

ESMCP TERMS AND CONDITIONS – USER SERVICES

SCHEDULE 32

INTELLECTUAL PROPERTY RIGHTS

CHANGE HISTORY

Version	Date	Description	Document Number
1.0	2022.08.01	Base Version – MSC 2.0 unamended	72939627.1
1.2	2023.07.27	Issued for release to bidders with ITPD	
1.3	2023.10.25	Issued for release to bidders prior to detailed dialogue	
2.0	2024.03.15	Issued for release to bidders at ISFT publication	
3.0	2024.10.01	Issued for release to the Preferred Bidder prior to contract conformance	
4.0	2024.12.12	Issued for release to the Preferred Bidder for contract execution	

Schedule 32 (*Intellectual Property Rights*)

1 INTELLECTUAL PROPERTY RIGHTS

1.1 Except as expressly set out in this Contract:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
 - (i) the Authority Software;
 - (ii) the Authority Data; and
 - (iii) the Authority Background IPRs;
- (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

1.4 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 1 to this Schedule 32 (*Intellectual Property Rights*) and shall keep Annex 1 updated during the Term.

2 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specialy Written Software and Project Specific IPRs

- 2.1 Subject to Paragraph 2.17 (*Patents*) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Paragraph 1.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):
- (a) the Documentation, Source Code and the Object Code of the Specially Written Software (other than any modifications or enhancements to Supplier COTS Software and Third Party COTS Software); and
 - (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (other than any modifications or enhancements to Supplier COTS Software and Third Party COTS Software) (together the “**Software Supporting Materials**”);
- but not including any Know-How, trade secrets or Confidential Information.

2.2 The Supplier:

- (a) shall:
 - (i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code (other than for any modifications or enhancements to Supplier COTS Software and Third Party COTS Software) and Object Code forms together with relevant Documentation and all related Software Supporting Materials [REDACTED] of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code (other than for any modifications or enhancements to Supplier COTS Software and Third Party COTS Software) and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

- (iii) without prejudice to Paragraph 2.11 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs, or which are otherwise required for or reasonably likely to be of assistance in the use of the Specially Written Software and/or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in the Authority upon their receipt by the Authority;
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software (other than any modifications or enhancements to Supplier COTS Software and Third Party COTS Software) and Project Specific IPRs are properly transferred to the Authority; and
- (d) shall for all Supplier Software and Third Party Software unless specified otherwise in Schedule 12 (Software) execute an industry standard source code escrow agreement on terms acceptable to the Authority, including the following requirements:
 - (i) the escrow deposit to be refreshed (and validated by the escrow agent) each time a new release of software is delivered to the Authority, and maintained with the current and previous release of software for the Production Environment plus the current release for all ESN Environments;
 - (ii) 'Release Events' to include: failure to meet contractual obligations, failure to maintain software; a Financial Distress Event without Appropriate Accepted Mitigation of the software owner (unless a guarantor has stepped in to fulfil the owner's obligations effectively); failure to pay escrow storage fees;
 - (iii) escrow storage fees to be paid the by Supplier, release fees to be paid by the Authority;
 - (iv) 'Release Events' to trigger the automatic grant of all such licences as are necessary for the Authority to make effective use of the relevant Supplier Software or Third Party Software from release..

Supplier Software and Supplier Background IPRs

- 2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 12 (*Software*) or sent to the Technical Design Authority for review and approval granted by the Authority. The Supplier shall not use any Supplier COTS Software in the provision of the Services which cannot be licensed in accordance with Paragraph 2.4(b) unless approval is granted by the Authority following a review by the Technical Design Authority.
- 2.4 The Supplier hereby grants to the Authority (and to any User Organisation which has entered into a User Organisation Order Contract with the Supplier, and to (i) any User Organisation on behalf of which the Authority or any other User Organisation which has entered into a User Organisation Order Contract with the Supplier acts or represents in the procurement of the Services (or substantially equivalent services) or use of the Emergency Services Network; and to (ii) any third party acting for or representing the Authority or a User Organisation in the procurement of the Services (or substantially equivalent services) or use of the Emergency Services Network):
- (a) subject to the provisions of Paragraph 2.17 (*Patents*) and Clause 35.11(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display, copy or translate (including but not limited to for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
 - (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority or any User Organisation for any purpose relating to the Services (or substantially equivalent services) and/or for any purpose relating to the Emergency Services Network, in each case including for the purposes of translation and/or training; and
 - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) and/or for any purpose relating to the Emergency Services Network, in each case including for the purposes of translation and/or training;
 - (b) a licence to use during the Term (including during any period of provision of Termination Services) the Supplier COTS Software (including any modifications or enhancements to Supplier COTS Software) for which the Supplier delivers a copy to the Authority or User Organisation and Supplier COTS Background IPRs on the licence terms identified in:

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

- (i) the Appendix to Annex 1 to Schedule 12 (Software); or
- (ii) a letter in or substantially in the form set out in Annex 1 to Schedule 12 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date

provided always that:

- (iii) those licence terms shall grant to the Authority or User Organisation rights no less beneficial than those applicable for Supplier Non-COTS Software and Supplier Non-COTS Background IPRs specified in Paragraph 2.4(a);
 - (iv) those licence terms shall not amend or take precedence over any other provision of this Agreement (including in respect of liability, indemnity protection or other allocation of risk); and
 - (v) the Authority and User Organisations shall remain entitled to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Paragraph 2.8 (*Authority's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs;
- (c) a perpetual royalty-free non-exclusive licence to use for any purpose relating to the Services (or substantially equivalent services) and/or for any purpose relating to the Emergency Services Network, any Know-How, trade secrets or Confidential Information contained within or considered by the Authority or User Organisation acting reasonably to be of assistance in the use of the Specially Written Software, or the Project Specific IPRs;
- (d) a royalty-free non-exclusive licence to use without limitation for so long as the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Supplier COTS Software (including any modifications or enhancements to Supplier COTS Software), the Supplier COTS Background IPRs continue to be licensed under Paragraph 2.4(a) or 2.4(b) any Know-How, trade secrets or Confidential Information contained within or considered by the Authority or User Organisation acting reasonably to be of assistance in the use of the same .

2.5 At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence or require the Authority or relevant User Organisation to terminate the sub-licence (as the context requires) granted in respect of the Supplier Non-COTS Software under Paragraph 2.4(a)(i) or in respect of the Supplier Non-COTS

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

Background IPRs under Paragraph 2.4(a)(ii) by giving [REDACTED], notice in writing (or such other period as agreed by the Parties) if the Authority or User Organisation or any person to whom the Authority or User Organisation grants a sub-licence pursuant to Paragraph 2.7 (*Authority's right to sub-licence*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within [REDACTED] after the Supplier gives the Authority or User Organisation written notice specifying the breach and requiring its remedy. The right set out in this Paragraph 2.5 for the Supplier to terminate a licence or to require the Authority or User Organisation to terminate a sub-licence shall apply only in respect of the licence or sub-licence granted to the breaching licensee or sub-licensee, and not to any other licensee or sub-licensee. If the Supplier terminates an Authority or User Organisation licence pursuant to this Paragraph 2.5 the Supplier shall be deemed to automatically grant to the Authority's and User Organisations' sub-licensees direct licences on the same terms as the Authority or User Organisation had granted such sub-licences to the sub-licensees prior to the termination of its licence.

2.6 In the event:

- 2.6.1 the Authority's or User Organisation's licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Paragraph 2.5, the Authority or User Organisation (as the case may be) shall:
- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
 - (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within [REDACTED] of the termination of the licence, the Authority or User Organisation may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be);
 - (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority or User Organisation) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs; and

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

- (d) notify the Supplier of all sub-licences it had granted under its licence (which automatically become direct licences from the Supplier to the relevant sub-licensee pursuant to Paragraph 2.5);
- 2.6.2 the Authority or User Organisation is required to terminate a sub-licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs pursuant to Paragraph 2.5, the Authority or User Organisation (as the case may be) shall:
 - (a) immediately notify the sub-licensee to cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
 - (b) notify the sub-licensee that it must, at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within [REDACTED] of the termination of the sub-licence, the sub-licensee may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
 - (c) notify the sub-licensee that it must ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the sub-licensee) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Authority's right to sub-license

- 2.7 Subject to Paragraph 2.17 (*Patents*) the Authority or User Organisation may sub-license:
 - (a) the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Authority or User Organisation (which includes the right of the sub-licensee itself to sub-license the rights);

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

- (ii) the sub-licence authorises the third party to use the rights licensed in Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) and/or for any purpose relating to the Emergency Services Network; and
 - (iii) the sub- licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*) (unless the sub- licensee is a User Organisation which has entered into a User Organisation Order Contract with the Supplier in which case no such confidentiality requirements/undertaking is required); and
- (b) the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software (including any modifications or enhancements to Supplier COTS Software and Third Party COTS Software) and/or the Project Specific IPRs provided that:
 - (i) the sub- licence is on terms no broader than those granted to the Authority or User Organisation; and
 - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

- 2.8 The Authority or User Organisation may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to:
- (a) a Central Government Body; or
 - (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority or User Organisation.
- 2.9 Any change in the legal status of the Authority or User Organisation which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*). If the Authority or User Organisation ceases to be a Central Government Body, the successor body to the Authority or User Organisation shall still be entitled to the

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services Version 4.0

benefit of the licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*).

- 2.10 If a licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*) is novated under Paragraph 2.8 (*Authority's right to assign/novate licences*) or there is a change of the Authority's or User Organisation's status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority or User Organisation.

Third Party Software and Third Party IPRs

- 2.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 12 (*Software*) or approval is granted by the Authority following a review by the Technical Design Authority and has in each case either (and in advance of such use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs)):

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority or User Organisation on a royalty-free basis to the Authority or User Organisation and on terms no less favourable to the Authority or User Organisation than those set out in Paragraphs 2.4(a) and 2.5 (*Supplier Software and Supplier Background IPRs*) and Paragraph 2.8 (*Authority's right to assign/novate licences*); or

- (b) complied with the provisions of Paragraph 2.12;

and if the Supplier uses any Third Party Non-COTS Software or Third Party Non-COTS IPRs in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) prior to the execution of the direct licence under Paragraph 2.11(a) or prior to obtaining approval in writing of one of the options under Paragraph 2.12(b)(i) or (ii) then the Supplier shall be deemed to represent to the Authority or User Organisation that it is authorised to grant, and shall hereby grant to the Authority or User Organisation a licence to use the Third Party Non-COTS IPRs and/or Third Party Non-COTS Software (as the case may be) on equivalent terms as the direct licence referred to in Paragraph 2.11(a).

- 2.12 If the Supplier cannot obtain for the Authority or User Organisation a direct licence in respect of any Third Party Non-COTS Software and/or

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services Version 4.0

Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.11(a), the Supplier shall:

- (a) notify the Authority or User Organisation in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing either:
 - (i) the terms of the licence from the relevant third party; or
 - (ii) use without a licence, with reference to the acts authorised and the specific IPR involved. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

2.13 The Supplier shall:

- (a) notify the Authority and User Organisations in writing of all Third Party COTS Software (including any modifications or enhancements to Third Party COTS Software) and Third Party COTS IPRs that it uses and the terms on which it uses them (and for these purposes such notification may be made through the Self-Service Interface); and
- (b) (unless instructed otherwise in writing by the Authority) in any case within [REDACTED] of notification pursuant to Paragraph 2.13(a) use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software (including any modifications or enhancements to Third Party COTS Software) and Third Party COTS IPRs grants a direct licence to the Authority or User Organisation on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party;

and if the Supplier uses any Third Party COTS Software or Third Party COTS IPRs in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) prior to the execution of a direct licence as referred to in Paragraph 2.13(b), then the Supplier shall be deemed to represent to the Authority or User Organisation (as the case may be) that it is authorised to grant,

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services Version 4.0

and shall hereby grant the Authority or User Organisation a licence to use the Third Party COTS IPRs and/or Third Party COTS Software (including any modifications or enhancements to Third Party COTS Software) (as the case may be) on equivalent terms to those which apply to the Supplier COTS Software and Supplier COTS Background IPRs as set out in Annex 1 to Schedule 12 (Software).

- 2.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority or User Organisation does not have a suitable licence, then the Supplier must notify the Authority or User Organisation within [REDACTED] of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

- 2.15 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences or sub-licences granted by the Supplier, the Authority, User Organisation, or relevant third party pursuant to or as contemplated by this Paragraph 2.
- 2.16 The Supplier shall, if requested by the Authority or User Organisation in accordance with Schedule 25 (*Exit Management*) and at the Supplier's cost:
- (a) grant (or procure the grant) to any Replacement Supplier of:
 - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority or User Organisation in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*) duly executed by the Replacement Supplier;
 - (ii) a licence to use any Supplier COTS Software (including any modifications or enhancements to Supplier COTS Software) and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
 - (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

COTS Software (including any modifications or enhancements to Third Party COTS Software) and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party;

and if the Supplier fails to comply with its obligations under Paragraphs 2.16(a) and (b) then the Supplier shall be deemed to represent to the Replacement Supplier that it is authorised to grant, and shall hereby grant to the Authority or User Organisation a licence or licences (as the case may be) on equivalent terms as the licences referred to in Paragraphs 2.16(a) and (b).

Patents

- 2.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority, any User Organisation, any Replacement Supplier, or any sub-licensee of any of those parties the Supplier hereby grants to the Authority, any User Organisation, and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract, and a right to sub-license such rights to any permitted sub-licensee.

3 LICENCES GRANTED BY THE AUTHORITY

- 3.1 Subject to Paragraph 3.3, the Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence for the Term of the Contract to use the Authority Software, the Authority Background IPRs, the Specially Written Software and the Project Specific IPRs and the Authority Data for the purpose of the provision of the Services, including using or exploiting the Specially Written Software and the Project Specific IPRs, including (but not limited to) the right to grant sub-licences to Sub-contractors [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0

- ## User Services

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0

[illegible]

ANNEX 1: SPECIALLY WRITTEN SOFTWARE AND PROJECT SPECIFIC IPRS

[illegible]

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0

	<p>[REDACTED]</p>
[REDACTED]	<p>[REDACTED]</p>
[REDACTED]	<p>[REDACTED]</p>
[REDACTED]	<p>[REDACTED]</p>

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0

[illegible]

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0

	<div></div> <div></div> <div></div> <div></div>
<div></div>	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>

Licence For the Use of ESN Trade Marks

This Licence Agreement sets out the terms on which the Secretary of State for the Home Department grants the company listed below (Licensee) the right to use the ESN Trade Marks.

Licensor Name	The Secretary of State for the Home Department
Licensor Address	Home Office, 2 Marsham Street, London, SW1P 4DF
Licensee Name	
Licensee company number	
Licensee Address	
Commencement Date	
Territory	United Kingdom
Marks	the registered and unregistered ESN trade marks set out Schedule 1, and any other ESN trade marks that may be notified in writing by the Licensor to the Licensee from time to time.
Scope of Authorised Use subject to approval of specific content	<input type="checkbox"/> licensee website <input type="checkbox"/> licensee signage <input type="checkbox"/> licensee social media <input type="checkbox"/> licensee vehicles and equipment <input type="checkbox"/> licensee invoices and letter head <input type="checkbox"/> licensee marketing materials <input type="checkbox"/> products/packaging supplied by licensee
Special Instructions	

By signing this Licence Agreement, the Licensee agrees to comply with the terms of this Licence Agreement including the terms and conditions set out in Schedule 2, and the ESN Brand Guidelines set out in Schedule 3

Signed by authorised signatory for the Licensee

Signature:

Name	
Position	
Date	

Signed by authorised signatory for the Licensor



Signature:

Name	
Position	
Date	

Schedule 1

Marks

Registered Marks

	Mark	Registration number
1		UK00003766473
2		UK00003766476

Unregistered Marks

ESN

Emergency Services Network

ESN Emergency Services Network



|



|

Schedule 2

TERMS AND CONDITIONS

1 Interpretation

The following definitions and rules of interpretation apply in this Licence Agreement.

1.1 Definitions:

Authorised Use	use of the Marks in the Territory as approved by Licensor in accordance with the Brand Guidelines and the terms of this agreement on the media or materials indicated on page 1 of the Licence Agreement.
Brand Guidelines	the Licensor's guidelines prescribing the permitted form in which the Mark may be used, a copy of which is at Schedule 3, including any amendments or additions notified in writing by the Licensor to the Licensee from time to time.
Commencement Date	The date of the front sheet of the Licence Agreement
ESMCP	Emergency Services Mobile Communications Programme
ESN	The Emergency Services Network
Group	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary of a holding company of that company.
Marks	the registered and unregistered trade marks set out in Schedule 1, including the listed registrations and applications and any registrations granted pursuant to those applications that may be notified in writing by the Licensor to the Licensee from time to time.
Territory	the UK.

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services Version 4.0

- 1.2 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 References to clauses and Schedules are to the clauses and Schedules of this Licence Agreement.
- 1.4 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:

For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be construed so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

- 1.5 This Licence Agreement shall be binding on, and enure to the benefit of, the parties to this Licence Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

2 Grant

- 2.1 For the duration of the Licence Agreement, and providing the Licensee remains an authorised supplier to ESMCP or an authorised user of the ESN, the Licensor grants to the Licensee a non-exclusive, non-transferable, royalty free licence to use the Marks for the Authorised Use (as indicated on page 1 of this Licence Agreement) in the Territory subject to the Licensee's compliance with Clause 2.2 and the other the terms of this Licence Agreement.
- 2.2 The Licensee shall only use the Marks for the Authorised Use in accordance with the Brand Guidelines and following the approval process set out in paragraphs 3.1-3.4 of this Licence Agreement.
- 2.3 The Licensee shall not make any use of the Marks in, or specifically aimed at, any country outside the Territory without the prior written consent of the Licensor.

3 Licensed Use and Approvals

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services Version 4.0

- 3.1 The Licensee shall send to the Licensor for its prior written approval, the text and layout/presentation of all proposed use of the Marks. In the event that the Licensor disapproves of such proposed use, it shall give written notice of such disapproval to the Licensee [REDACTED] of receipt by the Licensor of the proposed use in writing. The Licensee shall not use the Marks in a way or form that has not been approved by the Licensor.
- 3.2 The Licensee shall send any requests for approval under the above clause to [REDACTED] with a copy of the proposed use in a format acceptable to Licensor.
- 3.3 The Licensee is not obliged to obtain written approval for the proposed use where the same use on the same media has been approved by the Licensor within the previous [REDACTED]
- 3.4 The Licensee shall comply strictly with the directions of the Licensor regarding the form and manner of the application of the Mark, including the directions contained in the Brand Guidelines.

4 Title, goodwill and registrations

- 4.1 The Licensee acknowledges that the Licensor is the proprietor of the Marks.
- 4.2 Any goodwill derived from the use by the Licensee of the Marks shall accrue to the Licensor. The Licensor may, at any time, call for a document confirming the assignment of that goodwill and the Licensee shall immediately execute it.
- 4.3 The Licensee shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Marks or the reputation or goodwill associated with the Marks or the Licensor, or that may invalidate or jeopardise any registration of the Marks.
- 4.4 The Licensee shall not apply for, or obtain, registration of any trade mark, domain name, company name or social media account name in any country which consists of, or comprises, or is confusingly similar to, the Marks.

5 Protection of the Mark

- 5.1 The Licensee undertakes to ensure that its use of the Marks shall in no way reduce or diminish the reputation, image and prestige of the Marks or ESN or ESMCP.
- 5.2 The Licensee shall immediately notify the Licensor in writing giving full particulars, if any of the following matters come to its attention:
- 5.2.1 any actual, suspected or threatened infringement of the Marks;
 - 5.2.2 any actual or threatened claim that the Marks is invalid;

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

- 5.2.3 any actual or threatened opposition to the Mark;
- 5.2.4 any claim made or threatened that use of the Marks infringes the rights of any third party;
- 5.2.5 any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Licensee under this Licence Agreement; or
- 5.2.6 any other form of attack, charge or claim to which the Marks may be subject;

and shall not make any admissions relating to these matters, other than to the Licensor, and shall provide the Licensor with all assistance that it may reasonably require in the conduct of any claims or proceedings.

5.3 In respect of any of the matters listed in clause 5.2, the Licensor shall:

- 5.3.1 decide what action if any to take;
- 5.3.2 have exclusive control over, and conduct of, all claims and proceedings.

5.4 the Licensor shall bear the cost of any proceedings relating to any of the matters listed in clause 5.2 and shall be entitled to retain all sums that it recovers in any action for its own account.

5.5 Nothing in this Licence Agreement shall constitute any representation or warranty that:

- 5.5.1 any registration comprised in the Marks is valid;
- 5.5.2 any application comprised in the Marks shall proceed to grant or, if granted, shall be valid; or
- 5.5.3 the exercise by the Licensee of rights granted under this Licence Agreement will not infringe the rights of any person.

6 Liability and indemnity

6.1 To the fullest extent permitted by law, the Licensor shall not be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Licensee's exercise of the rights granted to it under this Licence Agreement.

6.2 The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages and losses and all other reasonable professional costs and expenses suffered or incurred by the Licensor arising out of or in connection with:

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

6.2.1 the Licensee's breach or negligent performance or non-performance of this Licence Agreement, including any product liability claim relating to the licensed products and services manufactured, supplied or put into use by the Licensee;

6.2.2 the enforcement of this Licence Agreement; or

6.3 Nothing in this Licence Agreement shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence.

7 Sub-licensing

7.1 The Licensee shall not grant sub-licences under this Licence Agreement or otherwise transfer or assign its rights under this Licence Agreement.

8 Assignment and other dealings

8.1 The Licensee shall not assign, transfer, mortgage, charge, declare a trust over, or deal in any other manner with any or all of its rights under this Licence Agreement.

9 Duration and termination

9.1 This Licence Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with this Clause 9.

9.2 This Licence Agreement shall terminate if the Licensors cease to be an authorised supplier to ESMCP or an authorised user of ESN.

9.3 The Licensors shall have the right to terminate this Licence Agreement on giving the Licensee not less than [REDACTED] written notice of termination.

9.4 Without affecting any other right or remedy available to it, the Licensors may terminate this Licence Agreement with immediate effect if:

9.4.1 the Licensee commits a material breach of any term of this Licence Agreement and (if such breach is remediable) fails to remedy that breach within a period of [REDACTED] after being notified to do so;

9.4.2 the Licensee repeatedly breaches any of the terms of this Licence Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Licence Agreement;

9.4.3 the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**)

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

- as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- 9.4.4 the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
- 9.4.5 the Licensee applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 9.4.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
- 9.4.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given, or if an administrator is appointed over the Licensee (being a company, partnership or limited liability partnership);
- 9.4.8 the holder of a qualifying floating charge over the assets of the Licensee (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 9.4.9 a person becomes entitled to appoint a receiver over all or any of the assets of the Licensee or a receiver is appointed over all or any of the assets of the Licensee;
- 9.4.10 a creditor or encumbrancer of the Licensee 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 and such attachment or process is not discharged within [REDACTED];
- 9.4.11 any event occurs, or proceeding is taken, with respect to the Licensee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.4.3 to clause 9.4.10 (inclusive);
- 9.4.12 the Licensee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

- 9.4.13 the Licensee's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Licence Agreement is in jeopardy; or
 - 9.4.14 there is a change of control of the Licensee (within the meaning of section 1124 of the Corporation Tax Act 2010); or
 - 9.4.15 the Licensee challenges the validity of all or any of the Marks.
- 9.5 For the purposes of clause 9.4.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
- 9.5.1 a substantial portion of this Licence Agreement; or
 - 9.5.2 any of the obligations set out in clauses 2 (*Grant*), 4 (*Title, goodwill and registrations*) or 6 (*Liability and Indemnity*).

over the term of this Licence Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

10 Consequences of termination

- 10.1 On expiry or termination of this Licence Agreement for any reason and subject to any express provisions set out elsewhere in this Licence Agreement:
 - 10.1.1 all rights and licences granted pursuant to this Licence Agreement shall cease;
 - 10.1.2 the Licensee shall cease all use of the Marks
- 10.2 Within [REDACTED] of termination, the Licensee shall remove all copies on the Marks from its materials, and media in its control.
- 10.3 Any provision of this Licence Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Licence Agreement shall remain in full force and effect.
- 10.4 Termination or expiry of this Licence Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Licence Agreement which existed at or before the date of termination or expiry.

11 Further assurance

- 11.1 Each party shall and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Licence Agreement.

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services Version 4.0

12 Waiver

- 12.1 No failure or delay by a party to exercise any right or remedy provided under this Licence 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.

13 Variation

- 13.1 No variation of this Licence Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14 Severance

- 14.1 If any provision or part-provision of this Licence Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Licence Agreement.
- 14.2 If any provision or part-provision of this Licence Agreement is deemed deleted under clause 14.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15 Counterparts

- 15.1 This Licence Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Licence Agreement.
- 15.2 Transmission of an executed counterpart of this Licence Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet-ink" hard copy original of their counterpart.
- 15.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

16 Third party rights

- 16.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence Agreement.

17 No partnership or agency

**SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS) ESMCP User Services
Version 4.0**

- 17.1 Nothing in this Licence Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18 Inadequacy of damages

- 18.1 Without prejudice to any other rights or remedies that the Licensor may have, the Licensee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Licence Agreement by the Licensee. Accordingly, the Licensor shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Licence Agreement.

19 Governing law

- 19.1 This Licence Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

20 Jurisdiction

- 20.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Licence Agreement or its subject matter or formation.

**Schedule 3
ESN Brand Guidelines**