

## **Agreed Standard Conditions**

### **1 Definitions**

1.1 "AUTHORITY" shall mean the Secretary of State for Defence.

1.2 "LICENSOR" shall mean the Company identified in the Head Agreement or the wholly owned subsidiary of the Company identified in the Schedule as being the Party granting the Licence to the AUTHORITY.

1.3 "Subscription Services" means the purchased services described in Part I of the Schedule together with any user documentation, update programs and anything else furnished to the AUTHORITY by the LICENSOR under the Licence in connection with the Subscription Services, and any portion and copy of any of them.

1.4 "Use" (or "to Use") in relation to the Subscription Services means copying the software from a store unit or medium into equipment, customising it within its existing functionality and consistent with the user documentation, running or processing it, operating upon it, all of these acts either alone or with other programs, and producing copies including, where appropriate, in eye-readable form.

1.5 "Licence" means the rights granted by the LICENSOR to the AUTHORITY in respect of the Subscription Services and all the conditions associated with it, as set out in the Standard Conditions in combination with a relevant Schedule.

1.6 "Schedule" means a schedule to the Head Agreement (in the format provided in the Attachment to this Annex) established by signature of the AUTHORITY and the LICENSOR, under which the LICENSOR undertakes to supply the Subscription Services for Use by the AUTHORITY under the conditions of the Licence. Each Schedule, in combination with these Standard Conditions, constitutes a distinct Licence independent of any other Licence existing by operation of the Head Agreement.

1.7 "Standard Conditions" means the conditions set out in this Annex to the Head Agreement, comprising Clauses 1 to 15.

1.8 "Special Conditions" means those conditions (if any) specified in Part VIII of the Schedule.

1.9 "Subscription Fees" means the subscription fees listed in the applicable Authority Order Schedule for use of the Subscription Services.

1.10. "Authorized User" means Authority's employees, consultants, contractors, and agents (a) who are authorized by Authority to access and use the Subscription Services under the rights granted to Authority pursuant

to this Agreement; and (b) for whom access to the Subscription Services has been purchased hereunder.

1.11 "De-identified Data" means Authority Data which has been de-identified through the removal of all references to Authority and any Authority Personal Data.

## **2 Subscription Services**

2.1 Subscription Services. Subject to Authority's compliance with this Subscription Terms of Use, including payment of all Subscription Fees on a timely basis, Licensor hereby grants Authority and its Authorized Users a non-exclusive, non-transferable right to access and use the Subscription Services during the Subscription Term subject to the conditions and restrictions in Section 1.2 below.

2.2 Restriction and Conditions of Access and Use of Subscription Services. (i) Such use is limited to Authority's internal business use; (ii) Authority's rights to access and use the Subscription Services excludes (i) the concurrent use of a single login by more than one user; (ii) Authority will not and will not permit any third party to: (a) seek unauthorized access to the Service; (b) upload or transmit information that contains any malicious code intended to damage or detrimentally interfere with any systems, data, personal information or property; or (c) use or knowingly permit the use of any security testing tools to probe, scan or attempt to penetrate or ascertain the security of the Service; (iv) Authority will not, to the best of its knowledge, submit to the Service any materials that : (a) violate any third party intellectual property right or any moral right, privacy right, right of publicity or other proprietary right; (b) are unlawful, harassing, tortious, defamatory, false, obscene, harmful to minors and/or offensive in any way; (v) No part of the Service may be reproduced, distributed, displayed, posted, or transmitted by Authority in any form or by any means; (vi) Authority will not access the Service by any means other than through the interfaces provided by Licensor; (vii) Authority will not do any "mirroring" or "framing" of any part of the Service or create Internet links to the Service that include login information, user names, passwords, and/or secure cookies; (viii) evaluate or use, or facilitate the evaluation or use, of the Subscription Services for the purpose of competing with Licensor; (xix) Authority may not use any device, software, or routine, including any viruses, Trojan horses, worms, or time bombs, intended to damage or interfere with the proper working of the Service or to surreptitiously intercept or expropriate any system, data or personal information thereon or therefrom; (x) Authority may not take any action that imposes an unreasonable or disproportionately large load on our infrastructure; (ix) make any attempt to discover the underlying software, structure or algorithms of the Services including without limitation reverse engineer or disassemble any software related to the Services or (x) Any action or breach of any of these terms by any Authorized User will be deemed an action or breach by Authority.

### **3 Payment**

- 3.1 The LICENSOR will invoice the AUTHORITY for the agreed Subscription Fees in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the AUTHORITY of the Subscription Services.
- 3.2 The AUTHORITY shall pay the invoice value within 30 days from the date of receipt of a valid invoice related to that Subscription Services.

### **4 Confidentiality**

- 4.1 Subject to Clause 5.2 and except as otherwise agreed in writing, the AUTHORITY and the LICENSOR shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence:

- a. the Subscription Services;
- b. details of the AUTHORITY's use and application of the Subscription Services;
- c. any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

the obligation for b. and c. relates only to information received in writing or other material form; and

if such information is disclosed orally, the obligation shall apply for 30 days unless the discloser confirms such information in writing or other material form within 30 days when the obligation of confidence shall apply thereafter.

- 4.2 The obligations under Clause 5.1 shall not require the receiving Party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving Party can show that such part of the information:
- a. was already known to that Party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the Licence; or

- b. has been received by that Party, without restraint on use or disclosure, from a third party having the right to disclose it; or
- c. has entered the public domain otherwise than in breach of the Licence or any other agreement between the Parties; or
- d. was generated by that Party independently of the information which is subject to Clause 5.1;

provided that the relationship of such part of the information to the remainder of the information which is subject to Clause 5.1 is not revealed.

4.3 The obligations under Clause 5.1 shall be perpetual.

4.4 The AUTHORITY shall ensure or procure that any individual to whom the Subscription Services is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant conditions of the Licence.

4.5 The AUTHORITY shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Subscription Services made in accordance with the Licence, including partial copies, and on any software changed under the terms of the Licence.

4.6 Ownership and Reservation of Rights to Licensor Intellectual Property.

Licensor and its licensors own all right, title and interest in and to the Service, Documentation, and other Licensor Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, Licensor reserves all rights, title and interest in and to the Service, and Documentation, including all related Intellectual Property Rights. No rights are granted to Authority hereunder other than as expressly set forth herein.

4.7 Authority Input

Licensor shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service any Authority Input.

4.8 De-identified Data.

Licensor shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service any De-identified Data.

## **5 IPR Actions And Liabilities For IPR Infringement**

- 5.1 The LICENSOR declares that they are entitled as either owner or licensee to provide the Subscription Services to the AUTHORITY on the terms and conditions of the Subscription Services.
- 5.2 Licensors Indemnification. Licensors agrees to (A) defend and indemnify Authority (“Indemnified Party”) against any suit or proceeding by a third party (“Third Party Claim”) to the extent arising out of or resulting from (i) a Third Party Claim that the Licensors Services infringe or violate the trademark, copyright, patent or other intellectual property rights or right of privacy or publicity of any third party, and (B) pay any damages finally awarded in such third party suit or proceeding as a result of such Indemnified Claim (or pay any settlement of such claim) or any governmental or other regulatory fines assessed against the Indemnified Party.
- 5.3 Indemnification Conditions. The indemnification obligations set forth herein are conditioned upon the indemnified party providing the indemnifying party (a) notice of any claim or cause of action upon which the indemnified party intends to base a claim of indemnification hereunder, and (b) the indemnified party providing reasonable assistance and cooperation to enable the indemnifying party to defend the action or claim hereunder. The indemnifying party will have the right to defend any action or proceeding involving a claim that the indemnifying party is obligated to indemnify hereunder. The indemnifying party will not be obligated to indemnify any claim that is settled by the other party without the prior written consent of the indemnifying party.

## **6 Warranty**

- 6.1 Licensors warrants that the Service shall perform materially in accordance with the documentation. Authority’s exclusive remedy and Licensors’s sole liability for Licensors’s breach of the foregoing warranty is that Licensors will use commercially reasonable efforts to remedy the Service’s deficiencies, and, if Licensors is unable to remedy such deficiencies, then Authority may terminate the affected Subscription, and Licensors will refund the pro rata Subscription Fees for unused Subscription Services.
- 6.2 EXCEPT AS EXPRESSLY SET FORTH HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

WITH RESPECT TO THE SERVICE AND/OR RELATED DOCUMENTATION. LICENSOR DOES NOT REPRESENT THAT AUTHORITY'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR THAT THE SERVICE WILL MEET AUTHORITY'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING THE INTERNET, OTHER TRANSMISSION NETWORKS, AND AUTHORITY'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF MALICIOUS CODE.

## **7 General Liability Conditions**

- 7.1 The LICENSOR shall have no liability to the AUTHORITY for any indirect or consequential damages or losses which might arise by reason of Use of the Subscription Services by or for the AUTHORITY including, without limitation, loss of profit, loss of revenue, loss of use, loss of business information produced by Use of the Subscription Services.
- 7.2 The total of the LICENSOR's liability under or in connection with this Agreement (whether arising from contract, negligence or any other basis) is limited in respect of each event or series of connected events to the value given in Part IX of the Schedule, provided that no limitation shall apply in respect of liability for death of or injury to persons arising from the LICENSOR's negligence, as provided by the Unfair Contracts Act 1977 and no limitation shall apply in respect of any liability arising under the provisions of Clause 5.2.

## **8 Term and Termination of the Subscription Services**

- 8.1 Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach;
- 8.2 Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent

appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

### 8.3 Effect of Termination:

Upon any expiration or termination of this Agreement: (a) Licensor may disable all Authority and Authorized User access to the Subscription Services; (b) if Authority terminates this Agreement for Licensor's material breach of the Agreement, then Authority will be relieved of any obligation to pay any Subscription Fees attributable to the period after the effective date of such termination and Licensor will refund to Authority Subscription Fees paid in advance for Subscription Services that Licensor has not performed as of the effective date of termination; (c) if Licensor terminates this Agreement for Authority's breach of the Agreement, then all Subscription Fees that would have become payable had the Agreement remained in effect until expiration of the applicable Subscription Term will become immediately due and payable, and Authority shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of Licensor's invoice.

## 10 Output

10.1 The AUTHORITY may freely copy and utilise any output resulting from Use in accordance with LICENSOR - supplied documentation of the Subscription Services.

## 11 Disputes

11.1 Other than for any claim arising from non payment of a valid invoice should any question, dispute or difference whatsoever arise between the AUTHORITY and LICENSOR in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the AUTHORITY or the LICENSOR may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the AUTHORITY or the LICENSOR may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).

11.2 Upon receipt of the ADR notice and subject to sub-Clause 12.3, the Parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the Parties may decide to adopt a second type of ADR. The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on

the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the AUTHORITY and the LICENSOR, however, the costs of arbitration shall be settled by the arbitrator.

- 11.3 Where a Party rejects the referral of the matter to ADR they shall promptly notify the other Party in writing of that rejection and the reasons for it.

## **12 Transfer**

- 12.1 The LICENSOR shall not assign their interest in any Licence or the intellectual property licensed thereunder without providing for the continuance of the AUTHORITY'S rights under the Licence and without notifying the AUTHORITY in writing of the identity of the assignee.

- 12.2 Unless prevented by law or national regulation the AUTHORITY shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:

12.2.1 following a transfer from the AUTHORITY to the legal entity of any function of the AUTHORITY for which the Licensed Software has been obtained; or

12.2.2 on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied "as is", and the liability referred to in Clause 8.3 shall be ten pounds sterling only.

PROVIDED THAT the Licensed Software novated in accordance with this sub-Clause may only be used for the same purposes for which the Authority was licensed in accordance with Clause 2 and wider use shall require the written approval of, and the grant of a further licence by, the LICENSOR.



## 13 General

13.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:

- a. that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and
- b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.

13.2 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy, shall by itself constitute a waiver of that right or remedy.

13.3 No waiver of any right or remedy shall operate as a waiver in respect of any other right or remedy.

13.4 Neither the LICENSOR nor the AUTHORITY shall be liable for failure to perform any of their obligations under the Licence if that failure results from circumstances beyond their reasonable control.

13.5 Headings have been included for convenience only and shall not be used in construing any condition of the Licence.

13.6 The Licence shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.

13.7 The Licence shall constitute the entire agreement between the Parties relating to the Subscription Services and supersedes any previous agreement.

13.8 No right is granted to any person who is not a Party to the Licence to enforce any term of the Licence in their own right and the Parties declare that they have no intention to grant any such right.