

End User Licence Agreement

This End User Licence and Support Agreement (“EULA”) is effective from 4 May 2013 for all customers procuring a licence to use Aunir’s INGOT Calibrations and/or SpecMan Gold Software.

1. Definitions

1.1 In this EULA:

Documentation means the documentation we supply which describes the functionality and operation of the Software and which exists as a Help file within the Software; **Equipment** means any computer or other instrument onto which the relevant Software is loaded;

INGOT means the calibration formulae we supply and market under the trade mark “INGOT” and which are used to convert near infra-red reflectance results into understandable results for the material being analysed;

Initial Support Services means the support services which we offer in relation to the Software in the first year of the Licence Period, details of which are set out in clause 5.2;

Intellectual Property Rights means all patents, trade marks, service marks, registered designs, copyright, rights in and to databases, rights in and to trade secrets, know-how, confidential information, all applications and rights to apply for the same and all other rights which are the same as or similar to them which subsist at any time anywhere in the world;

Licence Period means the period during which the EULA is in force, which shall start the moment you enter into the EULA in accordance with clause 2 and will end when the EULA is terminated under clause 14;

Ongoing Support Services means the support services which we offer, comprising various separate modules (that may be individually purchased), to support the Software for the second and subsequent years of the Licence Period;

Our Current Rates mean our licence fees and related charges and/or rates for the Software, the Support Services and ancillary products and services as at the date on which the relevant product or service is licensed or purchased from us, details of which are available from us on request;

Product Description means, in respect of INGOT, the performance statistics and in respect of SpecMan Gold, the user manual, each of which is comprised in the Documentation;

Release means an update of the Software, including improvements, extensions and code corrections and other changes;

Site means our website, currently located at www.Aunir.co.uk;

Software means INGOT and/or SpecMan Gold;

Software Materials means the relevant Software and the Documentation;

SpecMan Gold means the quality control analysis suite of software owned by us and designed to be used in conjunction with INGOTs and near infra red reflectance based analytical hardware, for the management and reporting of the data that hardware produces;

Support Services means the Initial Support Services and the Ongoing Support Services;

Third Party Software means the Windows operating system, Microsoft Access or RunTime module and/or Equipment manufacturers’ operating systems and chemometrics software which you use to run the Software Materials.

Version means every version of the Software with a higher version number which is issued where the functionality is expanded or new objects are added to the Software and which does not include a Release;

Viewer Version of SpecMan Gold means a version of SpecMan Gold which is capable of being hosted on a server and being accessed by a number of PCs simultaneously;

we means Aunir, a division of AB Agri Limited, a company registered in England (Company number 193800) whose registered office is at Weston Centre, 10 Grosvenor Street, London, W1K 4QY and **us** and **our** will be construed accordingly;

Working Hours means 9am until 5pm GMT Monday to Friday (except Bank Holidays); and

you or **your** means you, the party who has licensed the Software.

1.2 Words used in this EULA in the singular tense are to be read to include the plural and references to a person is to be read to include companies, partnerships and other similar undertakings.

2. Entering into the EULA

2.1 By doing any of the following you agree to enter into this EULA which will bind you and your employees:

(a) by clicking on the "I Accept" icon that appears in conjunction with the message "Do you accept the terms of the Licence under which this Product is made available to you?" when that message appears in conjunction with an attempt to use the Software or to download it from our Site;

(b) by breaking open the seal on a disk containing the Software for installation or allowing two weeks to elapse after you are sent such a disk before you open its seal; or

(c) by installing or allowing us or our agent to install the Software on your Equipment; or

(d) by using Equipment on which the Software has been installed

2.2 If you do not agree to the terms of this EULA we will not licence the Software Materials to you and you should discontinue the installation process immediately and return the disk or dongle incorporating the Software and all Documentation to us or return the Equipment to the relevant supplier so that they can remove the Software from it.

2.3 If more than one copy of the EULA has been made available to you and there are differences in their content, the latest version will apply.

2.4 You should print a copy of this EULA for future reference.

3 Licence

3.1 Provided you comply with your obligations under the EULA, we hereby grant to you a non-exclusive, non-transferable, non-assignable licence to use the Software Materials for the Licence Period on and subject to the terms and conditions of this EULA.

3.2 You shall not grant sub-licences, in whole or in part, of any of the rights granted under this EULA.

3.3 In return for us granting you a licence to use the Software Materials, you will pay us the applicable licence fee at Our Current Rates. We reserve the right to withhold your access to the Software until you have paid the licence fee in full and cleared funds. If you purchased Equipment with the Software already loaded onto it and the licence of the Software was included in the price for the Equipment, this clause 3.3 shall not apply.

3.4 The Licence Period will continue unless and until the EULA is terminated under clause 14.

3.5 You will not, nor will you allow anyone to:

(a) make any copies of the Software Materials, except that you may make copies of the Software to the extent necessary for back-up testing, security and disaster recovery purposes provided that you shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying;

(b) loan or rent the Software Materials or use the Software Materials for time-sharing or public network or similar use;

(c) translate, adapt, modify, reverse engineer, disassemble decompile, or create derivative works based on the whole or any part of the Software Materials; or

(d) remove or alter any copyright or other proprietary notice on the Software.

3.6 To enable us to offer the appropriate Support Services, you will keep us notified of the premises at which you use the Software Materials (**Your Premises**) and of the Equipment upon which you intend to install and run them. You will allow us and our representatives access, at all reasonable times, to Your Premises in order to audit your use of the Software Materials. If our audit establishes that you have breached the EULA then, without affecting our other rights, you will pay our audit costs together with any additional charges which would have been due had you properly complied with the EULA.

3.7 You will not, nor will you allow anyone other than us or our nominated agent or sub-contractor, to provide any repair or maintenance services in respect of the Software.

4 User restrictions and Concurrent Users

4.1 In respect of Specman Gold, unless you have bought the Viewer Version of SpecMan Gold, this EULA only allows you to install SpecMan Gold on a single unit of Equipment and allows use of the Software by a single user at any one time.

4.2 In respect of INGOT, this EULA only allows you to use INGOT on a single unit of Equipment and allows use by a single user at any one time.

4.3 If you purchase the Viewer Version of SpecMan Gold then you may allow access to the Software through multiple terminals although you will not allow more simultaneous users (“**Concurrent Users**”) than the number we have approved in writing. You must specify the number of Concurrent Users that you require at the time of purchasing (or upgrading to) the Viewer Version of SpecMan Gold and agree to pay to us the applicable fee for each Concurrent User as set out in Our Current Rates.

4.4 You may upgrade the normal version of SpecMan Gold to the Viewer Version of SpecMan Gold upon the payment of an upgrade fee as set out in Our Current Rates.

5 Support Services

5.1 During the first year of the Licence Period we will provide the Initial Support Services to you for no additional charge. From the commencement of the second year of the Licence Period onwards, provided that in our view you have complied with the terms of the EULA, you will have the option to subscribe for the Ongoing Support Services on an annual basis at Our Current Rates (subject to clause 8.5) .

5.2 The Initial Support Services include:

(a) a telephone/e-mail response centre that is available during Working Hours to receive telephone calls/e-mails from you in respect of documented errors or faults and to provide reasonable support in relation to issues raised; and

(b) support to you in topics such as calibration, technical problems and software operation in each case in respect of the Software.

5.3 Details of the Ongoing Support Services are available from us on request or through the Site. We reserve the right to change the Ongoing Support Services provided that if you are a current user of those services we give you notice of the change and the change does not materially prejudice the scope and quality of the service you receive.

5.4 We are entitled to levy additional charges at Our Current Rates if Support Services are provided at your request in circumstances where any reasonably skilled and competent operator would have judged your request to have been unnecessary.

6 Support Services– inclusions and exclusions

6.1 If you receive Support Services pursuant to clause 5.1 we will use commercially reasonable efforts to respond to your enquiries and resolve any support issues in relation to the Software by issuing either:

(a) ad hoc advice;

(b) correction information (such as correction documentation, corrected code, or notice of availability of corrected code all of which responses will be issued remotely such as via e-mail, tape, disk etc); or

(c) a temporary restriction or a temporary fix or bypass procedure.

6.2 In the case of a genuine business-critical error then, provided you bring this to our attention, we will provide our response under clause 6.1 within the shortest commercially reasonable time. For non-critical errors, we will use reasonable endeavours to issue timely corrections, which for errors of syntax will be within a subsequent Release (provided you are a current recipient of the Support Services).

6.3 You are responsible for implementing any error corrections which we supply within a reasonable time of being requested so to do by us.

6.4 Subject to your prior consent, we may respond to error calls by remote diagnosis. In this case, you shall provide us with such access as we may require to the Software through a dedicated direct dial telephone facility.

6.5 The provision of the Support Services is subject to you:

(a) providing us with adequate information to enable us to diagnose any errors in the Software; and

(b) using either of the latest two Versions of the Software.

6.6 The Support Services do not include the diagnosis or rectification of any fault resulting from:

(a) misuse, improper use or alteration of the Software or the Equipment or any breach by you of any maintenance agreement for the Equipment;

(b) a breach of the EULA;

(c) merger with any other software (other than Third Party Software), without our prior written consent;

(d) your failure to implement our recommendations or proposed solutions in respect of faults previously advised to us;

(e) any repair, adjustment, alteration or modification of the Software by any person other than us without our prior written consent;

(f) failure to install and use in substitution of the previous update any updates to the Software supplied by us within 60 days of receipt of the same;
or

(g) use of the Software for a purpose for which it was not designed (as described in clause 11.2 and 11.3).

6.7 Fees quoted for the Support Services do not include any third party costs that we incur, such as travel expenses, accommodation and subsistence costs all of which we will be additionally entitled to recover from you provided we notify to you in advance of any item in excess of €50.

7 Additional support services

7.1 Any support, maintenance and other services which are outside the scope of the Support Services ("**Additional Services**") will only be provided at our sole discretion and subject to you paying our additional charges as set out in Our Current Rates.

7.2 If we agree to rectify faults that result from any of the circumstances described in clauses 6.6(a) to 6.6(g) (inclusive), such support will be deemed to be Additional Services.

7.3 If we or our agents or sub-contractors are obliged to incur additional expenses in performing the Support Services as a result of any act or omission by you then you will reimburse the additional expenses to us.

8 Releases and new Versions

8.1 Whilst you are a recipient of the Support Services you will also receive, at no additional charge, any Releases that are issued for the latest two Versions.

8.2 You will accept and install all new Releases issued to you unless you consider that to do so would cause a significant problem, fault or error to occur that would affect the functionality or performance of the Software (other than a problem caused by the capacity or performance of the Equipment or third party software), in which case you will immediately notify us with sufficient details to allow us (without obligation) to provide a solution.

8.3 If we produce any new Version then so long as you are receiving the Support Services, we will tell you that it is available. You are not obliged to accept any new Version but if you do you will pay us the applicable licence fee as set out in Our Current Rates.

8.4 Unless we specify otherwise, the EULA will apply to all Software Materials and all Releases and new Versions in the same way it applies to the original Software that you purchased.

8.5 In the event that following expiry of the first year of the Licence Period you choose not to subscribe for the Ongoing Support Services or if do not to renew your subscription for the Ongoing Support Services at any time, then if you choose to subscribe or re-subscribe for the Ongoing Support Services at a later date, you will be required to purchase the last 2 Versions of the Software issued by us at Our Current Rates.

9 Your obligations

9.1 You will, at your own cost, be responsible for:

(a) providing and maintaining the operational and environmental conditions necessary for the proper functioning of the Equipment and Software;

(b) communications links involving the Software (and any data derived from its operation) between the Equipment and any printer or other computer terminal, the resolution of any printing or communications difficulties and any wiring required;

(c) the safe custody of the Software and any of our equipment and documents left at Your Premises; and

(d) ensuring that the Equipment and Software are operated in a proper manner by competent trained employees.

9.2 Where our employees are required to carry out work at Your Premises you will provide us with such computer facilities at Your Premises (including computer consumables, storage and data preparation facilities and communication facilities) information, documentation, access to your personnel and time on the Equipment as we may reasonably require.

9.3 You will appoint and notify to us a competent person to act as your contact person for the purposes of the EULA, such person to co-operate fully with our personnel in the performance by us of our obligations under the EULA.

9.4 You shall not export, directly or indirectly, the Software Materials or the Equipment or any direct product thereof or any technical data relating to Software without complying with all applicable laws and regulations relating to such export.

10 Payment

10.1 Unless stated otherwise in this EULA, you will pay our invoices within thirty days of their date.

10.2 If any sum payable due to us is not paid within seven days of its due date then (without prejudice to our other rights) we may:

(a) charge interest on such sum on a day to day basis (before as well as after any judgement) at the rate of two per cent above the UK base rate of Barclays Bank plc from time to time in force; and

(b) suspend performance of the EULA and your rights to use the Software until we been paid.

10.3 Where we are entitled to charge for Support Services or Additional Services we will only charge you once the relevant work has been completed, unless we or our agents or sub-contractors are prevented from finishing on time by reason of any act or omission by you, your employees or contractors in which case we can charge you on the planned completion date.

10.4 Our Current Rates are exclusive of VAT or other sales tax, for which you will be responsible if payable.

11 Warranties

11.1 Subject to the remainder of this clause 11, we warrant that for a period of ninety days after the date of delivery the Software will, when operated on the Equipment, be capable of performing the functions and facilities set out in the Product Description in all material respects. We do not warrant that the operation of the Software will be uninterrupted or error free. We warrant that we will provide the Support Services with reasonable care and skill. Except as expressly stated in this clause, all warranties which might otherwise be implied into, or incorporated in, this EULA whether by statute, common law or otherwise, are excluded to the fullest extent permitted by law.

11.2 INGOT and SpecMan Gold are only intended for the following uses:

(a) INGOT for the predictive analysis of materials for a defined set of parameters, dependent on the purchased application on the Equipment for which the particular INGOT is designed; and

(b) SpecMan Gold for the collection, storage and statistical analysis of data acquired using near infra red technology and the Equipment.

11.3 You accept that the Software will only function on operating software that is Windows 95 or a later Windows version.

11.4 Should you choose to use INGOT or SpecMan Gold for purposes other than those described in clause 11.2 or if you do not use the correct operating software as set out in clause 11.3, we shall not in any way be liable for any losses that you suffer as a consequence.

11.5 We will have no liability under the warranties in clause 11.1 for any defects or errors resulting from any of the circumstances described in clauses 6.6(a) to 6.6(g) (inclusive).

11.6 If we breach of any of the warranties in clause 11.1, you will promptly notify us and will allow us a reasonable opportunity to correct the breach or to re-perform the relevant Support Services (as appropriate). This clause states your sole remedy and our sole liability for any breach of the warranties in clause 11.1. However, if we fail to remedy a breach in the manner set out in this clause 11.6, our liability for such failure will be limited to a sum equal to:

(a) in respect of defects in the Software, the fee paid by you for the licence of the Software in question; and

(b) in respect of defects in the Support Services, the fees and charges paid by you in respect of the Support Services in question.

11.7 You agree that you are responsible for ensuring that the facilities and functions and performance of the Software described in the Product Description meet your requirements and we will not be liable for any failure of the Software to provide any function or facility or performance that is not expressly included in that description.

12 Limitation of Liability

12.1 Subject to clause 12.3 and without prejudice to either clause 11.6 or clause 12.2, our total aggregate liability to you under the EULA whether arising in contract, tort (including negligence) or otherwise howsoever will be limited to a maximum amount of £20,000 (Twenty Thousand Pounds Sterling) in aggregate.

12.2 Subject to clause 12.3, we are not liable in contract, tort (including negligence), breach of statutory duty or otherwise for any losses or damages which may be suffered by you (or any person claiming under or through you) which fall within any of the following categories (a) loss of profit, sales, or savings; (b) loss of business opportunity, goodwill or reputation; (c) business interruption; (d) loss of, damage to or corruption of data or information and its consequences; (e) special damage (even if we were aware of the circumstances in which such special damage could arise) or indirect or consequential loss or damage, provided that this clause 12.2 shall not prevent claims for loss of or damage to your tangible property that fall within the terms of clause 12.1 or any other claims for direct financial loss that are not excluded by any of categories (a) to (e) inclusive of this clause 12.2.

12.3 Nothing in this EULA excludes or limits our liability for (a) death or personal injury caused by our negligence or (b) fraud or fraudulent misrepresentation.

12.4 You agree that in entering into this EULA you have not relied on any representation, warranty or other assurance of any kind or of any person other than those expressly set out in this EULA and that you shall have no remedy in respect of such representations, warranties or assurances and we shall have no liability in any circumstances otherwise than in accordance with the express terms of this EULA.

12.5 All timescales set out in this EULA for our performance are estimates only and time will not be of the essence of our performance.

12.6 You must give us notice of any claim within one month of the earlier of the date on which you become aware of the circumstances giving rise to the claim and the date on which you ought reasonably to have become so aware.

12.7 Where Third Party Software is licensed to you, your rights in respect of that Third Party Software are against the third party licensor only and we have no liability to you in respect of that Third Party Software.

13 Intellectual Property Rights and Confidentiality

13.1 All Intellectual Property Rights in and to the Software Materials and all other documentation, including specifications and schematics, relating to the Software Materials (together, **Information**) belong to and will remain vested in us or our licensors (as applicable) at all times.

13.2 You will at all times (including after the EULA terminates):

(a) maintain the confidentiality of the Information;

(b) ensure that each of your employees from time to time having access to the Information is made aware, prior to such access, that the Information is confidential and that he or she owes a duty of confidence to us;

(c) ensure that neither you nor any of your employees, agents or contractors from time to time having access to the Information copies or duplicates it or divulges or makes any disclosure relating to it to any third party (whether during or after their employment by you);

(d) effect and maintain adequate security measures to safeguard the Information from theft, or from access by any person other than your employees in the normal course of their employment;

(e) promptly give us notice of any infringement of our rights in, or any unauthorised use of, or access to, the Information, of which you become aware and give us all reasonable assistance in connection with any proceedings which we may commence in respect of it; and

(f) enforce the terms of any confidentiality agreements or duties of confidence owed to you by your employees in respect of the Information.

13.3 We may refer to you in marketing and promotional materials as being a user of the Software Materials and, as the case may be, the Support Services.

14 Termination

14.1 In respect of INGOT, the EULA shall automatically terminate upon the expiry or permanent failure of the Equipment.

14.2 Either party may terminate the EULA, without affecting its other rights, if the other:

(a) materially breaches the EULA and (if the breach can be remedied) does not remedy it within thirty days of a notice requiring it to be remedied;

(b) ceases or threatens to cease to carry on business or is declared bankrupt or enters into voluntary or compulsory liquidation or becomes insolvent, compounds with its creditors or suffers a receiver, administrative receiver or liquidator to be appointed in respect of the whole or any part of its assets or undertaking or suffers any similar or equivalent process under the laws of the jurisdiction to which it is subject.

14.3 We may give notice to you to terminate the EULA in whole or in part with immediate effect if you fail to pay any sum due to us under the EULA or any other agreement we have with you and such sum remains unpaid for 14 days after we have given notice to you that such sum has not been paid.

14.4 Termination of the EULA (“**Termination**”) will not affect any accrued rights or liabilities of either party at the date of Termination.

14.5 On Termination all rights granted under this EULA will immediately cease and you will immediately: (a) stop using the Software Materials, (b) permanently erase the Software from the Equipment and (c) return to us or destroy all copies of the Software Materials in your possession. You will procure that one of your officers promptly sends us written certification that you have complied with your obligations under this clause.

14.6 No refund of any part of any of our charges will be made on Termination and any sums due to us from you under the EULA will become immediately payable.

15 General

15.1 We shall not be liable to you if we are prevented from or delayed in performing our obligations under the EULA by circumstances outside our reasonable control, including, but not limited to, strikes and other industrial action, sub contractor default or breakdown of machinery.

15.2 The EULA sets out the entire agreement and understanding between the parties, and supersedes all proposals and prior agreements, arrangements and understandings between the parties, relating to its subject matter.

15.3 No variation of the EULA will be effective unless it is in writing and is signed by or on behalf of each of the parties.

15.4 You are not entitled to assign or sub-contract any of your rights or obligations under the EULA in whole or in part without first obtaining our consent. We are entitled to assign, novate and sub contract our rights and obligations under the EULA, in whole or in part, at our discretion and without the need for your consent.

15.5 All notices to be given under the EULA will be in writing in English and delivered by registered post or e-mail at our contact address or e-mail address as provided on the Site and to you at Your Premises or such other post or e-mail address as you may from time to time designate by notice pursuant hereto. Any such notice will be deemed duly received:

(a) if sent by registered post, at 9am on the fifth working day after posting; or

(b) if sent by e-mail, on transmission or if the e-mail is transmitted outside Working Hours, on the first working day after the day of transmission.

15.6 The rights of either party arising out of any provision of the EULA or any breach thereof will not be waived except in writing. Any waiver by either party of any of its rights under the EULA or of any breach of the EULA will not be construed as a waiver of any other rights or of any other or further breach.

15.7 All provisions of the EULA are severable and if any of them (or any part of them) are held to be invalid by any competent court the EULA will be interpreted as if such valid provisions (or part of them) were not contained in the EULA.

15.8 A person who is not party to this EULA shall not have any rights under it pursuant to the Contract (Rights of Third Parties) Act 1999 or otherwise.

15.9 The EULA will be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts in respect of any disputes.