled to terminate this Agreement by providing one (1) months written notice to the Customer.
- 1.4 If IES has released a New Version since the version which forms part of the Supported Software, and the Customer has not, within twelve (12) months of IES having notified the Customer that a New Version is available, acquired and installed that New Version, IES shall be entitled to terminate this Agreement by one (1) months written notice to the Customer (given at any time after the expiry of the said period of twelve (12) months). IES acknowledges that some Customers may require to use a previous version of the Software, alongside a current version of the Software from time to time and shall not be entitled to exercise the right to terminate as set out in this Clause 1.4 where this is the case.
- 1.5 Unless otherwise agreed in writing between IES and the Customer, the Services shall be provided to the Customer by IES (or any other third party that it may appoint) between 9am and 5pm Monday to Friday, except on such days that are local public holidays in the country in which the Services are being provided from by IES.
- 1.6 On payment of the Charges, IES may issue the Customer with service credits which can be exchanged for receiving the support and maintenance from IES. Such service credits can be used without limit of time, but shall not be refundable or transferable. Unless terminated as a result of a breach of the terms of this Agreement by IES, on termination of this Agreement any service credits shall no longer be redeemable and shall not be refunded by IES.
- 1.7 If any on-site support or training is required by the Customer this shall not fall within the remit of the Services, but may be provided by IES at its option at such rates as shall be agreed between IES and the Customer. Such on-site support shall be provided in accordance with our separate training terms and conditions.

1.8 In the event that the Customer makes excessive use of the Services, IES may at its option notify the Customer in writing that the Customer is making excessive use of the Service and that it is required to:

1.8.1 purchase further on-site support or training as referred to in Clause 1.7; or

1.8.2 purchase additional service credits.

In the event that the Customer does not elect to purchase the recommended amount of on-site support or training or service credits, IES shall be permitted at its option to terminate the Agreement in writing by providing one (1) months written notice to the Customer.

1.9 In the event that a fault that does not substantially hinder or prevent the Customer from using a material part of the functionality of the Software ("Non-Critical Fault") that is to be corrected in a forthcoming Maintenance Release, then for a reasonable period prior to the issue of such Maintenance Release IES shall be entitled to decline to provide assistance in respect of that Non-Critical Fault.

1.10 IES shall have no obligation to provide the Services where faults arise from; (a) misuse, incorrect use of or damage to the Software; or (b) failure to maintain the necessary environmental conditions for use of the Software; or (c) use of the Software in combination with any equipment or software not provided by IES, or (d) use of Excluded Scripts, or any fault in any such equipment or software; or (d) any breach of the Customer's obligations under this Agreement.

1.11 IES shall use its reasonable endeavours to comply with any request by the Customer for additional services, but the Customer acknowledges that IES's ability to supply the additional services shall depend on the availability of appropriate resources at the time in question and such additional services may be subject to separate commercial terms and conditions.

2. **TERM**

2.1 This Agreement becomes effective when the Customer accepts the terms of this Agreement, and it shall continue to remain in force for the period of time below which is indicated on the Invoice as applying to the relevant Software. This Agreement shall remain in force in relation to the specific Software as indicated on the Invoice for either:

2.1.1 twelve (12) calendar months ("Initial Period"), unless otherwise terminated by IES or the Customer in accordance with this Agreement. Following the expiry of Initial Period, this Agreement shall automatically renew for further one (1) calendar month

periods unless otherwise terminated by IES or the Customer in accordance with this Agreement (“Rolling”); or

2.1.2 twelve (12) calendar months, unless otherwise terminated by IES or the Customer in accordance with this Agreement (“Annual”); or

2.1.3 one (1) calendar month, unless otherwise terminated by IES or the Customer in accordance with this Agreement (“Monthly”).

3. CUSTOMER’S RESPONSIBILITIES

3.1 The Customer shall:-

3.1.1 agree and comply with the terms and conditions in the IES end user licence agreement relevant to the Software subject to the Services;

3.1.2 co-operate with IES in performing the Services and provide any assistance or information as may reasonably be required by IES;

3.1.3 report faults detected in the Software promptly to IES;

3.1.4 keep full back-up copies of all of its data including licence keys and installation files;

3.1.5 indemnify IES against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against IES as a result of the Customer’s breach of this Agreement or any negligent or wrongful act of the Customer, the Customer’s officers, employees, contractors or agents;

3.1.6 to ensure that any employees and sub-contractors of the Customer are aware of and comply with the terms of this Agreement; and

3.1.7 appoint a representative if required by IES to coordinate the Services for the Customer and liaise as required with IES.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 The Customer acknowledges that all intellectual property rights in any deliverables throughout the world belong to IES, and that they have no rights in, or to, the deliverables other than the right to use them in accordance with the terms of this Agreement.

4.2 To avoid any doubt, deliverables may include any documentation provided by IES in connection with the Software, technical documentation, program specification, operations manuals,

software, know-how or other works created or supplied by IES in the course of providing the Services.

- 4.3 The Customer shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as IES may from time to time require for the purpose of giving IES the full benefit of the provisions of any intellectual property rights.

5. **CHARGES**

- 5.1 In consideration of the Services, the Customer shall pay to IES the charges set out in the annual maintenance invoice (the "Charges").
- 5.2 The Charges shall be paid by the Customer to IES within thirty (30) days of the date of the Invoice or by the date on which the Services start to be provided by IES to the Customer, whichever is the later date.
- 5.3 The Customer shall pay all costs (at IES's then prevailing rates) and reasonable expenses incurred by IES for work carried out by IES in connection with any fault which is not covered by this Agreement.
- 5.4 If the Customer fails to pay any amount payable by it under this Agreement, IES shall be entitled, but not obliged, to charge the Customer interest on the overdue amount, payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 2% per annum above the base rate for the time being of The Royal Bank of Scotland. Such interest shall accrue on a daily basis and be compounded quarterly.
- 5.5 All amounts payable under this Agreement shall be exclusive of value added tax (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.
- 5.6 The Customer shall not be entitled by reason of any set-off, counter-claim, abatement, or other similar deduction to withhold payment of any amount due to IES.
- 5.7 IES shall be entitled to review the Charges as from each anniversary of the date of this Agreement. Any such increase shall be notified to the Customer at least three (3) months prior to such anniversary.

6. **IES'S WARRANTIES**

- 6.1 IES represents and warrants to the Customer that:-

6.1.1 the Services will be performed in accordance with all applicable laws and regulations;

- 6.1.2 the Services will be performed with reasonable skill and care;
- 6.1.3 to the best of its knowledge and belief, the Services will not infringe Intellectual Property Rights of any third party in the UK; and
- 6.1.4 at the date of this Agreement, IES has obtained and will maintain for the duration of this Agreement all permissions, licences and consents necessary for IES to perform the Services.
- 6.2 If, during the term of this Agreement, IES receives written notice from the Customer of any breach by IES of the representation and warranties contained in this Agreement, IES shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice. The Customer shall provide all information reasonably necessary to enable IES to comply with its obligations under this paragraph. Alternatively, where a breach is not remediable by IES, IES shall arrange for the Charges to be refunded to the Customer on a pro rata basis in respect of the proportion of the remaining Term. This paragraph sets out the Customer's sole remedy and IES's entire liability for breach of any of its obligations in terms of this Agreement.
- 6.3 No representation or warranty is given by IES that all faults will be fixed or will be fixed within a specified period of time.
- 6.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, 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 and the use of reasonable skill and care.
- 7. IES'S LIABILITY**
- 7.1 Nothing in this Agreement shall exclude or in any way limit IES's liability for fraud, or for death and personal injury caused by its negligence, or any other liability to the extent that it cannot be excluded or limited as a matter of law.
- 7.2 Subject to condition 7.1; IES shall not be liable under or in connection with this Agreement or any collateral contract for:
- (a) loss of income;
 - (b) loss of business profits or contracts;

- (c) business interruption;
- (d) loss of the use of money or anticipated savings;
- (e) loss of information;
- (f) loss of opportunity, goodwill or reputation;
- (g) loss of, damage to or corruption of data;
- (h) any indirect or consequential loss or damage of any kind howsoever arising from the use of Scripts not supplied, or validated by IES; or
- (i) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise;

provided that this condition 7.2 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of condition 6, or any other claims for direct financial loss that are not excluded by any of categories (a) to (i) inclusive of this condition 7.2.

7.3 Subject to condition 7.1 and condition 7.2, IES's maximum aggregate liability under or in connection with this Agreement, or any collateral contract, whether in contract, delict, tort (including negligence) or otherwise, shall be limited to a sum equal to the Charges payable by the Customer in the year in which the liability arises.

7.4 Subject to condition 7.1, condition 7.2 and condition 7.3, IES's liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in the UK.

7.5 This Agreement sets out the full extent of IES's obligations and liabilities in respect of the supply of the Services. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on IES except as specifically stated in this Agreement. Any condition, warranty, representation or other term concerning the supply of the Services which might otherwise be implied into, or incorporated in, this Agreement, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

8. **TERMINATION**

8.1 IES may terminate this Agreement immediately by written notice to the Customer if:

- 8.1.1 The Customer commits a material or persistent breach of this Agreement which the Customer fails to remedy (if remediable) within fourteen (14) days after the service on the Customer of written notice requiring the Customer to do so; or
- 8.1.2 the Customer (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986).
- 8.2 Where the Services are provided in relation to the relevant Software on a Rolling basis (as defined in Clause 2.1.1) only, following the expiry of the Initial Period, either party may terminate this Agreement on serving thirty (30) days' written notice to the other party.
- 8.3 Upon termination for any reason:
- 8.3.1 all rights granted to the Customer under this Agreement shall cease;
- 8.3.2 the Customer must cease all activities authorised by this Agreement; and
- 8.3.3 the Customer must immediately pay to IES any sums due to IES under this Agreement.
9. **TRANSFER OF RIGHTS AND OBLIGATIONS**
- 9.1 This Agreement is binding on the Customer and IES and on each party's respective successors and assigns.
- 9.2 The Customer may not transfer, assign, charge or otherwise dispose of this Agreement, or any of their rights or obligations arising under it, without IES' prior written consent.
- 9.3 IES may transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of its rights or obligations arising under it, at any time during the term of the Agreement.
10. **NOTICES**
- 10.1 All notices given by the Customer to IES must be given to Integrated Environmental Solutions Limited in writing at Helix Building, Kelvin Campus, West of Scotland Science Park, Glasgow G20 0SP. IES may give notice to the Customer at either the e-mail or postal address provided to it (or any of its representatives) by the Customer when purchasing the Services. Notice will be

deemed received and properly served twenty four (24) hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

11. **EVENTS OUTSIDE IES'S CONTROL**

11.1 IES will not be liable or responsible for any failure to perform, or delay in performance of, any of his obligations under this Agreement that is caused by an event outside his reasonable control (**Force Majeure Event**).

11.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond IES's reasonable control and includes in particular (without limitation) the following:

11.2.1 strikes, lock-outs or other industrial action;

11.2.2 civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

11.2.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

11.2.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

11.2.5 impossibility of the use of public or private telecommunications networks;

11.2.6 the acts, decrees, legislation, regulations or restrictions of any government.

11.3 IES's performance under this Agreement is deemed to be suspended for the period that the Force Majeure Event continues, and it will have an extension of time for performance for the duration of that period. IES will use their reasonable endeavours to find a solution by which their obligations under this Agreement may be performed despite the Force Majeure Event.

12. **WAIVER**

12.1 If IES fails, at any time during the term of this Agreement, to insist on strict performance of any of the Customer's obligations under this Agreement, or if IES fails to exercise any of the rights or remedies to which it is entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve the Customer from compliance with such obligations.

12.2 A waiver by IES of any default shall not constitute a waiver of any subsequent default.

12.3 No waiver by IES of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to the Customer in writing.

13. **SEVERABILITY**

13.1 If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

14. **ENTIRE AGREEMENT**

14.1 This Agreement and any document expressly referred to in it represents the entire agreement between the parties in relation to the purchase of the Services and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.

14.2 The parties each acknowledge that, in entering into this Agreement, neither of them has relied on any representation, undertaking or promise given by the other party or implied from anything said or written in negotiations between the parties before entering into this Agreement except as expressly stated in this Agreement.

14.3 Neither of the parties shall have any remedy in respect of any untrue statement made by the other party, whether orally or in writing, prior to the date they entered into this Agreement (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in this Agreement.

15. **LAW AND JURISDICTION**

15.1 This Agreement is governed by Scots law. Any dispute (including non-contractual claims) arising from, or related to, any term of this Agreement shall be subject to the non-exclusive jurisdiction of the Scottish Courts.