

NiGEM Terms and Conditions

These terms and conditions, dated January 2024 (these “T&Cs”), set out the terms under which the National Institute of Economic and Social Research (registered company number 341010) (“NIESR”) agrees to grant access to the “Licensee” to use NIESR’s National Institute Global Econometric Model software (the “Software”) and associated data (both as may be updated from time to time) and to provide support in respect of the Software (the “NiGEM Service”) and associated services. These T&Cs apply to the agreement between NIESR and the Licensee for the provision of the NiGEM Service and associated services (this “Agreement”) to the exclusion of any other terms that the Licensee seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Grant of Licence

- 1.1 In consideration of payment by the Licensee of the annual fee for the NiGEM Service (the “Licence Fee”) and subject to the Licensee complying with these T&Cs, NIESR hereby grants to the Licensee a non-exclusive, non-transferable, non-sublicensable licence to use the NiGEM Service for the term of this Agreement (the “Term”) for the Authorised Use (the “Licence”).
- 1.2 The Licensee hereby acknowledges and agrees that:
 - 1.2.1 it may only use the NiGEM Service for its own internal business purposes to generate data representing a range of possible future economic outcomes based on data inputted by the Licensee, pre-existing data obtained from third-party sources and assumptions made in the relevant model used (the “Authorised Use”);
 - 1.2.2 the Licensee is solely responsible for the use of and interpretation of the data generated from use of the NiGEM Service, such data is subject to the assumptions made in the relevant model used, the provision of the NiGEM Service by NIESR cannot and does not of itself constitute the provision of advice and NIESR shall not be responsible for the results or any use of, conclusions drawn from or reliance placed upon such data by the Licensee or any other person; and
 - 1.2.3 use of the NiGEM service requires financial expertise.
- 1.3 The Licensee may not resell the NiGEM Service, use the NiGEM Service to provide products or services to third parties or otherwise commercially exploit the NiGEM Service, and any output(s) generated from the usage of any element of the NiGEM Service must be disseminated without charge, except with the prior written consent of NIESR (acting in its absolute discretion). The Licensee acknowledges that the grant of any such consent may be subject to the Licensee agreeing to pay a royalty to NIESR on any revenue generated by such commercial exploitation and agreeing to any other conditions of consent required by NIESR. In the event that the Licensee wishes to apply for competitive research bids or answer tenders for funding and intends to use NiGEM in delivering its proposal, the Licensee must obtain NIESR’s prior written consent before making any such bid or tender and must acknowledge such proposed use of NiGEM in its proposal.
- 1.4 The Licensee shall ensure that the number of individuals it authorises to use the NiGEM Service (the “Users”) does not exceed the number of User licences purchased by the Licensee and shall ensure that each User licence is used by no more than one individual. The Licensee shall notify NIESR as soon as it becomes aware of any unauthorised use of the NiGEM Service by any person. The Licensee shall procure that its Users comply with the terms of this Agreement and shall be liable for any breach of this Agreement by any of its Users as if that breach were committed by the Licensee.
- 1.5 If the Licensee wishes to increase the number of its Users, it must contact NIESR and if any such increase is agreed then the Licence Fee shall be increased in accordance with NIESR’s then current price list for the remainder of the Initial Term or then current Renewal Period (as applicable) on a pro rata basis, with such increase to take effect from, and be invoiced on or around, the date the Licensee’s number of Users is increased. If the Licensee wishes to decrease the number of its Users, it must serve notice to terminate the Licences that are no longer required in accordance with clause 10.1.

Access to Services

- 2.1 NIESR may (acting in its absolute discretion) from time to time make available to the Licensee training on the use of the NiGEM Service free of additional charge, such training to be provided from NIESR's premises only (the "Training"). The frequency, dates and content of the Training shall be determined by NIESR acting in its absolute discretion. NIESR does not warrant that the Training will be sufficient for the Licensee's requirements and the Licensee shall be solely responsible for ensuring that any personnel attending the Training are suitably qualified, skilled, experienced and familiar with the NiGEM Service. The Training shall be made available on a 'first come first served' basis and NIESR makes no commitment as to the availability of the Training. NIESR hereby excludes all liability for any losses incurred by any person as a result of the unavailability or cancellation of any Training. Without prejudice to any of the foregoing, NIESR shall endeavour to provide useful and relevant training and welcomes feedback from Licensees in respect of any Training provided.
- 2.2 NIESR may (acting in its absolute discretion) from time to time make available to the Licensee updates to the Software and/or the data used to provide the NiGEM Service ("Updates"). NIESR shall notify the Licensee when any Updates are available and the Licensee shall be solely responsible for downloading and installing such Updates using appropriately qualified, skilled and experienced personnel. NIESR shall have no liability to the Licensee for any losses arising from the Licensee's failure to download or install any Updates.
- 2.3 NIESR shall during the Term provide telephone and e-mail support to the Licensee and its Users in respect of the existing functions of the Software. The support shall cover queries relating to use of the Software and the investigation and resolution of problems encountered by the Licensee and its Users with the use of the Software.
- 2.4 NIESR may (acting in its absolute discretion) agree to provide additional consultancy services and/or additional training services relating to the NiGEM Service (the "Consultancy Services"), subject to the parties agreeing the additional fees payable by the Licensee for the provision of such Consultancy Services. The provision of Consultancy Services shall be subject to these T&Cs.

Delivery/Access to Enabling Software

- 3.1 The Licensee shall be responsible for downloading, installing and hosting the Software and any associated data and for using appropriately skilled, qualified and experienced personnel to download and install the same and use the NiGEM Service. On the commencement of the Licence, NIESR shall deliver to the Licensee such login details sufficient for the Licensee to download the Software from such web location as shall be directed by NIESR (the "Delivery Date"). Once NIESR has delivered such login details and web location, its obligations to deliver the Software shall be deemed satisfied.
- 3.2 The Licensee is permitted to install NiGEM on Permitted Equipment. "Permitted Equipment" shall mean equipment meeting the specifications and technical requirements notified by NIESR from time to time. The Licensee may download and install one copy of the Software for each User for whom the Licensee has purchased a licence.
- 3.3 The Licensee shall be responsible for ensuring that its Permitted Equipment is installed and fully operational at the Users' location(s) by the Delivery Date and for the period of the Licence. The Delivery Date shall not be delayed or otherwise affected by reason of any failure by the Licensee to ensure the same.
- 3.4 The Licensee may choose to install and operate NiGEM on such other equipment for the convenience of the lawful Users but shall be entirely responsible for assuring itself of the continued safe operation of NiGEM and that such use is compatible with the Licensee's other systems as used from time to time. NIESR hereby excludes liability for any losses suffered or incurred by the Licensee arising from the Licensee's use of the Software with any equipment that is not Permitted Equipment.

Payment

- 4.1 The Licence Fee shall be charged on a “per User” basis and invoiced annually in advance. Any charges payable for the Consultancy Services shall be invoiced in advance unless otherwise agreed by the parties in writing.
 - 4.2 The Licence Fee and any additional charges payable under this Agreement are exclusive of any applicable Value Added Tax or other applicable sales taxes or duties applied by local laws which shall be paid by the Licensee at the rate and in the manner for the time being prescribed by relevant local laws.
 - 4.3 The Licence Fee and any additional charges payable under this Agreement shall be payable in pounds sterling, free and clear of all deductions and withholdings whatsoever, by bank transfer to an account designated in writing by NIESR within 30 days of the date of invoice.
 - 4.4 If any amount due by the Licensee under this Agreement is not paid by the due date for payment, NIESR may:
 - 4.4.1 charge interest on the overdue amount at the rate of 4% per annum above Bank of Scotland’s base rate from time to time (compounded quarterly). Such interest shall accrue on a daily basis until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount; and/or
 - 4.4.2 immediately suspend the provision of the NiGEM Service and/or the Consultancy Services to the Licensee under this Agreement.
- For the avoidance of doubt, any failure to pay any amount by the due date for payment shall constitute a material breach of this Agreement.
- 4.5 The Licence Fee shall be subject to an annual increase in line with the all services component of the UK consumer price index for December of the previous year, or some other amount to be agreed.

Licensee Obligations

- 5.1 The Licensee shall:
 - 5.1.1 provide NIESR with all necessary information, access and co-operation as may be required by NIESR in order to provide the NiGEM Service and the Consultancy Services;
 - 5.1.2 take sole responsibility to ensure the legality, accuracy and completeness of any data or information inputted by the Users into the Software. The Licensee acknowledges that NIESR’s ability to provide the NiGEM Service is dependent upon the accuracy and completeness of any such data or information so provided by the Licensee;
 - 5.1.3 comply with all applicable laws in respect of the operation of its business and conduct of its business activities, and in connection with the use of the NiGEM Service for the purposes contemplated in this Agreement;
 - 5.1.4 obtain and maintain during the Term all licences, consents, approvals and permissions necessary in order to use and receive the NiGEM Service and the Consultancy Services; and
 - 5.1.5 properly implement all technical measures necessary to enable it to access and use the NiGEM Service, including those steps required to maintain appropriate network connections and configure its computer systems, software and/or websites.

Data

- 6.1 On or shortly after the Delivery Date NIESR shall provide the Licensee with login details which will enable the Licensee to access data made available by NIESR, which the Licensee may use only in connection with its use of the Software. Such data is provided by NIESR “as is”. NIESR makes no warranties or representations in respect of such data, which the Licensee uses at its own risk.
- 6.2 The parties agree and acknowledge that NIESR shall not be supplied or provided with access to any of the Licensee’s data or information and all data inputted into the Software by or on behalf of the Licensee shall be stored on the Licensee’s equipment. If the Licensee wishes to provide data or information to

NIESR in connection with its use of the NiGEM Service, then it may only do so with NIESR's prior consent and the Licensee shall ensure that all such data or information shall be fully anonymised by the Licensee prior to it being supplied or made available to NIESR so that it does not constitute personal data.

Lawful Handling of NiGEM

- 7.1 The Licensee shall permit only the Users, and in such manner as permitted as set out in these T&Cs, to use the NiGEM Service.
- 7.2 The Licensee may make only so many copies of the Software as are reasonably necessary for the Licensee's back up purposes. Such copies (whether lawfully modified in part by the Licensee or not) and the media on which they are stored shall be the property of NIESR and the Licensee shall ensure that all such copies bear NIESR's proprietary notices. The terms of this Agreement shall apply to all such copies of the Software. No other copies or part-copies of the Software may be made without the prior written consent of NiGEM.
- 7.3 The Licensee shall keep the Software and any associated documentation secure, confidential and limit access to the same to its Users and those of its employees agents and/or sub-contractors who have a need to know for regulatory purposes and the Licensee shall maintain a record of all persons who do have such access.

Third Party Software

- 8.1 Together with the supply of the Software, NIESR, acting as reseller, supplies licensed copies of third-party compiler software sufficient for the use of the NiGEM Service only as licensed. At the date of this Agreement, the only third-party compiler software licensed under this clause is Silverfrost. Third party software is supplied "as is" and NIESR disclaims to the fullest extent permitted by applicable law all warranties, conditions and other terms, express or implied, including, without limitation, the warranties of merchantability and of fitness for any purpose in respect of all third-party software. Use of any third-party software supplied by NIESR shall be subject to the licence terms and conditions imposed by the licensor of that software. In accordance with the terms and conditions of the Silverfrost Ltd Single User Licence Agreement (Schedule 1), each NiGEM license holder is granted a non-exclusive, non-assignable sublicense to the Silverfrost Compiler. NIESR can help Licensee arrange for further licensed copies of this compiler to be supplied to the Licensee.

TM Use/Acknowledgement

- 9.1 The name "NiGEM" is the trade mark of NIESR (the "Trade Mark") and shall be used by the Licensee only in accordance with the terms of this Agreement.
- 9.2 In the event the Licensee copies, reproduces or distributes any information or data contained in or derived from the use of the NiGEM Service which is reasonably likely to be disseminated to the public, the Licensee shall acknowledge that use with the data and shall incorporate into the publication in a clearly visible manner an acknowledgement reflecting the following: "This data has been generated with the help of NiGEM. The NiGEM economic model is the property of the National Institute of Economic and Social Research (NIESR) and NiGEM is a trade mark of the Institute. NiGEM is available via subscription at the following website <https://www.niesr.ac.uk>".
- 9.3 The Licensee shall ensure that in any discussion of the NiGEM Service or its capabilities, whether in its advice to clients or as part of public statements, that the Licensee acknowledges NIESR's rights in the NiGEM Service and in the Trade Mark. The Licensee shall not make any warranty or representation about the NiGEM Service that is not set out in these T&Cs.
- 9.4 The Licensee shall not use the Trade Mark in any way that is derogatory or damaging to it or NIESR's reputation, though for the avoidance of doubt the Licensee is not prevented from making fair comment in public on the suitability or capabilities of the NiGEM economic model provided NIESR is given the reasonable opportunity to air its own views.

Term and Renewal

- 10.1 The Term commences on the Delivery Date and shall last for a period of 12 months.
- 10.2 NIESR and the Licensee agree to reconvene prior to the end of the period to discuss options for renewal or extension of the agreement.

Warranties

- 11.1 NIESR warrants that the Software is compatible with Permitted Equipment (when operated correctly).
- 11.2 NIESR warrants that it has the right, power and authority to license the Software to the Licensee upon the terms and conditions of this Agreement.
- 11.3 NIESR warrants that it will provide the NiGEM Service and the Consultancy Services with reasonable care and skill.
- 11.4 The Licensee warrants that it is a sophisticated user and has either had an opportunity to review the functionality of the NiGEM Service prior to entering into this Agreement or been offered by NIESR a trial of the NiGEM Service demo version to assess the suitability, fitness for purpose (particularly for Licensee's own requirements) and functioning of the NiGEM Service.
- 11.5 NIESR does not warrant that the Licensee's use of the NiGEM Service will be uninterrupted, non-infringing, available or error-free, or that the Software will be free from bugs, errors or other technologically harmful material or that the Training will be available or sufficient for the Licensee's requirements. NIESR does not warrant that the NiGEM Service, and/or the results or information obtained by the Licensee through the use of the NiGEM Service and/or the Software, will meet the Licensee's requirements. Save as expressly provided for in these T&Cs, the NiGEM Services is provided "as is" and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement, including the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose.
- 11.6 The warranties provided by NIESR in this Agreement shall be subject to the Licensee complying with its obligations hereunder and to there having been made no alterations or modifications to the NiGEM Service by any person other than NIESR.

Proprietary Rights

- 12.1 The copyright and other intellectual property rights of whatever nature subsisting in the NiGEM Service (including such rights in the Software and Upgrades) are and shall remain the property of NIESR and its licensors and NIESR reserves the right to grant licences to use the NiGEM Service to third parties. Except as expressly stated herein, this Agreement does not grant the Licensee any rights to any intellectual property rights, or any other rights or licences, in respect of the NiGEM Service or the Software.
- 12.2 The Licensee shall notify NIESR immediately if the Licensee becomes aware of any unauthorised use of the whole or any part of the NiGEM Service by any person whether within or without its organisation.
- 12.3 NIESR shall indemnify the Licensee for amounts reasonably incurred or suffered by the Licensee as a direct result of, or awarded against the Licensee in judgment or settlement of claims that the NiGEM Service, when used in accordance with the terms of this Agreement, infringes copyright, United Kingdom trade mark, database rights or right of confidentiality, provided that:
 - 12.3.1 NIESR is given prompt notice of any such claim, specifying the nature and particulars of the claim in reasonable detail;
 - 12.3.2 the claim does not arise as a result of the modification of or addition to the NiGEM Service by the Licensee;
 - 12.3.3 the Licensee does not make any admission of liability, agreement, compromise or settlement in respect of such claim, and provides reasonable co-operation to NIESR in the defence and settlement of such claim at NIESR's reasonable expense; and

- 12.3.4 NIESR is given sole authority to defend or settle the claim.
- 12.3.5 The maximum amount of indemnifiable losses which may be recovered by the Client arising out of or resulting from the causes set out in clause 12.3 shall be the Charges paid by the Client under this agreement.
- 12.4 If all or part of the NiGEM Service becomes or, in NIESR's reasonable opinion, is likely to become the subject of any claim that it infringes any intellectual property rights of a third party, NIESR shall be entitled, at its absolute discretion and without liability, to:
- 12.4.1 replace all or part of the NiGEM Service without any charge to the Licensee; and/or
- 12.4.2 modify the NiGEM Service as necessary to avoid such claim, provided that the amended NiGEM Service continues to function in substantially and materially the same way; and/or
- 12.4.3 procure for the Licensee a licence from the relevant complainant to continue using the NiGEM Service without any additional charge to the Licensee; and/or
- 12.4.4 if after having used reasonable endeavours NIESR is unable to achieve any of the options at clauses 12.4.1 to 12.4.3, NIESR may terminate this Agreement with immediate effect on written notice to the Licensee, in which case, NIESR shall refund any Licence Fee paid in advance by the Licensee in respect of the unexpired term of the Initial Term or relevant Renewal Period calculated on a pro rata basis.
- 12.5 The Licensee shall not:
- 12.5.1 attempt to copy, modify , duplicate, create derivative works from, frame, mirror, republish, transmit, or distribute all or any portion of the Software and/or the NiGEM Service in any form or media or by any means;
- 12.5.2 attempt to reverse compile, disassemble, reverse engineer, reduce to human-perceivable form all or any part of the Software and/or the NiGEM Service or otherwise attempt to learn any of the source code of the Software;
- 12.5.3 access all or any part of the Software and/or the NiGEM Service in order to build a product or service which competes with the Software and/or the NiGEM Service; or
- 12.5.4 license, sell, rent, lease, transfer, assign, distribute or disclose the Software and/or the NiGEM Service (subject to clause 1.3).

Any breach of this clause 12.5 shall be a material breach of this Agreement. NIESR reserves the right to suspend the Licensee's access to all or part of the NiGEM Service in the event of any breach of this clause 12.5.

Confidentiality of NiGEM

- 13.1 Licensee undertakes to treat as confidential and keep secret all confidential information of NIESR that is disclosed to the Licensee or any of its Users or other personnel in connection with this Agreement (in whatever form, whether or not marked as confidential and whether disclosed before, on or after the Delivery Date), including all information of a confidential nature that is contained or embodied in or otherwise relates to the NiGEM Service (including such information relating to the Software and all algorithms and equations subsisting therein), associated documentation and all information of a confidential nature conveyed to Licensee whether by training or otherwise and any other information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, operations, processes or intellectual property rights of NIESR (hereinafter collectively referred to as "the Information"), provided that this clause shall not extend to information which was lawfully in the possession of the Licensee prior to the commencement of the negotiations

leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

- 13.2 The Licensee shall not without the prior written consent of NIESR divulge any part of the Information to any person except:
- 13.2.1 the Licensee's own employees, contractors or advisers and then only to those employees, contractors or advisers who reasonably have a need to know the same;
 - 13.2.2 the Licensee's auditors, financial or regulatory body and any other persons or bodies having a right, duty or obligation to know the business of the receiving party and then only in pursuance of such right duty or obligation;
 - 13.2.3 any person who is from time to time appointed by the Licensee to maintain any equipment on which the Software is being used and then only to the extent necessary to enable such person properly to maintain such equipment.
- 13.3 The Licensee undertakes to ensure that the persons and bodies mentioned in 13.2 above are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to NIESR. The Licensee shall indemnify NIESR against any loss or damage which NIESR may sustain or incur as a result of the Licensee failing to comply with such undertaking.
- 13.4 The Licensee shall promptly notify NIESR if it becomes aware of any breach of confidence by any person to whom the Licensee divulges all or any part of the Information and shall give NIESR all reasonable assistance in connection with any proceedings which NIESR may institute against such person for breach of confidence.
- 13.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

Termination

- 14.1 Either party may terminate this Agreement in accordance with clause 10.1.
- 14.2 Either party may terminate this Agreement forthwith on giving notice in writing to the other party if the other party commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) fails, within 30 days after the receipt of a request in writing from the first party so to do, to remedy the breach.
- 14.3 Either party may terminate this Agreement forthwith on giving notice in writing to the other party if the other party is subject to an Insolvency Event. "Insolvency Event" means in respect of a party, that it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986, or enters into a composition, compromise or arrangement to reschedule or restructure its debt with or for the benefit of its creditors (except for the purpose of a bona fide reconstruction or amalgamation), or it compulsorily or voluntarily enters into liquidation or commences negotiations in respect of the same (except for the purpose of a bona fide reconstruction or amalgamation), or it has an administrator, receiver, liquidator (except for the purpose of a bona fide reconstruction or amalgamation) or manager appointed over the whole, or a substantial part, of its undertaking or assets or any petition or notice is filed or give in respect of the same by any person, or any creditor or encumbrancer attaches or takes possession of or a distress, execution, sequestration or other such process is levied or enforced on or sued against the whole or any part of its assets which is not discharged within 14 days, or it ceases or threatens to cease business or is dissolved, or if any equivalent or similar event occurs or proceeding is taken, with respect to that company in any jurisdiction to which it is subject.
- 14.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights of the parties nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

Effect of Termination

- 15.1 Upon the termination of this Agreement for any reason:
 - 15.1.1 all licences granted to the Licensee under this Agreement shall immediately terminate;
 - 15.1.2 the Licensee shall immediately cease all access to, and use of, the Software and any data or third party software provided under this Agreement and remove all copies of the Software and such data and third party software from its computer systems and certify in writing to NIESR that it has done so;
 - 15.1.3 subject to clause 15.2, the Licensee shall return and make no further use of any Information, equipment, property, documentation and other items (and all copies of them) belonging to NIESR.
- 15.2 For the avoidance of doubt, after termination of this Agreement for whatever reason the Licensee may retain the Information only to the extent and for so long as is necessary under applicable law, provided that clause 13 shall continue to apply to such Information.

Liability

- 16.1 Nothing in this Agreement excludes the liability of either party for: (a) death or personal injury caused by its negligence; (b) for fraud or fraudulent misrepresentation or (c) for any other liability that cannot be limited or excluded under applicable law. All exclusions and limitations of liability set out in this Agreement shall be subject to this clause 16.1.
- 16.2 The Licensee shall be responsible for ensuring that it promptly installs any Updates that are made available by NIESR. NIESR shall have no liability for any damage suffered by the Licensee that could have been prevented by the installation of an Update made available by NIESR.
- 16.3 NIESR is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Licensee acknowledges that the NiGEM Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 16.4 NIESR shall have no liability for impaired performance or non-performance of the NiGEM Service arising from a failure to comply with any specifications or technical requirements relating to use of the NiGEM Service notified by NIESR from time to time, or arising from any modification to the NiGEM Service made by the Licensee or any third party. The Licensee shall indemnify NIESR against any claim that such modifications infringe the intellectual property rights of any third party.
- 16.5 NIESR shall have no liability for any damage caused by errors or omissions in any information or instructions provided by the Licensee or any User in connection with the NiGEM Service or any actions taken by NIESR at the Licensee's or a User's direction.
- 16.6 The Licensee assumes sole responsibility for results obtained and conclusions drawn from the use of the NiGEM Service and NIESR shall have no liability arising from any reliance placed by the Licensee or any other person on any such results and conclusions.
- 16.7 Neither party shall be liable to the other under or in connection with this agreement for any: loss of profits; loss of anticipated savings; loss of opportunity; loss of goodwill; loss or corruption of data; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 16.8 NIESR shall have no liability to the Licensee arising from any use of the NiGEM Service outside of the scope of the Licence.
- 16.9 NIESR shall not be liable to the Licensee for any loss arising out of (and to the extent caused by) any failure by the Licensee to keep full and up-to-date security copies of the Software it uses in accordance with best computing practice. Nor shall NIESR be liable in any circumstances for any damage or loss caused by computer viruses contracted by the Licensee's systems during operation of the Software.
- 16.10 The Licensee's sole remedy under this Agreement in respect of any claim that the NiGEM Service (when used in accordance with the terms of this Agreement) effective as of the Delivery Date,

infringes any copyright, United Kingdom trade mark, database right or right of confidentiality shall be the indemnity set out in clause 12.3.

- 16.11 The Licensee's sole remedy for any fault with the Software shall be the provision of the support services set out in clause 2.3.
- 16.12 NIESR's total aggregate liability in respect of all claims arising in each year of this Agreement (the first year commencing on the Delivery Date) in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with:
 - 16.12.1 the NiGEM Service shall be limited to the Licence Fee paid by the Licensee to NIESR for the NiGEM Service during that year;
 - 16.12.2 the Consultancy Services shall be limited to the charges paid by the Licensee to NIESR for the Consultancy Services during that year; and
 - 16.12.3 any other liability under this Agreement shall be limited to the total fees and charges paid by the Licensee to NIESR during that year.

Assignment & Third Parties

- 17.1 The Licensee shall not be entitled to assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights or obligations under this Agreement.
- 17.2 NIESR may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.3 The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

Waiver

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

Entire Agreement

- 19.1 This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof (save that neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied). Modification of any provision of this Agreement must be made in writing signed by a duly authorised representative of each of the parties.
- 19.2 The Licensee hereby confirms to NIESR that the Licensee has not been induced to enter into this Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in this Agreement and the Licensee hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently and was relied upon by the Licensee) and/or to rescind this Agreement.

Notices

- 20.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the email address as may have been notified by that party for such purposes. Unless

otherwise agreed: (a) notices sent by email to NIESR shall be sent to the email address of the Licensee's primary contact at NIESR, with accounts@niesr.ac.uk also copied in; and (b) notices sent by email to the Licensee shall be sent to the email address of NIESR's primary contact at the Licensee.

- 20.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (or if transmission is not in business hours, at 9 am on the first business day following transmission) provided the sender does not receive a delivery failure notification or out of office message.
- 20.3 Clauses 20.1 and 20.2 shall not apply to the service of any proceedings or other documents in any legal action.

Severability

- 21.1 If any provision or part-provision of this 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 this Agreement.

Rights and Remedies

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

Disputes

- 23.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this Agreement. Accordingly, it is agreed that if a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("Dispute"), then the parties shall follow the procedure set out in this clause.
- 23.2 If any Dispute arises, senior executives of the parties shall meet to attempt resolution. If, within 30 days of the Dispute first having been referred to the senior executives of the parties, no agreement has been reached as to the Dispute, the dispute resolution process set out in this clause shall be deemed to have been exhausted in respect of the Dispute, and each party shall be free to pursue the rights granted to it by this Agreement in respect of such Dispute without further reference to the dispute resolution process.
- 23.3 For the avoidance of doubt, clauses 23.1 and 23.2 shall not prevent either party from seeking injunctive relief to avoid irrefutable harm or where an action could be prejudiced by delay, including 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.

Governing Law & Jurisdiction

- 24.1 This Agreement shall be governed by and construed in accordance with the laws of England.
- 24.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).