

**Enablon**

**Bow Tie Suite**

**A**

**greement**

**Secretary of State for Defence UK**

MOD Head Office Commercial

65

Brown Street

Glasgow, G2 8EX

**AGREEMENT**

**Contract number:** 712165450

**Parties:**

1. **Enablon Netherlands B.V.**

Zuidpoolsingel 2

2408 ZE Alphen aan den Rijn

The Netherlands

[www.enablon.com](http://www.enablon.com/)

# Enablon Contacts

# Terms & Conditions

This Enablon BowTie Suite Agreement (the “Agreement”) is entered into by Secretary of State for Defence UK (“Client”) and Enablon Netherlands B.V. (“Enablon”) and shall become effective upon the date of last signature (the “Effective Date”). The terms and conditions attached hereto as Appendix A and B apply to this Agreement. In the event of a conflict between the body of this Agreement any of its appendices, the body of this Agreement shall prevail. For the avoidance of doubt, the terms and conditions in a specific appendix are in addition to the terms and conditions set out in the other appendices.

**Commercial Quotation**

# Pricing is in Pound Sterling (GBP) Annual Subscription BowTieXP Enterprise Level 2

Complete BowTieXP Enterprise Package;

• All BowTieXP Enterprise modules (features), plugins and API’s

* Level 2 License includes up to 150 named users & 50 concurrent users
* Level 2 up to 250x BowTieXP Complete & IncidentXP Complete licenses for template and maintenance management of the enterprise solution

Included capabilities.

* SSO for ease of Use
* Web based (SAA)
* Central bowtie management
* Advanced barrier management including Incidents and barrier Audit/Inspection - Action tracking
* Integrated with Enablon platform for Risk Management and Barrier Management - Extensive API availability

|  |  |
| --- | --- |
| New License Arrangement | |
| Qty | Description |
| 1 | Level 2 BowTieXP Enterprise Bundle |
| 150 | BowTieXP Enterprise (inclusive Editor, Incidents & Audits) |
| 250 | BowTieXP Complete (inclusive Incidents & Audits) |
| 50 | BowTieXP Enterprise (concurrent) |

**PRICING SCHEDULE OF REQUIREMENTS**

**FOR THE SUPPLY & MAINTAINENCE OF**

**BOWTIE LICENCES**

Prices are firm (exclusive of VAT)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5 (option year)** |
| **1.1.2025 to 31.12.2025 £** | **1.1.2026 to 31.12.2026 £** | **1.1.2027 to 31.12.2027 £** | **1.1.2028 to 31.12.2028 £** | **1.1.2029 to 31.12.2029 £** |
| **1. Level 2 BowTieXP Entreprise Bundle licence subscription** | XXXXXX | XXXXXX | XXXXXX | XXXXXX | XXXXXX |
| **2. Service support**  **including fault response, recovery, patching and helpdesk** |  |  |  |  |  |
| **3. Service management** |  |  |  |  |  |
| **Total Cost** | XXXXXX | XXXXXX | XXXXXX | XXXXXX | XXXXXX |

**Total 5 year price is £584,359**

Support & Maintenance is included

# price per unit for additional scope

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# Payment & Invoicing

If Client requires a Purchase Order (P.O.) reference to be added to invoices, P.O. document and/or the P.O. reference should be provided upon execution of this Agreement. Payment will be done through the MOD’s CP&F system (connected to Exostar) and will need contract and PO references to be quoted.

# SIGNATURES - AUTHORIZED PARTIES

|  |  |
| --- | --- |
| **Secretary of State for Defence UK** | **Enablon Netherlands B.V.** |
| Name: | Name: XXXXXXXXXXXXXXX |
| Title: | Title: |
| Date: | Date: |
| Signature: | Signature: |

**Appendix A**

**“We”** or “us” or **“Enablon”**: Enablon (as defined above).

**“You”**: Client (as defined above).

Each a **“Party”** and together the **“Partie**s”.

**Agreement** **1 Software licensing conditions**

See Appendix B.

## 2 Invoicing and prices

2.1 You hereby authorize us to invoice via e-mail or otherwise electronically.

2.2 Upon receipt of a fully signed Agreement, we have the right to submit our invoice. Please supply any required information for invoicing with your purchase order or any other document.

2.3 Unless expressly specified otherwise in the Agreement, we will invoice annually in advance.

2.4 All fees and other charges are in Euro unless specified otherwise.

2.5 Fees and other charges do not include federal, state or local sales, foreign withholding, use, property, excise, service, value added, or similar taxes (“Tax(es)”) now or hereafter levied, all of which shall be for your account (for the avoidance of doubt, you shall not be responsible for taxes based on Enablon’s net income). With respect to state/local sales tax, you must provide direct pay permits or valid tax-exempt certificates to Enablon prior to the execution of this Agreement. If we are required to collect or pay Taxes on any fees or other charges, you shall reimburse us for all such amounts.

## 3 Payment terms

3.1 All invoiced amounts duly owed hereunder are payable within thirty (30) days after the invoice date, provided the invoice is submitted via your Contracting, Purchasing and Finance (CP&F) electronic procurement tool (unless otherwise specified by you in writing, this shall be the tool referenced on: [Contracting, Purchasing and Finance (CP&F) guidance for suppliers - GOV.UK,](https://nam04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fgovernment%2Fpublications%2Fmod-contracting-purchasing-and-finance-e-procurement-system%2Fcpf-guidance-for-suppliers&data=05%7C02%7CEfraim.Lumalessil%40wolterskluwer.com%7Cfcb9c601697b4620e82a08dd1b5d10bb%7C8ac76c91e7f141ffa89c3553b2da2c17%7C0%7C0%7C638696809266461403%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=x8JkqS5jDDfRfNQPvm00Jm4gnC2EPePYG40ytk29OcA%3D&reserved=0) which can be accessed via the following link: [https://www.exostar.com)](https://nam04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.exostar.com%2F&data=05%7C02%7CEfraim.Lumalessil%40wolterskluwer.com%7Cfcb9c601697b4620e82a08dd1b5d10bb%7C8ac76c91e7f141ffa89c3553b2da2c17%7C0%7C0%7C638696809266483307%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=KkzFkrsKdTJrpcIPnTH%2BBFXgV7EWZnFhaM4Wb3sujj8%3D&reserved=0).

3.2 If an amount duly payable hereunder and invoiced by us is not paid within the payment term, statutory interest will be due in respect of the outstanding invoice without requiring further notice of default. In the event payment is not made on time, we are entitled to full compensation of both the judicial and extrajudicial collection costs, including lawyer's and bailiff's fees and the costs of collection agencies, in addition to the amount that is owed and the interest due in respect thereof. We may also suspend your use of the software and/or suspend any other services provided by us to you hereunder. We have these rights without affecting any other right we may have under applicable law.

3.3 If an amount duly payable hereunder and invoiced by us is not paid within the payment term, interest at an annual rate equal to the Bank of England annual interest rate +8% will be due in respect of the outstanding invoice without requiring further notice of default.

## 4 Training, courses & consultancy

4.1 All services in relation to training, courses and consultancy shall be provided on the basis of commercially reasonable efforts. We shall make commercially reasonable efforts to ensure that the course and services are provided with due care and in accordance with any arrangements and procedures agreed in writing with you. You accept that we shall determine the content and scope of the course.

4.2 Enablon expressly retains all intellectual property rights in respect of the documentation and the course, test and examination material. Such documentation and materials constitute Enablon Confidential Information.

## 5 Support & maintenance is included

5.1 In addition to any license for the use of Enablon’s software, we may offer you support and maintenance services. Unless stated otherwise herein, your purchase of support and maintenance will entitle you to:

1. Support by the helpdesk through email (support.bowtie@wolterskluwer.com) or phone +31 70 3626126 (based on reasonable efforts, also taking into account incident severity). The helpdesk is available on Monday to Friday between 9 am and 5 pm CE(S)T except for Dutch Public Holidays.
2. Access to such updates (bug fixes) and upgrades (new features) to the Software as may be made available by us as part of the support and maintenance services for no additional charge.

## Appendix B

“**Affiliate**” means with respect to the party referenced, any corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, governmental organization or body that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, organization or body, whether through ownership of voting securities or otherwise.

**“Software”**: the Enablon software products (BowTieXP Enterprise, BowTieXP or IncidentXP) as identified above in this Agreement (including, without limitation, the features, functions and designs thereof, and any new versions thereof and updates thereto, as well as any complete or partial copies thereof) and any accompanying documentation.

## 1 License

1.1 Subject to all the terms of this Agreement, Enablon grants you a limited, non-exclusive, non- sublicensable, non-assignable, nontransferrable license to install and use the Software provided to you by Enablon. This license is at all times conditional to your payment of the applicable license fees, except in the event Enablon has granted you a temporary, free trial license. The licenses and any applicable restrictions may differ depending on the specific Software product involved, as set forth in this Agreement.

### 1.2 BowTieXP and IncidentXP Licenses

1.2.1 BowTieXP licenses are named user licenses. You may install and use the Software on a single computer or other device and install an additional copy of the Software on a second, portable device. The use of this additional copy is exclusively restricted to the same user of the first licensed copy of the Software.

1.2.2 You may access and use your licensed copy of the Software by using remote access technologies (such as remote desktop features). This access and use with a remote access device is exclusively restricted to the primary user of the device hosting the desktop. The Software is licensed as a single product. Its component parts may not be separated for use on more than one device.

1.2.3 You may transfer a license from one end user within your company to another end user within your company, but only if you have purchased support and maintenance. To initiate the transfer, you must submit a request to us. If your eligibility is verified, we will provide a new activation code or other method to effectuate the transfer. The copy of the previous end user will be deactivated and may no longer be used.

1.2.4 You may transfer your rights under this Agreement to another party, provided it is a permanent transfer and provided you transfer this Agreement including this license, the Software, and any related documentation, to a party who confirms to Enablon in writing (originating from an authorized representative) to accept and to comply with the terms of this Agreement. Immediately after the transfer: 1) all your licenses and rights under this Agreement shall terminate 2) you will cease any and all use of the Software and 3) you will remove the Software from the device(s) where it was installed and you must destroy all copies of the Software that are in your possession or under your control and 4) you will inform Enablon of the transfer of this license.

### 1.3 BowTieXP Enterprise Licenses

1.3.1 The software is licensed based on:

1. The number of BowTieXP Enterprise instances you run;
2. The number of people that access the software and modules (such as Bowtie Editor, Audits, Incidents, etc.), either concurrently or in total.

1.3.2 You must acquire an instance license for each instance you will run. “**Instance**” means an image of software that is created by executing the software’s setup or install procedure or by duplicating an existing instance, and normally consists of a connection to a single database with the correct schema as well as a single (web) server with the BowTieXP Enterprise Software installed on it. You must acquire and assign a Client Access License (CAL), either named or concurrent, for each user that accesses the application directly or indirectly.

1.3.3 **NAMED USER CALS AND CONCURRENT CALS**. A named user CAL is assigned to a specific (named) user**.** A concurrent CAL is assigned to a user from a pool of free CALs when the user requires said CAL (by accessing the application) and is released to the pool after a predetermined amount of time of non-use.In case no free concurrent CALs are available, the user is denied access. Both named and concurrent CALs are valid across the application, and for any module you own.

1.3.4 **REASSIGNMENT OF NAMED USER CALs**. You may reassign your named user CALs within an instance from one user to another within your organization. Named user CALs are assigned to user groups in the Software. You may change group memberships freely, effectively reassigning the named CALs.

1.3.5 **MULTIPLEXING**. Hardware, software or any other automated or manual mechanism you use to pool connections, reroute information, reduce the number of users that directly or indirectly access or use the software, or reduce the number of users the software directly manages, (sometimes referred to as “multiplexing” or “pooling”), does not reduce the number of licenses you need.

1.3.6 **THIRD-PARTY HOSTING**. You may have a third-party host the software on your behalf solely for access by you. You may not permit your third-party hosting vendor to allow access to the Software by unaffiliated (see the definition of “Affiliate” in Appendix C) third parties except as otherwise allowed by this Agreement. If your third-party hosting provider is responsible for installation, configuration and/or management of the Software, and does not merely provide computing resources by which you can perform such tasks yourself, your hosting provider must agree to be bound by the terms and conditions in this Agreement. You may not use the software for business process outsourcing purposes.

1.3.7 **PREREQUISITES.** The Software requires certain prerequisites to be installed or be available before it will function correctly, such as but not limited to Microsoft SQL Server and Microsoft Internet Information Server. That software is not part of this license Agreement and it is your own responsibility to acquire licenses, install and configure them so that the BowTieXP Enterprise Software can run correctly. The documentation describes these prerequisites.

1.3.8 **CLIENT SOFTWARE**. In order to make full use of BowTieXP Enterprise, you will require at least one BowTieXP Complete license to upload and configure certain data.

1.3.9 **BACKUP COPY**. You may make up to two extra instances of the software for backup and testing purposes, so long as such instances are not used in production and the use is for your internal backup and testing only.

## 2 Restrictions of use

2.1 Except as expressly permitted in this Agreement or by applicable law, you agree not to reverse engineer, de-compile, disassemble, alter, duplicate, modify, rent, lease, loan, sublicense, make available (including by subscription, Software-as-aService models or otherwise), make copies, create derivative works from, distribute or provide others with the Software in whole or in part.

2.2 You may transfer your copy of the Software from the device where it was originally installed to a different device. Immediately after the transfer, you must completely remove the Software from the former device.

2.3 In order to be able to verify that you have a licensed copy of the Software, the Software contains product activation technology which is designed to protect the Software against unlicensed use. In order to be able to activate your copy of the Software, you should follow the instructions that are presented to you during the installation and launch sequence. You may need to reactivate the Software if you modify your computer hardware or operating system.

2.4 Your rights under this Agreement will terminate automatically without prior notice from Enablon if you materially fail to comply with any terms of this Agreement and Enablon will be entitled to pursue any appropriate legal remedies. In such case: 1) all your licenses and rights under this Agreement shall terminate 2) you will cease any and all use of the Software and 3) you will remove the Software from the device(s) where it was installed, and you must destroy all copies of the Software that are in your possession or under your control.

2.5 Because the usage right is coupled to an obligation to pay, Enablon has the right, upon reasonable prior notice, to perform an audit once a year to verify your compliance with these Software license terms. The audit shall be performed during your normal business hours by an independent professional third party (such as a chartered accountant) in confidence and in accordance with your reasonable site security requirements. The auditor may only report the data relevant for the compliance verification to Enablon. The costs of the audit shall be borne by Enablon, unless the report reveals that you have failed to pay the right license fee or used the Software beyond of the scope of your license or without a valid license.

## 3 Your representations, warranties, and indemnification

3.1 You represent and warrant that you have the legal right to enter into this Agreement and to comply with its terms; you will use the Software for lawful purposes only and in accordance with this Agreement and all applicable laws and regulations; you will not attempt to overcome any technical protection methods or security measures with respect to the Software; and you will always provide complete and accurate information as requested by Enablon.

3.2 You indemnify and hold harmless Enablon and its Affiliates, parent companies, subsidiaries, officers, directors, employees, agents and suppliers (including, without limitation, its licensors), against any liabilities, damages, settlements, penalties, fines, costs and expenses incurred by Enablon or said parties arising out of or relating to your (or any of your users’) infringement of Enablon’s, Enablon’s Affiliates’ or Enablon’s licensor’s intellectual property or other proprietary rights and/or unauthorized use or misuse of the Software.

## 4 Disclaimer of Warranties

4.1 **Complex Software.** The software is complex computer software. Its performance will vary depending on your hardware platform, software interactions, the configuration of the software and other factors. The software is neither fault tolerant nor free from errors, conflicts, or interruptions. Therefore, to the maximum extent permitted by law, the Software is provided “as is” and “as available” and Enablon makes no warranties, claims or representations, whether express or implied, with respect to the Software, including warranties of quality, performance, non-infringement, merchantability, or fitness for a particular purpose. Enablon does not represent or warrant that the Software will always be available, reliable, accessible, uninterrupted, timely, secure, accurate, complete, or error-free.

4.2 You are solely responsible for installation and usage of the Software. The Software documentation will provide recommended requirements for the hardware and software environment(s).

## 5 Limitation of Liability

5.1 The entire liability of Enablon, its Affiliates, parent companies, subsidiaries, officers, directors, employees, agents or its suppliers under or in connection with this Agreement, the Software and Enablon’s (maintenance, support, training or consultancy) services, on whatever ground, shall be limited to direct damages, to the amount of fees actually paid by you for the use of the Software and related support and maintenance services in the twelve-month period preceding the date such claim or cause of action first arose.

5.2 Neither Enablon, its Affiliates, parent companies, subsidiaries, officers, directors, employees, agents or its suppliers will have any liability for any loss of profit, lost or damaged data, loss of goodwill, or any (other types of) incidental, consequential or indirect damage.

5.3 The limitation of liability set out in article **Error! Reference source not found.** shall not apply to any express indemnity obligations hereunder or the extent that the damage is the result of willful misconduct or Gross Negligence of Enablon (where “Gross Negligence” means an act or omission that demonstrates a wanton and reckless disregard of the direct and harmful consequences likely to arise of such act or omission towards the life or rights of the other party).

5.4 Nothing in this Agreement shall exclude or limit Enablon’s liability for (1) fraud, (2) death or personal injury caused by its negligence (including negligence as defined in section 1 of the Unfair Contract Terms Act 1977), or (3) any other liability which cannot be excluded or limited by applicable law.

5.5 In order to qualify for any compensation by Enablon, you must notify Enablon in writing of your loss or damage as soon as possible after it has occurred. Any claims for damages against Enablon under or in connection with this Agreement or the subject matter thereof, irrespective of the grounds thereof, shall expire by the mere passage of twenty- four months from the date on which the claim arose.

## 6 Changes to and new versions of the Software

6.1 Enablon reserves the right to discontinue or modify the Software, support, or any part, component or feature therein or related thereto, on prior written notice.

6.2 You have no right to use, and Enablon has no obligation to make available to you, any subsequent versions of, or updates to, the Software you have purchased a license to, unless this right is conferred to you as a result of your purchase of support and maintenance services in addition to your license.

6.3 To use updates to the Software, you must first be licensed for the Software identified as eligible for the update. After installing the update, you are required to cease the use of the original Software which formed the basis of your eligibility to update, except as part of the update Software.

6.4 Whenever a new version (or patch) of the Software is released, we may require you to accept revised or additional terms, which must be accepted in their entirety by you in order to become authorized to use such new version.

## 7 Intellectual Property

7.1 You acknowledge that Enablon and/or as the case may be its licensor, is and will remain the sole and exclusive owner of all intellectual property rights in and to the Software. You shall have no right, title, or interest therein or thereto, other than the limited license expressly set forth in this Agreement. Enablon or, as the as the may be, it licensor, shall be the exclusive owner of all right, title and interest (including intellectual property rights) in and to the Software and any related materials (including, without limitation, any and all translations, adaptations, developments, enhancements, improvements, updates, versions, customizations or other modifications or derivations of or to the Software (whether or not developed by or for you), and documentation, training materials and recordings of training sessions relating to the Software). This Agreement does not imply any transfer of intellectual property rights to you. Enablon retains all ownership and intellectual property rights to anything developed and delivered under this Agreement (including, without limitation, any deliverables provided by Enablon in connection with the Services, whether as “work-for-hire” or otherwise). You are not allowed to remove from and change in the Software any designation or sign concerning or including copyrights, trademarks, trade names or other intellectual or industrial property rights of Enablon and/or its licensors.

## 8 Indemnification

8.1 General. Enablon agrees to (i) defend you against or, at Enablon’s option, settle any unaffiliated (see the definition of “Affiliate” in Appendix C) third party claim or action brought against you asserting that your use of all or part of the Software in conformity with this Agreement infringes such third party’s intellectual property rights; and (ii) indemnify you against actual damages and reasonable costs and expenses assessed against or recovered from you as a result of any such claim or action.

8.2 Exclusions. Article 8.1 does not cover claims or actions to the extent based upon or arising out of: (i) access to or use of the Software in combination with other non-Enablon-provided products or programs with which the Software is not authorized or intended to be used; (ii) modification or alteration of the Software by you or for you by any person other than Enablon or its authorized agent; (iii) access or use of the Software in breach of this Agreement or in a manner not consistent with or contemplated by the documentation pertaining to such Software; or (iv) use of a superseded or altered version of some or all of the Software if infringement would have been avoided or mitigated by the use of a subsequent version of (or with any applicable updates to) the Software that may be provided to you as part of support and maintenance services under or in connection with this Agreement.

8.3 Enablon Cure. If any of the Software becomes, or in Enablon’s opinion, is likely to become, the subject of a third party claim of infringement or violation of such thirty party’s intellectual property rights, Enablon may, at its option: (i) procure for you the right to continue using the affected Software; (ii) replace the same with substantially equivalent, non-infringing materials; or (iii) modify the affected Software so that they become non-infringing without materially changing their functionality. If, in Enablon’s opinion, none of the foregoing alternatives are feasible or commercially reasonable, Enablon may terminate your license to the affected Software, require and accept return of the same, and refund to you the unamortized portion of the allocable license fees paid by you with respect thereto (in case of a perpetual license, based on a five-year estimated useful life) and the unused portion of any related support fees prepaid by you

8.4 Exclusive Remedy. To the maximum extent permitted by applicable law, the provisions of this article 8 state the sole, exclusive and entire liability of Enablon and its Affiliates, distributors, agents, subcontractors and suppliers, and your sole remedy, with respect to any actual or claimed infringement or other violation of any third party’s intellectual property rights.

8.5 Indemnification Procedures. The indemnity in this Article 8 is contingent upon: (i) you promptly notifying Enablon in writing of any claim which may give rise to a claim for indemnification; (ii) Enablon being allowed to control the defense and settlement of such claim; and (iii) you cooperating with all reasonable requests of Enablon (at Enablon’s expense) in defending or settling a claim. You shall have the right, at your option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing. Enablon may settle any such claim, provided that no settlement of any claim admitting liability of, or imposing duties or restrictions upon, you, other than for payment of monetary amounts for which Enablon agrees to be responsible or for termination of your use of the Software in accordance with article 8.3, may be effected without your prior written consent, which shall not be unreasonably withheld or delayed. The indemnity in this article 8 shall not apply if, and during the period that, any Software is provided to you for evaluation or trial use.

## 9 Confidential Information

9.1 As used in this article 9, “Confidential Information” means any non-public, confidential information either marked as such or, in the relevant circumstances, that should be understood to be confidential information, whether furnished or made available before or after the date of this Agreement, and regardless of its form, format, media or mode of disclosure (written, visual, electronic, or other). ENABLON Confidential Information includes (without limitation) the Software and any related materials (including, without limitation, documentation, training materials and recordings of training sessions relating to the Software) created by Enablon.

9.2 Each Party will keep all Confidential Information of the other Party strictly confidential. Each party agrees to use the same care to protect the Confidential Information of the other as it employs with similar information of its own (but in no event less than reasonable care). Neither Party will disclose any Confidential Information of the other Party, except that each Party may disclose Confidential Information of the other to its employees, contractors or agents who have a need to know such information, provided that, prior to such disclosure, each such employee, contractor or agent is bound by obligations to comply with restrictions on use and disclosure of Confidential Information which are substantially in line with those set forth in this Agreement. The parties further agree that they will use Confidential Information solely for the purposes for which such information, or access to it, is provided pursuant to the terms of this Agreement.For the avoidance of doubt, you shall be responsible for your users’ full compliance with the non-use and confidentiality obligations hereunder. These confidentiality obligations shall survive for a period equal to the longer of (i) five (5) years after the termination or expiry of this Agreement; or (ii) the period during which such Confidential Information remains a trade secret under applicable law.

9.3 Confidential Information shall not include information which is: (i) independently developed by the receiving Party without the benefit of the other's disclosure or is already lawfully known by the receiving Party at the time of disclosure; (ii) approved for release by the other's written authorization or is rightfully received by the receiving Party from a third party without any obligation of confidentiality; (iii) public knowledge without the wrongful act or breach of this Agreement by either Party; or (iv) disclosed pursuant to the requirements of a governmental agency or court order.

9.4 Notwithstanding the foregoing (and specifically article 9), you are permitted to publish this Agreement on ‘Gov.co.uk’ ‘Contracts Finder’ provided that you, to the maximum extent permitted under The Public Contracts Regulations 2015, redact all commercial information and personal information.

## 10 Processing and protection of personal data

10.1 Each Party shall comply with (i) all obligations imposed by applicable laws and regulations regarding the protection and processing of personal data and (ii) the Data Processing Agreement (meaning the collateral contract that the parties will execute on or after the Effective Date as this Agreement in respect of their obligations regarding the processing of personal data pursuant to this Agreement, if required by applicable law).

## 11 Termination

11.1 This Agreement will be effective from Effective Date (as defined above).

11.2 Either Party may terminate this Agreement for cause, in the following circumstances:

1. upon the other Party’s material breach of this Agreement and, in case of a remediable breach, if the other Party fails to cure such breach within thirty (30) days after receipt of written formal notice specifying the breach;
2. the other Party has applied for or received, whether provisional or not, a moratorium, or
3. upon the other Party ceasing its business other than for reconstruction or amalgamation while solvent or becoming or being declared to be insolvent or bankrupt.

* 1. Enablon may terminate this Agreement with immediate effect if you materially fail to comply with articles 1, 2, 3, 7, 9 or 10 of this Appendix B.
  2. Upon termination or expiry of this Agreement:

1. each Party shall return or destroy, at the other Party’s request and option, all materials and information received from the other Party, except to the extent retention is required under applicable law;
2. you shall make payment of any amount still due and payable to us;
3. all your licenses and rights under this Agreement shall terminate; you will cease and desist any and all use of the Software in respect of which the license has terminated; and
4. you will remove the Software in respect of which the license has terminated from the device(s) where it was installed, and you shall destroy all copies of the Software in respect of which the license has terminated that are in your possession or under your control.

11.5 Termination or expiration of this Agreement shall not relieve either Party of any obligations which are expressly provided to come or remain in force on/after such termination or expiration, or by their nature continue after such termination or expiration.

## 12 Miscellaneous

12.1 This Agreement may only be modified or amended by mutual agreement of the Parties.

12.2 You acknowledge that the Software may be subject to applicable laws and regulations relating to export, re-export, import, transfer or other disposition of software and other technology, including export controls under United States laws and regulations (collectively, “Export Control Laws”). From and after the Software is delivered or otherwise made available to you, you shall comply with any and all applicable Export Control Laws applicable to the Software. You agree not to provide access to the Software or any of our services to any individual located in Iran, Cuba, Syria, North Korea, Russia, Belarus or the Crimea, Donetsk, Kherson, Luhansk, and Zaporizhzhia regions of Ukraine that are under Russian control. We shall have no obligation to make the Software or any of our services available to any user or in any such jurisdiction or if doing so, in its reasonable discretion, would violate applicable law and we shall have no liability for upon immediate written notice withdrawing any Software or services in such event.

12.3 The terms set forth in this Agreement (including its appendices) (i) constitute the entire agreement between the parties with respect to the subject matter thereof and (ii) supersede all prior agreements, understandings, proposals, and communications, oral or written, relating to the subject matter of this Agreement. Any purchase order, requisition, work order, request for proposal or other document or record prepared, issued or provided by or on behalf of you relating to the subject matter of this Agreement is for administrative convenience only and will have no effect in supplementing, varying or superseding any provisions of this Agreement, regardless of any acknowledgement thereof by Enablon.

12.4 Except for payment obligations, neither party will be liable to the other for any failure or delay in performing its obligations under this Agreement due to any cause beyond its reasonable control, including, without limitation, fire, flood, earthquake or other natural catastrophes, acts of war, terrorism or civil disobedience, governmental acts, laws or regulations, embargoes, labor strikes or difficulties, failures of third party suppliers, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, hackers, transportation stoppages or slowdowns or the inability to procure parts or materials. Each party will use reasonable efforts to give written notice to the other promptly after becoming aware of any condition or event causing any such excusable performance failure or delay.

12.5 The Contract (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No third party is intended to be or shall be a third-party beneficiary of any provision under this Agreement. Enablon and you shall be the only parties entitled to enforce the rights set out in this Agreement.

12.6 If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be, to the maximum extent permitted by applicable law, construed or limited, and/or deemed replaced by a revised provision, to the extent (and only to the extent) necessary to render it valid, legal and enforceable and, as nearly as possible, to reflect and achieve the parties’ intentions in agreeing to the original provision. If it is not possible to so construe, limit, or reform any such provision, then the invalid, illegal or unenforceable provision shall be severed from this Agreement. The remaining provisions of this Agreement shall be unaffected thereby and shall continue in full force and effect.

12.7 In the event of any inconsistency or conflict between the body of this Agreement and appendices, the body of this Agreement shall govern and control.

12.8 This Agreement shall be governed by and construed in accordance with the laws England and Wales, without regard to any conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12.9 Except for claims seeking emergency or temporary injunctive relief or other equitable relief pending arbitration (which either Party may elect to pursue in any court of competent jurisdiction), any dispute directly or indirectly arising out of, relating to this Agreement, any documents referenced herein and/or the subject matter hereof, shall be exclusively and finally settled by arbitration in accordance with the Arbitration Rules of the London Court of International Arbitration. The seat of the arbitration shall be in London, United Kingdom. Unless otherwise agreed in writing by the parties, the arbitral proceedings shall be governed by the provisions of the Arbitration Act 1996. The language of the arbitral proceedings shall be English. Under no circumstances are the arbitrators authorized to make awards contrary to the damages exclusions, liability limitations, remedial and other provisions of this Agreement. It is agreed between the Parties that for the purposes of the arbitral proceeding, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996. The arbitration award shall be final and binding on the Parties. All aspects of the arbitration proceeding, and award shall be confidential. Any court having jurisdiction shall be entitled to enforce the agreement of the parties to arbitrate their disputes and enter judgment on any arbitral award hereunder.