

**DELTAXML LICENCE TERMS AND CONDITIONS**

**DeltaXML Limited** (Registered Number 2528681) whose registered office is at Malvern Hills Science Park, Geraldine Road, Malvern, Worcestershire, WR14 3SZ, UK ("**DeltaXML**")

**1. DEFINITIONS**

1.1. The following words and phrases have the following meanings:

<b>Agreement</b>	means an Order that is accepted by DeltaXML and which incorporates these terms and conditions.
<b>Client</b>	means the person to whom the Licence is granted as specified in the Order.
<b>Concurrent Server Licence</b>	means the right to load, install and use the Software on multiple computing devices (the maximum number of which may be specified in the licence key) where the sum of all the Runtime Cores of all the computing devices using the software at any one time is limited by the number permitted in the licence key.
<b>Concurrent User Licence</b>	means the right for multiple End Users (the maximum number of which may be specified in the licence key) to use the Software where the number of End Users using the Software at any one time is limited by the number of Concurrent User Licences specified in the licence key.
<b>Documentation</b>	means the documents provided by DeltaXML for the Software, in either printed text or machine-readable form, including but not limited to the technical documentation, program specification and user manual.
<b>End User</b>	means an employee, agent or representative of the Client authorised by the Client to use the Software subject to any restrictions on the number or location of End Users as set out in the Order.
<b>Intellectual Property Rights</b>	means all patents, patent applications, rights to inventions, copyrights, design rights, trade marks, service marks, unfair competition rights, trade secrets, know-how, database rights, and any other intellectual property rights (whether registered or unregistered) and all applications for, and renewals or extensions for, the same, anywhere in the world.
<b>Licence</b>	means the licence granted by DeltaXML to the Client to use the Software in accordance with these terms and conditions.
<b>Licence Fee</b>	means the licence fees specified in the Order or by the Reseller, due from the Client in respect of the Licence.
<b>Licence Period</b>	means the licence period specified in the Order.
<b>Licence Type</b>	means a Named User Licence, Server Licence, Concurrent User Licence or Concurrent Server Licence.
<b>Named User Licence</b>	means the right for one individual End User (the "Designated User") to use the Software on one computing device subject to a maximum number of Runtime Cores if specified, including the right to copy the Software to another computing device such that the Designated User is using no more than one copy simultaneously. The Named User Licence may be re-assigned to another Designated User, within the same company or legal entity, at any time as long as the Software is no longer being used by the previous Designated User. The Software may not be used to provide an automated service to another computing device or to any person other than the Designated User.
<b>Non-production Use</b>	means use of the Software for development, testing, staging, hot backup, user acceptance testing or other similar purpose where the purpose of using the software is to develop a software system for Production Use.
<b>Operating System</b>	means any operating system that supports either a Java runtime system or a common language runtime (.Net Framework) as specified in the Documentation, and Third Party Software as specified in the Documentation.
<b>Order</b>	means an order from the Client for Software Licences which is accepted by DeltaXML and incorporates these terms and conditions.
<b>Production Use</b>	means any use of the Software by End Users other than Non-production Use. Note that this may include testing if this is the ultimate purpose of the purchase of the Software.
<b>Reseller</b>	means any authorised reseller or partner appointed by DeltaXML with the authority to take orders and payments for the Software and provide Client with a Security Password.

## DeltaXML End User Licence

<b>Runtime Cores</b>	means the processors known to the Java runtime where the number of Runtime Cores is the result of the <code>java.lang.Runtime.availableProcessors()</code> method.
<b>Security Password</b>	is the password or method provided by DeltaXML which enables the Client to download the Software.
<b>Server Licence</b>	means the right to load, install and use the Software on a computing device, as part of a network, with up to the number of Runtime Cores specified in the Order for use only by End Users.
<b>Software</b>	means a copy of the executable object code of the package of computer programs specified in the Order including any related user guides and source code examples.
<b>Third Party Software</b>	means an operating system or other software that is required in order to run the Software as specified in the Documentation.

1.2. In these licence terms and conditions, unless the context shall otherwise require or permit:-

- (a) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted and includes any subordinate legislation made there under;
- (b) words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated, and each case vice versa;
- (c) the headings or captions to the clauses are for ease of reference only and shall not affect the interpretation or construction of the Agreement;
- (d) References to "**including**" or "**includes**" shall be deemed to have the words "**without limitation**" inserted after them.

1.3. These licence terms and conditions shall:

- (a) apply to and be incorporated into all contracts for the licence by DeltaXML of Software to the Client unless expressly excluded in writing signed by a director of DeltaXML;
- (b) prevail over any inconsistent terms contained or referred to in the Client's purchase order, confirmation of order or specification.

## 2 GRANT OF LICENCE

2.1 Subject to the terms of the Agreement and in consideration of the payment by the Client of the Licence Fee, DeltaXML grants to the Client a personal, non-exclusive and non-transferable Licence:

- (a) to use the Software during the Licence Period; and
- (b) to merge or embed the whole or any part of the Software in machine-readable form into a software application for use only by End Users in accordance with the Licence Type.

TITLE TO THE SOFTWARE AND MEDIA SHALL NOT PASS TO THE CLIENT OR THE END USER IN ANY CIRCUMSTANCES.

2.2 If the Client is granted a Server Licence or a Concurrent Server Licence, the Client may install the Software on the number of servers and CPUs specified in the Order for use by End Users.

2.3 If the Client is granted a Named User Licence or a Concurrent User Licence, the Client may allow only the specified number of Named Users to use the Software.

2.4 If the Software is installed or used outside the United Kingdom, the Client shall be responsible at its expense for complying with all applicable laws and regulations (including United States export laws and regulations) and obtaining any applicable licences and consents, relating to the import, export, re-export, installation, use or operation of the Software. If requested, the Client shall provide DeltaXML with all reasonable assistance, at the reasonable cost of the Client, to enable DeltaXML to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any such applicable laws or regulations.

## 3 PRICE AND PAYMENT

3.1 The Client shall pay the Licence Fee to DeltaXML, unless a Reseller has been appointed, in which case the Client shall pay the Licence Fee to the Reseller.

3.2 The Licence Fee is exclusive of value added and any other tax or duty which, where applicable, shall be paid additionally by the Client at the then prevailing rate.

3.3 If any sum payable to DeltaXML under the Agreement is in arrears for more than 30 days after the due date, DeltaXML reserves the right without prejudice to any other right or remedy to charge interest on such overdue sum in accordance with its legal right to do so.

#### **4 DELIVERY AND INSTALLATION**

- 4.1 DeltaXML shall deliver to the Client or the Reseller a password protected means to enable the Client to download the Software within 3 business days of the acceptance of the Order by DeltaXML.
- 4.2 Where payment of any part of the Licence Fee is due before delivery of the Software, DeltaXML may withhold delivery until such payment has been received.
- 4.3 Unless otherwise specified on the Order, DeltaXML is not responsible for installation of the Software.

#### **5 PERMITTED USE**

- 5.1 The Client may use the Software only in conjunction with the Operating System. The use of the Software on different operating systems requires prior written consent of DeltaXML, (which consent shall not be unreasonably withheld or delayed), and shall be at the Client's own risk.
- 5.2 Unless specified otherwise in the Order, the Client may use the Software solely for processing data for the Client's own internal business purposes and for no other purpose whatever. The Client shall not use or attempt to use the Software or any of the Software's output (whether on behalf of, or for the benefit of, itself or a third party) or permit or allow any third party to do so:-
  - (a) to provide a data processing or bureau service to any third party by way of trade or otherwise unless expressly permitted in the Order; or
  - (b) contrary to any restriction stated in the Agreement; or
  - (c) unless otherwise expressly permitted by the Agreement.
- 5.3 If the number of End Users is restricted the Client may only use the Software in accordance with the maximum number of End Users specified in the Order. Additional End Users may be added by means of a further Order for Software Licences and payment of the Licence Fees for the additional End Users.
- 5.4 The Client hereby undertakes to be responsible and liable for all acts, omissions, misconduct, breach, fault, default or negligence of, or by, its End Users arising in respect of, or in connection with, the obligations or restrictions imposed on the Client pursuant to the Agreement and to indemnify DeltaXML in respect of all losses, damages or expenses incurred by DeltaXML as a result of unauthorised use of the Software.

#### **6 RESTRICTIONS ON USE**

The Client shall:-

- 6.1 not copy or permit the Software to be copied except for reasonable security and back up purposes for its lawful use. The Client shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying;
- 6.2 not reverse engineer or decompile, copy or adapt the whole or any part of the Software for the purposes of correcting errors in the Software;
- 6.3 not, save solely for the purposes, and to the extent expressly permitted by law, copy, adapt, reverse compile, decompile, reverse engineer, disassemble or translate the whole or any part of the Software except to the extent that that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client, unless DeltaXML 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 Client shall request DeltaXML to carry out such action or to provide such information (and shall meet DeltaXML's reasonable costs in providing that information) before undertaking any such reduction;
- 6.4 not use any such information provided by DeltaXML or obtained by the Client during any such reduction permitted under clause 6.3 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;
- 6.5 not allow any third party to use the Software or any software application in which the Software is embedded;
- 6.6 not make for any purpose including (without limitation) error correction, any alterations, modifications, additions or enhancements to the Software except those parts of the Software provided in source code form for customisation by Client;
- 6.7 not assign, distribute, licence, hire, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Software or use the Software on behalf of any third party or make available the Software to any third party nor allow or permit a third party to do any of the same unless expressly permitted under the terms of this Agreement;
- 6.8 not remove or alter any copyright or other proprietary notice on any of the Software or which is visible during its operation or on any user guide; or

## DeltaXML End User Licence

- 6.9 not use the Software in connection with an on-line service unless expressly permitted in the Order or allow the Software to be made available or down loaded over the internet.
- 7 INTELLECTUAL PROPERTY RIGHTS**
- 7.1 The Client shall not acquire in any way any title, rights of ownership, copyright, intellectual property (including but not by way of limitation patents AU2001270901; EP1325432; US8196135; CA 2416876; US 8,423,518 B2; EP2174238; 602008031420.0 and patent applications 1315520.5, 14275178.3, 14/474,377) or other Intellectual Property Rights of whatever nature in the Software and Documentation or in any copies of it. All such interests and rights are and shall remain the exclusive property of DeltaXML.
- 7.2 The Client shall incorporate or reproduce all copyright and proprietary markings in any permitted back-up or other copies of the Software or any user guide.
- 7.3 The Client acknowledges and understands that the Software contains confidential and proprietary information and the Client shall:-
- (a) not provide or otherwise make any of the Software available for any reason to any other person except as permitted by the Agreement or otherwise in accordance with express written authority signed by an authorised signatory of DeltaXML; and
  - (b) maintain an accurate and up-to-date written record of the Client's use, copying and disclosure of the Software in accordance with good data processing practice and shall provide DeltaXML on request copies of such records from time to time;
  - (c) without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights of DeltaXML; and
  - (d) ensure that all End Users are advised that the Software constitutes confidential and proprietary information of DeltaXML and that all Intellectual Property Rights therein are the property of DeltaXML and that they owe a duty of confidentiality to DeltaXML.
- 7.4 The Client shall effect and maintain adequate security measures to safeguard the Software and Security Passwords from unauthorised access, use or copying by any person.
- 7.5 The Client shall notify DeltaXML immediately if the Client becomes aware of any unauthorised access to, use or copying of any part of the Software by any person.
- 7.6 This clause shall also apply to all materials and information belonging to or under the control of DeltaXML to which the Client and/or its End Users is given access or receives directly or indirectly as a result of the operation of the Agreement.
- 7.7 If any action or proceeding is brought against the Client in respect of any alleged infringement of any Intellectual Property Right of a third party in respect of the possession, use, development, modification or maintenance of the Software (or any part thereof) in accordance with the terms of this Licence ("IPR Claim") then DeltaXML shall be responsible for any reasonable losses, costs (including legal fees), damages and expenses incurred by or awarded against the Client as a result of or in connection with an IPR Claim. For the avoidance of doubt, this clause 7.7 shall not apply where:
- (a) the IPR Claim in question is attributable to possession, use, development, modification or maintenance of the Software (or any part thereof) by the Client other than in accordance with the terms of this Licence;
  - (b) use of the Software in combination with any hardware or software not supplied or specified by DeltaXML 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 an IPR Claim, or notifies an intention to make an IPR Claim against the Client, DeltaXML's obligation under clause 7.7 is conditional on the Client:-
- (a) as soon as reasonably practicable, notifying DeltaXML in writing of any such IPR Claim, specifying the nature of the IPR Claim in reasonable detail;
  - (b) not making any admission of liability, agreement or compromise in relation to the IPR Claim without the prior written consent of DeltaXML (such consent not to be unreasonably withheld or delayed);
  - (c) giving DeltaXML and its professional advisers access at reasonable times (on reasonable prior notice) to its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power and control of the Client, so as to enable DeltaXML and its professional advisers to examine them and to take copies (at DeltaXML's expense) for the purpose of assessing the IPR Claim; and
  - (d) subject to DeltaXML providing security to the Client to the Client's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as DeltaXML may reasonably request to avoid, dispute, compromise or defend the IPR Claim.
- 7.9 In the event that any IPR Claim is made, or in DeltaXML's opinion is likely to be made, against the Client, DeltaXML may at its sole option and expense:

## **DeltaXML End User Licence**

- (a) procure for the Client the right to continue using the Software or infringing part thereof in the manner permitted under this Agreement; or
- (b) modify or amend the Software or infringing part thereof so that the same becomes non-infringing; or
- (c) replace the Software or infringing part thereof with other non-infringing software of similar capability; or
- (d) terminate the Licence immediately by notice in writing to the Client and repay to the Client any of the Licence Fee paid by the Client as at the date of termination (less a reasonable sum in respect of the Client's use of the Software to the date of termination) on return of the Software, Documentation and all copies thereof,

provided that if DeltaXML modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 8.1 and the Client shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Licence been references to the date on which such modification or replacement was made.

- 7.10 This clause 7 constitutes the Client's exclusive remedy and DeltaXML's only liability in respect of IPR Claims and, for the avoidance of doubt, is subject to clause 9.3. For the avoidance of doubt, any IPR Claim the Client may have in respect of the Software shall be made against DeltaXML directly and not via a Reseller (where a Reseller has been appointed).

## **8 WARRANTIES**

- 8.1 Subject to the exceptions set out in this clause and the limitation upon its liability in this clause, DeltaXML warrants that:-

- (a) it has the right, power and authority to Licence the Software upon the terms of the Agreement; and
- (b) the Software when properly used on the Operating System shall provide the facilities and functions as described in the applicable Documentation at the date of delivery of Software to the Client.

- 8.2 The warranties specified in clause 8.1 are subject to the Client giving notice to DeltaXML as soon as it is reasonably able upon becoming aware of a breach of warranty but in the case of the warranty under clause 8.1(b) such notice must be given within 90 days of delivery of the Software. When notifying DeltaXML of such a breach, the Client shall provide DeltaXML with such documented information, details and assistance as DeltaXML may reasonably request.

- 8.3 All other warranties, conditions or other terms which might have effect between the parties or be implied or incorporated into this Licence or collateral contract, whether by statute, common law or otherwise, are hereby expressly excluded, including the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose.

- 8.4 The Client's sole remedy against DeltaXML for any failure on the part of the Software to conform to the applicable user guide as at the date of delivery shall be to require DeltaXML to use reasonable endeavours to correct such failure, free of additional charge, and within a reasonable time, as part of the support services (if any) provided by DeltaXML.

- 8.5 DeltaXML undertakes to use all reasonable endeavours to remedy free of charge to the Client any faulty work arising from a breach of the warranty in Clause 8.1 which is reported to DeltaXML in writing within 90 days after delivery of the Software. If DeltaXML rectifies such faulty work by the provision at DeltaXML's option of replacement or additional materials within a reasonable period of time, then DeltaXML will have no other liability of any kind in respect of or arising from such faulty work.

- 8.6 If a problem is found upon investigation not to be DeltaXML's responsibility under the provisions of Clause 8.1 DeltaXML may charge for all reasonable costs and expenses incurred by DeltaXML in the course of or in consequence of such investigation.

- 8.7 DeltaXML will not be liable under Clause 8.1 to remedy any problem arising from or caused by any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software (including data structure) by persons other than DeltaXML without its express prior written consent.

- 8.8 All advice and recommendations given by DeltaXML and its representatives shall be made in good faith and on the basis of information provided to DeltaXML and otherwise generally available. No advice or recommendations given shall in any circumstances constitute a warranty by DeltaXML as to the accuracy of such advice or recommendations and DeltaXML shall not in any event be held liable for any loss or damage that may be suffered, whether directly or indirectly, as a result of the Client acting upon such advice or recommendations.

## **9 LIABILITY**

- 9.1 The Client acknowledges that:-

- (a) the Software has not been prepared to meet the Client's individual requirements and that it is the Client's responsibility to ensure that the facilities and functions of the Software described in the applicable user guide and Documentation meet the Client's requirements;
- (b) the Software cannot be tested in every possible combination and operating environment, and that it is not possible to produce or maintain economically (if at all) computer programs known to be entirely error free or which operate in uninterrupted manner.

## DeltaXML End User Licence

- 9.2 Except as expressly stated in clause 9.5, DeltaXML shall not in any circumstances have any liability for any losses or damages which may be suffered by the Client (or any person claiming under or through the Client), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (i) special damage even if DeltaXML was aware of the circumstances in which such special damage could arise;
  - (ii) loss of profits;
  - (iii) loss of revenue;
  - (iv) loss of production;
  - (v) loss of anticipated savings;
  - (vi) loss of business opportunity;
  - (vii) loss of goodwill;
  - (viii) loss or corruption of data;
  - (ix) indirect or consequential loss.
- 9.3 Subject to clause 9.5, the total liability of DeltaXML in respect of any one incident or any series of incidents arising from a common cause, whether in contract, tort (including negligence), or otherwise arising out of or in connection with this Licence, shall be limited to 100% of the Licence Fees paid by the Client to DeltaXML under this Licence in the 36 months immediately prior to when the cause of action arose.
- 9.4 The Client agrees that, in entering into this Licence, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Licence or (if it did rely on any representations, whether written or oral, not expressly set out in this Licence) that it shall have no remedy in respect of such representations and (in either case) DeltaXML shall have no liability in any circumstances otherwise than in accordance with the express terms of this Licence.
- 9.5 Nothing in the Agreement shall exclude or restrict either party's liability for death or personal injury resulting from the negligence of a party or its officers, employees, contractors or agents; fraud or fraudulent misrepresentation; or any other liability which cannot be excluded by law.
- 9.6 All dates supplied by DeltaXML for the delivery of the Software shall be treated as approximate only. DeltaXML shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

## 10 CLIENT'S OBLIGATIONS

- 10.1 The Client agrees that it shall report as soon as reasonably possible to DeltaXML all suspected or known operational/functional problems with the Software.
- 10.2 The Client will keep complete, true and accurate written records in accordance with good data processing practice on the Client's copying and disclosure of the Software and details of any server or computer upon which the Software is installed as DeltaXML may from time to time reasonably require. The Client shall permit DeltaXML to inspect and have access to such records (or copies of such records) for the purpose of ensuring that the Client is complying with the terms of this Licence.

## 11 TERMINATION

- 11.1 Either party may (without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies) terminate the Agreement and the Licence with immediate effect by notice in writing to the other if:-
- (a) a voluntary arrangement is approved, or an administration order is made, or receiver or administrative receiver is appointed over any of the other parties' assets or undertaking or resolution or petition to wind up the other party 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 or if similar proceedings are threatened or instituted against the Client in any other jurisdiction or the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (b) the other party defaults in due performance or observance of any of its material obligations under the Agreement and (in the case a remedial breach) fails to remedy the breach within 30 days of receipt of the written notice to do so.
- 11.2 Termination of the Agreement and Licence, 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.
- 11.3 Upon termination of the Agreement and Licence, for any reason:-
- (a) all rights granted to the Client under this Licence shall cease;
  - (b) the Client shall cease all activities authorised by this Licence;

## **DeltaXML End User Licence**

- (c) the Client shall immediately pay the DeltaXML any sums due to DeltaXML under this Licence; and
- (d) the Client shall immediately destroy all copies of the Software or, at DeltaXML's option, return all copies of the Software then in its possession, custody or control to DeltaXML, and in the case of destruction, certify to DeltaXML that it has done so.

11.4 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including clause 1, clause 2.3, clause 9, clause 11, clause 13 and clause 14 shall remain in full force and effect.

## **12 FORCE MAJEURE**

12.1 Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.

12.2 In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If any force majeure event shall continue for more than 12 weeks then the party not in default shall be entitled to terminate the Agreement. Neither party shall have any liability to the other in respect of termination of the Agreement as a result of an event of force majeure.

## **13 CONFIDENTIALITY**

13.1 Each party shall, during the term of this Licence and thereafter, treat as confidential all information obtained from the other party under or in connection with this Agreement which is designated as confidential by the other party or which is by its nature clearly confidential. The recipient party will 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 for purposes other than the support service without the other party's prior written consent. This clause will not extend to information which:-

- (a) was in the possession of the recipient party (with full right to disclose) before receiving it;
- (b) is already or becomes public knowledge (otherwise than as a result of a breach of this clause);
- (c) is independently developed by the recipient party without access to or use of such information; or
- (d) is required to be disclosed by law or regulatory authority.

13.2 Each party will ensure that all persons to whom it discloses any confidential information of the other party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other party. These obligations of confidentiality will survive any termination of this Agreement.

13.3 Each party will establish and maintain adequate security measures to safeguard information and data of the other party in its possession from unauthorised access use or copying.

13.4 The terms of this Licence are confidential and may not be disclosed by the Client without the prior written consent of DeltaXML.

## **14 WAIVER**

No failure or delay by either party in enforcing any right or remedy provided under this Agreement shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **15 SEVERABILITY**

15.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

15.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **16 AMENDMENTS**

Any amendment or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend the Agreement and signed by or on behalf of each of the parties.

## **17 NOTICES**

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in an Order. Notices may be sent by first-class or air mail or e-mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by mailed confirmation of a copy. Correctly addressed notices sent by mail shall be deemed to have been delivered at 9.00am ten (10) business days after

## **DeltaXML End User Licence**

posting and correctly directed e-mails or facsimile transmissions shall be deemed to have been received instantaneously on sending or transmission provided that they are confirmed as set out above. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **18 ENTIRE AGREEMENT**

The Order incorporating these terms and conditions contains the whole agreement between the parties relating to the subject matter thereof and supersedes and cancels all previous agreements, working arrangements and representations of whatever nature unless expressly incorporated by reference in the Agreement. The Client and DeltaXML each acknowledge that no reliance is placed on, and it shall have no remedy in respect of any representations made but not embodied in these terms and conditions or the Order relating to the matters referred therein. Nothing in this clause attempts to exclude or limit a party's liability for fraud.

## **19 THIRD PARTY RIGHTS**

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

## **20 ASSIGNMENT**

The Client is not entitled to assign to any third party any of its rights or obligations under the Agreement without DeltaXML's prior written consent which shall not be unreasonably withheld. DeltaXML shall be entitled to assign or sub-contract its rights and obligations under this Agreement to any person, but DeltaXML shall give notice of such assignment or sub-contracting in writing to the Client.

## **21 PUBLICITY**

Any form of advertising or publicity or reference to the Client shall require the Client's prior written consent (such consent not to be unreasonably withheld or delayed). DeltaXML shall be permitted to refer to the Client in a client list without the Client's prior approval; however the Client may request removal from such a list at any time by notice in writing to DeltaXML.

## **22 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish a partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## **23 MEDIATION**

23.1 The parties shall use all reasonable endeavours and attempt in good faith to resolve any dispute or claim arising out of or relating to any Order promptly through negotiations between the respective authorised representatives or other senior executives of the parties who have authority to settle the same. Any dispute, difference or claim which is not settled in fourteen (14) days of such dispute, difference or claim having been made or provided in writing by one party to the other (the "**Relevant Event**") shall be referred, with the agreement of the parties, to an independent third party (the "**Third Party**") as DeltaXML and the Client shall jointly nominate.

23.2 If, where the parties have agreed to use a Third Party to settle the Relevant Event, and the parties fail to nominate a Third Party within twenty-one (21) days of occurrence of the Relevant Event, then the Third Party shall be nominated at the request of either DeltaXML or the Client by the President for the time being of the Institute of Electrical Engineers.

23.3 If the parties fail to reach agreement or resolve the dispute, such failure shall be without prejudice to the right of any party subsequently to refer any difference or dispute to litigation and nothing contained in the sub-clause shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right.

23.4 For the avoidance of doubt, this Clause 23 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

## **24 GOVERNING LAW AND JURISDICTION**

This Agreement 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. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of DeltaXML to take proceedings against the Client in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.