

LICENCE AGREEMENT

For the use of intellectual property of the UK Hydrographic Office and some other organisations in view only commercial web-based products and services intended for non-navigational purposes

LICENCE AGREEMENT NUMBER: **GB XX - 000 - Name**

1. THE PARTIES

This Agreement is between:

- (1) The “LICENSOR” The UK Hydrographic Office (the UKHO), of Admiralty Way, Taunton, Somerset, TA1 2DN, United Kingdom, for and on behalf of the Secretary of State for Defence.

and

- (2) The “LICENSEE” **[LICENSEE's name] [Registered company number] of [LICENSEE's registered address including country].**

This and the following pages comprise the Agreement for which the duly authorised representatives below have agreed and signed on behalf of the PARTIES.

On behalf of:	The LICENSOR	The LICENSEE
Signatures:		
Name (Print):		
Position:		
Date:		

2. Definitions

The following words and expressions shall have the following meanings except where the context otherwise requires:

- | | | |
|-------|-------------------------------|---|
| 2.1. | “ACCOUNTING PERIOD” | Each period of six months from 1 January to 30 June and from 1 July to 31 December of each year during the term of this Agreement. |
| 2.2. | “AUDITOR” | An auditor that is independent of the LICENSOR, has no conflicts of interest in relation to the LICENSEE and is selected and appointed by the LICENSOR. |
| 2.3. | “COMMENCEMENT DATE” | [XX Month YYYY] |
| 2.4. | “CONFIDENTIAL INFORMATION” | Has the meaning given in clause 11.1 below. |
| 2.5. | “CUSTODIANSHIP ORGANISATIONS” | The third parties listed in Schedule C to this Agreement. |
| 2.6. | “DETERMINATION” | Has the meaning given in clause 6.10 below. |
| 2.7. | “END-USER” | Any person permitted by the LICENSEE to view the LICENSEE'S MATERIAL. |
| 2.8. | “EXPERT” | Has the meaning given in clause 6.6.3 below. |
| 2.9. | “LICENCE PERIOD” | The period commencing from the COMMENCEMENT DATE continuing indefinitely unless terminated by either PARTY in accordance with clause 20 below. |
| 2.10. | “LICENSEE'S MATERIAL” | The material produced by the LICENSEE as a result of the operation of this Agreement. |
| 2.11. | “LICENSOR'S MATERIAL” | The material described in clause 4 below. |

- 2.12. "PAGE IMPRESSION" A request for a file whose type is defined as a page in log analysis, excluding requests by web robots. Any change of LICENSEE'S MATERIAL displayed within a page, whether or not resulting in a new page file request, is a new page impression. (See www.abc.org.uk).
- 2.13. "PARTIES" The persons identified in clause 1 above who individually are sometimes referred to as 'the PARTY'.
- 2.14. "PERMITTED PURPOSES" For use in view only commercial web-based products and services intended for non-navigational purposes.
- 2.15. "TERRITORY" Worldwide.
- 2.16. "WORKING DAY" Monday to Friday, not including official Public Holidays in England and Wales.

3. Supply and licence

- 3.1. The LICENSOR shall publish a list of the LICENSOR'S MATERIAL it can supply to the LICENSEE on its website. Such list shall include the form, format and normal delivery dates and update frequencies available. The LICENSOR may amend that list from time to time as it finds necessary. The LICENSEE may notify the LICENSOR which parts of the LICENSOR'S MATERIAL on that list that it wants to receive and the LICENSOR shall use reasonable endeavours to supply those parts. Otherwise, the LICENSEE acknowledges that it is responsible for obtaining the LICENSOR'S MATERIAL at its own expense through the LICENSOR's normal distribution routes.
- 3.2. The LICENSOR grants the LICENSEE, subject to the terms and conditions of this Agreement including its Schedules, a non-exclusive non-transferable licence to reproduce and adapt (as set out in Sections 17 and 21 of the Copyright, Designs and Patents Act 1988 (c. 48)) and, where the context permits and where appropriate, to extract and re-utilise (as set out in Regulation 16 of the Copyright and Rights in Databases Regulations 1997) the LICENSOR'S MATERIAL in the TERRITORY during the LICENCE PERIOD for the purpose of:
- 3.2.1. internal research and development;
 - 3.2.2. internal quality assurance processes relating to the LICENSEE'S MATERIAL;
 - 3.2.3. creating the LICENSEE'S MATERIAL using only that LICENSOR'S MATERIAL shown in Schedule B for each LICENSEE'S MATERIAL; and

- 3.2.4. displaying on web pages accessible to END-USERS the LICENSEE'S MATERIAL in the form and format specified in this Agreement within the TERRITORY.
- 3.3. The LICENSEE shall not reproduce or adapt the LICENSOR'S MATERIAL to create LICENSEE'S MATERIAL for purposes other than the PERMITTED PURPOSES. The LICENSEE shall not mislead or permit or authorise others to mislead third parties about the PERMITTED PURPOSES. The LICENSEE shall not permit, by way of end user licence provisions or otherwise, END-USERS to use the LICENSEE'S MATERIAL for other than the PERMITTED PURPOSES. If there is any conflict between this clause and Schedule B then this clause shall take precedence.
- 3.4. Where the LICENSEES' MATERIAL is displayed on a website that requires END-USER registration, unless otherwise agreed in writing by the PARTIES, the LICENSEE shall supply the LICENSOR with one registration, free of charge, valid for the LICENCE PERIOD and for 6 years thereafter (or until the website displaying the LICENSEE'S MATERIAL is no longer available for use).
- 3.4.1. The LICENSOR, and any third parties acting on behalf of the LICENSOR, shall only use the supplied registration or viewing facility as necessary to exercise the LICENSOR's rights or perform its obligations under this Agreement or to protect its intellectual property rights

4. The LICENSOR'S MATERIAL

- 4.1. Save as otherwise provided either by this Agreement or by any other agreement between the PARTIES the LICENSEE shall remain responsible for obtaining all necessary permissions to reproduce material protected by intellectual property rights of third parties. The LICENSEE shall not reproduce material protected by such third party rights and published by the LICENSOR unless requisite third party permission has been obtained by the LICENSEE.
- 4.1.1. For the avoidance of doubt, the LICENSOR'S MATERIAL supplied to the LICENSEE under this Agreement may include third party material. NO RIGHTS ARE GRANTED TO REPRODUCE THIS THIRD PARTY MATERIAL EXCEPT THAT FROM A CUSTODIANSHIP ORGANISATION EXPLICITLY INCLUDED IN THIS AGREEMENT.
- 4.2. The LICENSOR'S MATERIAL shall consist of the following (and only to the extent that such material is the sole copyright (or other intellectual property right) of the LICENSOR or the CUSTODIANSHIP ORGANISATIONS):
- 4.2.1. Chart data**
- 4.2.1.1. Chart data shall consist of all intellectual property that belongs to either the Crown or the CUSTODIANSHIP ORGANISATIONS that is:
- 4.2.1.1.1. published by the LICENSOR within its commercial range of navigational charts, which are listed in its publication NP 131; or
- 4.2.1.1.2. supplied by the LICENSOR to the LICENSEE pursuant to clause 3.1 above; or
- 4.2.1.1.3. published by any licensee of the LICENSOR lawfully reproduced or adapted from such navigational charts or supplied material.
- 4.2.1.2. Chart data shall include all updates to that data published by the LICENSOR.

4.2.1.3. The LICENSOR shall use reasonable endeavours to provide the LICENSEE within five WORKING DAYS of signature of this Agreement by both PARTIES and within five WORKING DAYS of 1 January and 1 July during the LICENCE PERIOD the following information about third-party rights:

- 4.2.1.3.1. a list of navigational charts currently published by the LICENSOR and a summary, expressed to the nearest 5%, of the third parties whose material was used in the compilation of the charts;
- 4.2.1.3.2. a list of all cells where the cell content of LICENSOR and CUSTODIANSHIP ORGANISATIONS is greater than 0% and an estimate of likely sources of third party material within those areas. The LICENSEE acknowledges that this information is only an estimate and that it is the LICENSEE's responsibility to identify third-party rights within any material it intends to reproduce or adapt.

4.2.2. *Astronomical data*

4.2.2.1. Astronomical data shall consist of all intellectual property that belongs to the Crown that is

- 4.2.2.1.1. published by the LICENSOR within its commercial range of Astronomical Publications as listed in its publication NP 131,
- 4.2.2.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Astronomical data.
- 4.2.2.1.3. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.
- 4.2.2.1.4. Astronomical data shall include all updates to that data published or supplied by the LICENSOR.

4.2.3. *Bathymetry data (surveys)*

4.2.3.1. Bathymetry data shall consist of all depth information, including depth contours, collected, processed and compiled by the LICENSOR or the CUSTODIANSHIP ORGANISATIONS and who's copyright or other intellectual property rights belong to the Crown or the CUSTODIANSHIP ORGANISATIONS and which are supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement. Bathymetry data (surveys) shall include all updates to that data supplied by the LICENSOR.

4.2.3.2. The bathymetric data supplied by the LICENSOR to the LICENSEE are shown at paragraph 1 of Schedule D, together with the name of the relevant intellectual property owner.

4.2.4. *Distance Tables data*

4.2.4.1. Distance Tables data shall consist of all intellectual property that belongs to either the Crown that is

- 4.2.4.1.1. published by the LICENSOR within its commercial range of Admiralty Distance Tables publications as listed in its publication NP 131,
- 4.2.4.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Distance Tables data.
- 4.2.4.1.3. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.
- 4.2.4.1.4. Distance Tables data shall include all updates to that data published or supplied by the LICENSOR.

4.2.5. *Lights and Fog Signals data*

- 4.2.5.1. Lights and fog signals data shall consist of all intellectual property that belongs to either the Crown that is
 - 4.2.5.1.1. published by the LICENSOR within its commercial range of Lists of Lights and Fog Signals (ALL) publications as listed in its publication NP 131,
 - 4.2.5.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Lights and Fog Signals data;
 - 4.2.5.1.3. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.
 - 4.2.5.1.4. Lights and fog signals data shall include all updates to that data published or supplied by the LICENSOR.

4.2.6. *Maritime limits data*

- 4.2.6.1. Maritime limits data shall consist of all intellectual property that belongs to the Crown that is
 - 4.2.6.1.1. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.
 - 4.2.6.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Maritime Limits data.
 - 4.2.6.1.3. Maritime limits data shall include all updates to that data supplied by the LICENSOR.
 - 4.2.6.1.4. The Maritime limits data supplied by the LICENSOR to the LICENSEE are shown at paragraph 2 of Schedule D, together with the name of the relevant intellectual property owner.

4.2.7. *Ocean Passages data*

- 4.2.7.1. Ocean Passages data shall consist of all intellectual property that belongs to either the Crown that is
 - 4.2.7.1.1. published by the LICENSOR within its commercial range of Ocean Passages publications as listed in its publication NP 131,

- 4.2.7.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Ocean Passages.
- 4.2.7.1.3. Ocean Passages data shall include all updates to that data published by the LICENSOR.

4.2.8. Offshore installations data

- 4.2.8.1. Offshore installations data shall consist of all intellectual property that belongs to the Crown that is
 - 4.2.8.1.1. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.
 - 4.2.8.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Offshore installations data.
 - 4.2.8.1.3. Offshore installations data shall include all updates to that data supplied by the LICENSOR.
 - 4.2.8.1.4. The offshore installations data supplied by the LICENSOR to the LICENSEE are shown at paragraph 3 of Schedule D, together with the name of the relevant intellectual property owner.

4.2.9. Practice and exercise area (PEXA) data

- 4.2.9.1. Practice and exercise area (PEXA) data shall consist of all intellectual property that belongs to either the Crown or the CUSTODIANSHIP ORGANISATIONS which is
 - 4.2.9.1.1. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.
 - 4.2.9.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such PEXA data.
 - 4.2.9.1.3. PEXA data shall include all updates to that data supplied by the LICENSOR.
 - 4.2.9.1.4. The PEXA data supplied by the LICENSOR to the LICENSEE are shown at paragraph 4 of Schedule D, together with the name of the relevant intellectual property owner.

4.2.10. Radio Signals data

- 4.2.10.1. Radio Signals data shall consist of all intellectual property that belongs to the Crown that is
 - 4.2.10.1.1. published by the LICENSOR within its commercial range of Admiralty Lists of Radio Signals (ALRS) publications as listed in its publication NP 131,
 - 4.2.10.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Radio Signals data;
 - 4.2.10.1.3. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.

4.2.10.1.4. Radio Signals data shall include all updates to that data published or supplied by the LICENSOR.

4.2.11. Sailing Directions data (text only)

4.2.11.1. Sailing Directions data shall consist only of the editorial text that belongs to the Crown that is

4.2.11.1.1. published by the LICENSOR within its commercial range of Admiralty Sailing Directions as listed in its publication NP 131,

4.2.11.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Sailing Directions data.

4.2.11.1.3. Sailing Directions data shall include all updates to that data published by the LICENSOR.

4.2.12. Tidal data – simplified harmonic constants

4.2.12.1. The simplified harmonic constants shall consist of all intellectual property that belongs to the Crown that is

4.2.12.1.1. published in Part III of the latest editions of NP 201-4, the Admiralty Tide Tables, and the angles and factors information published in Table VII of the Admiralty Tide Tables.

4.2.12.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Tidal Predictions data.

4.2.12.1.3. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.

4.2.12.1.4. the simple harmonic constants shall include all updates to that data supplied by the LICENSOR.

4.2.12.2. The LICENSEE shall only use the simplified harmonic constants with the LICENSOR's simplified harmonic method of calculating tidal predictions published in the latest editions of NP 201-4, the Admiralty Tide Tables.

4.2.13. Tidal Predictions

4.2.13.1. Tidal Predictions shall consist of all intellectual property that belongs to the Crown that is:

4.2.13.1.1. published by the LICENSOR within its commercial range of Admiralty Tide Tables as listed in its publication NP 131; including

4.2.13.1.1.1. the application of time and height differences as published in Part II of the Admiralty Tide Tables,

4.2.13.1.1.2. the results produced from using the simplified harmonic constants as published in Part III of the Admiralty Tide Tables (using the simplified harmonic method of calculating tidal predictions) and the Angles and Factors information published in

Table VII of the Admiralty Tide Tables).

- 4.2.13.1.2. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Tidal Predictions data.
- 4.2.13.1.3. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.
- 4.2.13.1.4. Tidal Predictions shall include all updates to that data supplied by the LICENSOR.

4.2.14. Tidal Streams data

- 4.2.14.1. Tidal stream data shall consist of all intellectual property that belongs to the Crown that is:
 - 4.2.14.1.1. derived from the chart data listed in clause 4.2.1 above.
 - 4.2.14.1.2. published by the LICENSOR within its commercial range of Tidal Stream Atlases as listed in its publication NP 131; or
 - 4.2.14.1.3. published by any LICENSEE of the LICENSOR lawfully reproduced or adapted from such Tidal Stream Atlases.

4.2.15. Wreck and obstruction data

- 4.2.15.1. Wreck and obstruction data shall consist of all intellectual property belongs to the Crown that is
- 4.2.15.2. supplied to the LICENSEE by the LICENSOR for the purpose of this Agreement.
- 4.2.15.3. Wreck and obstruction data shall include all updates to that data supplied by the LICENSOR.
- 4.2.15.4. The wreck and obstruction data supplied by the LICENSOR to the LICENSEE are shown at paragraph 5 of Schedule D, together with the name of the relevant intellectual property owner.

4.2.16. Other data

- 4.2.16.1. The material, if any, described in this clause.

- 4.3. The LICENSEE shall inform the LICENSOR in writing of any actual or claimed defects or errors in the LICENSOR'S MATERIAL that come to the LICENSEE's attention during the LICENCE PERIOD as soon as practicable after the LICENSEE becomes aware of any such actual or claimed defects or errors.

5. Rights and obligations

- 5.1. The LICENSEE shall use its best endeavours to ensure that its employees comply with the LICENSEE's obligations under this Agreement. The LICENSEE shall use its best endeavours to ensure compliance and shall supply evidence satisfactory to the LICENSOR to show such compliance when required by the LICENSOR.
- 5.2. The LICENSEE shall use its best endeavours to ensure that its obligations are passed on to its distributors, agents and contractors.

- 5.3. The LICENSEE shall use reasonable endeavours to ensure that the LICENSOR'S MATERIAL and the LICENSEE'S MATERIAL are protected from unauthorised reproduction by third parties. In the event that the LICENSOR or the LICENSEE obtains evidence that the protection is not sufficient to prevent unauthorised reproduction they shall as soon as possible notify the other PARTY of such evidence. If such unauthorised reproduction in the reasonable opinion of the LICENSOR represents a measurable risk to the LICENSOR, then the LICENSEE shall, within five WORKING DAYS of receiving notice to this effect from the LICENSOR, propose an action or actions to improve the protection, including timescales to implement such improvements, for the LICENSOR's reasonable approval. If approved, the LICENSEE shall implement the improvements within the timescales stated.
- 5.4. Subject to clause 5.5 below the LICENSEE shall not place or authorise others to place the LICENSOR'S MATERIAL on a computer accessible to third parties, whether via the Internet or otherwise, other than in accordance with this Agreement.
- 5.5. The LICENSEE may place the LICENSEE'S MATERIAL on a computer accessible to third parties via the Internet or otherwise and shall include the following notices:
- 5.5.1. the words "NOT TO BE USED FOR NAVIGATION", to be displayed in a prominent position on each webpage containing LICENSOR'S MATERIAL, in such a way that they cannot be removed.

The following notices must be displayed in a prominent position on the website.

- 5.5.2. "This website has been derived in part from material obtained from the UK Hydrographic Office with the permission of the UK Hydrographic Office and Keeper of Public Records **and the following authorities:**
- Argentina - Servicio de Hidrografía Naval (SHN)
 - Belgium - Vlaamse Hydrografie
 - Croatia - Hvratski Hidrografski Institute (HHI)
 - Iceland - Hydrographic Department of the Icelandic Coast Guard
 - Malta - Malta Hydrographic Office, Ports and Yachting Directorate, Transport Malta
 - Netherlands – Netherlands Hydrographic Office / Dienst Der Hydrografie
 - Oman - National Hydrographic Office, Sultanate of Oman (NHOSO)
 - Portugal - Instituto Hidrográfico of Portugal (IHPT)
 - South Africa - South African Navy Hydrographic Office
 - Spain - Instituto Hidrográfico de la Marina
 - Suriname – Maritime Authority of Suriname (MAS)
- 5.5.3. "NOTICE: The UK Hydrographic Office (UKHO) and its licensors make no warranties or representations, express or implied, with respect to this product. The UKHO and its licensors have not verified the information within this product or quality assured it."; and
- 5.5.4. "© British Crown Copyright, **[the year of first publication]**."
- 5.5.5. The LICENSEE shall include a list of all relevant CUSTODIANSHIP ORGANISATIONS in the acknowledgements and notices.

- 5.6. Where LICENSEE'S MATERIAL is displayed on a website in an image form (including, but not limited to, all displayed chart data), it may only be displayed in a bit-map format (an image made up of rows and columns of pixels) including, but not limited to, file types with the extension jpg/jpeg, png, bmp, gif, tiff, raw.
- 5.6.1. The LICENSEE will make reasonable efforts to ensure that the END USER can view the LICENSEE'S MATERIAL but cannot download the underlying data and cannot download the LICENSEE'S MATERIAL as an editable file.

6. Payment

- 6.1. Web Use
- 6.1.1. In consideration of the LICENSOR granting the rights within this Agreement, the LICENSEE shall pay the LICENSOR a licence fee for each PAGE IMPRESSION of a web page containing the LICENSOR'S MATERIAL, which the LICENSOR shall calculate in accordance with Schedule A to this Agreement.
- 6.1.2. Within thirty days of the end of each ACCOUNTING PERIOD, the LICENSEE shall deliver to the LICENSOR a true and accurate report giving particulars of the LICENSEE'S MATERIAL displayed on websites during that ACCOUNTING PERIOD in sufficient detail to allow the LICENSOR to calculate the licence fees. The report shall include the following information (as an electronic file in Excel format or as otherwise mutually agreed by the PARTIES), namely:
- 6.1.2.1. the url of each website containing the LICENSOR'S MATERIAL;
- 6.1.2.2. the number of PAGE IMPRESSIONS of web pages containing LICENSOR'S MATERIAL for each website / domain.
- 6.2. All charges in this Agreement are, unless otherwise stated, shown exclusive of taxes or duties which shall be paid by the LICENSEE in accordance with the terms of any applicable regulations.
- 6.3. Based on the report prepared and submitted by the LICENSEE in accordance with clause 6.1.2, the LICENSOR shall prepare and provide to the LICENSEE an invoice which includes charges owed by the LICENSEE for the reported ACCOUNTING PERIOD. The LICENSEE shall pay all invoices presented by the LICENSOR within thirty days of the date of the relevant invoice such that the LICENSOR receives the full invoiced amount. The LICENSEE shall make payments in accordance with instructions issued by the LICENSOR from time to time quoting the licence number and any relevant invoice numbers. Payment made in any other form may incur additional fees to cover bank charges and currency exchange fluctuations and any such fees or charges shall be payable by the LICENSEE.
- 6.4. In relation to any statement of sales provided by the LICENSEE, the LICENSOR may require the LICENSEE to provide a certificate at the expense of the LICENSEE, prepared and certified by the independent professional auditor that performs the periodic audit of the LICENSEE's accounts or prepared and certified by the LICENSEE if the LICENSEE is not required to be subjected to an independent audit. The LICENSOR shall only request one such certificate in any three years unless an under-declaration is discovered. Such certificate shall state whether the statement of sales in question is complete, correct and in agreement with the LICENSEE's books of account. This right may be exercised by the LICENSOR at any time up to one year from the end of the relevant ACCOUNTING

PERIOD and the certificate must be supplied by the LICENSEE as agreed with the LICENSOR in writing or, in the absence of such agreement, within three months of the request.

- 6.5. Where a certificate is provided pursuant to clause 6.4 above does not corroborate the statement or statements of sales in question or where such a certificate is not supplied within the required time period the LICENSOR may require the LICENSEE to pay the amount due plus simple interest from the date payment was due until the date payment is made at a rate of 4% per annum above the latest published annual average of the Bank of England repo rate (IUAABEDR) calculated on a daily basis during the relevant ACCOUNTING PERIOD.
- 6.6. The LICENSEE shall upon the LICENSOR giving to the LICENSEE not less than one month's notice permit the AUDITOR, at the LICENSOR's own expense, access to the LICENSEE's premises (or alternatively the LICENSEE shall procure access for the AUDITOR to such other premises as it may be necessary for it to visit for the purposes of this clause 6.6) and permit the AUDITOR to inspect the books of account of the LICENSEE at all reasonable times. This includes the right to access the LICENSEE's premises (or other premises as the case may be) to audit the performance of this Agreement. The LICENSOR shall only request one such inspection in any three years unless an under-declaration is discovered. In addition, in the event that the LICENSOR has reasonable grounds to suspect the LICENSEE to have deliberately failed to account for any payment due under this Agreement or the LICENSEE has been negligent in preparing the account or the LICENSEE's accounting system has a systematic error that remained uncorrected from one inspection to the next then the LICENSEE shall upon the LICENSOR giving to the LICENSEE not less than 2 WORKING DAY's notice permit the AUDITOR, at the LICENSOR's own expense, access to the LICENSEE's premises (or alternatively the LICENSEE shall procure access for the AUDITOR to such other premises as it may be necessary for it to visit for the purposes of this clause 6.6) and permit the AUDITOR to inspect the books of account of the LICENSEE at all reasonable times. This includes the right to access the LICENSEE's premises (or other premises as the case may be) to audit the performance of this Agreement.
- 6.6.1. The AUDITOR shall use the metrics and definitions as listed by ABC (www.abc.org.uk) when examining website statistics.
- 6.6.2. If such an inspection reveals to the reasonable satisfaction of the AUDITOR that the LICENSEE has failed to account for any payment due under this Agreement, the LICENSOR may require the LICENSEE to pay the amount due plus simple interest from the date payment was due until the date payment is made at a rate of 4% per annum above the latest published annual average of the Bank of England repo rate (IUAABEDR) calculated on a daily basis during the relevant ACCOUNTING PERIOD and, if any under-declaration exceeds 5% of the amount due to the LICENSOR or £3,000 whichever is the greater, the LICENSEE shall pay the LICENSOR for the costs of the inspection and all of the LICENSOR's related administrative expenses.
- 6.6.3. If any AUDITOR's report or reports show, to the reasonable satisfaction of the LICENSOR, the LICENSEE to have:
- 6.6.3.1. deliberately failed to account for any payment due under this Agreement; or
- 6.6.3.2. the LICENSEE has been negligent in preparing the account and that negligence has resulted in an under-declaration

exceeding 15% of the amount due to the LICENSOR or £3,000 whichever is the greater over two ACCOUNTING PERIODS; or

- 6.6.3.3. the LICENSEE's accounting system has a systematic error that remained uncorrected from one inspection to the next;

then the LICENSOR shall be entitled to consider the LICENSEE to have committed a repudiatory breach of this Agreement and to treat this Agreement as being at an end with immediate effect. In the event that the LICENSEE disputes the conclusion of the LICENSOR in respect to the AUDITOR's report then the LICENSEE and LICENSOR shall submit the dispute to be finally resolved by an independent expert (the "EXPERT") who shall be appointed in accordance with clause 6.7 below.

- 6.7. The identity of the EXPERT, who shall act as an expert and not as an arbitrator and shall be an accountant experienced in the relevant field, shall where possible be agreed by the PARTIES but failing agreement within 5 WORKING DAYS after the agreement of the PARTIES to submit the dispute to an EXPERT (or such other period as the PARTIES may agree) shall, on the application of either PARTY, be the nominee of the President from time to time of the Institution of Chartered Accountants in England and Wales.
- 6.8. Subject to clause 6.9 below the DETERMINATION of the EXPERT shall be binding upon the PARTIES.
- 6.9. No DETERMINATION of the EXPERT shall specify that any amendment to this Agreement shall be made.
- 6.10. The EXPERT may require each PARTY, and each PARTY shall be entitled, to provide such information as the EXPERT may reasonably require for the purposes of his or her determination as well as written representations to the EXPERT (within 14 days of his or her appointment) and the EXPERT shall provide copies of any such information and representations to the other PARTY and shall allow such other PARTY (within 14 days of their receipt of such copies) to make cross-representations in writing. Copies of such cross-representations shall be supplied to the other PARTY but no further representations by the PARTIES to the EXPERT shall be permitted. Although the EXPERT shall consider all such information, representations and cross-representations he or she shall not be precluded from determining the reference in accordance with his or her own judgment. The EXPERT shall issue his or her determination (the "DETERMINATION") in writing within 14 days of the submission to him or her of the last of the information, representations or cross-representations as the case may be.
- 6.11. If the EXPERT shall become unable to act or shall fail for any reason to determine the dispute within the period prescribed in clause 6.10 above then either PARTY may apply to the President from time to time of the Institution of Chartered Accountants in England and Wales for the appointment of a replacement and this procedure may be repeated as many times as may be necessary to secure a DETERMINATION.
- 6.12. The EXPERT shall be required to keep strictly confidential all information, representations and cross-representations provided to him or her in connection with the dispute and shall return all such confidential information, representations and cross-representations to the PARTY from which they originated. In making a DETERMINATION the EXPERT may obtain such independent professional and technical advice as he or she may reasonably require subject to such persons

accepting the same obligations of confidentiality as the EXPERT under this clause 6.12.

- 6.13. The EXPERT shall determine what proportion of the fees and expenses of the EXPERT each PARTY shall pay.

7. Review and Amendment of licence and supply fees

- 7.1. Subject to the procedure set out in clause 7.2 below the LICENSOR shall have the right to amend the licence fees in clause 6.1 and Schedule A as the LICENSOR considers necessary. The LICENSOR shall give the LICENSEE no less than 6 months' notice of any such amendments and such amendments shall take effect from the next 1 January after the end of the notice period.
- 7.2. The LICENSOR shall review its licence and supply fees annually. The LICENSOR shall publish the results of each annual review on its website, together with any proposals it may have as to amendment of licence and supply fees. The LICENSOR shall hold an open consultation on any proposals to amend licence and supply fees and such consultation shall be open for a minimum of one calendar month from the publication of such proposals. The LICENSOR shall consider all responses to that consultation before deciding upon any amendments to licence and supply fees.

8. Acknowledgements

- 8.1. The LICENSEE shall ensure that no reference to the Crown, Keeper of Public Records, the LICENSOR or the CUSTODIANSHIP ORGANISATIONS is made in or in association with any form of promotion or advertisement without the prior written consent of the LICENSOR.
- 8.2. The LICENSEE shall not make or authorise others to make any claim that the LICENSOR or the CUSTODIANSHIP ORGANISATIONS in any way endorses the LICENSEE'S MATERIAL save where otherwise agreed by the PARTIES in writing.
- 8.3. The LICENSEE shall not make or authorise others to make any inaccurate or misleading statement about the LICENSOR, the CUSTODIANSHIP ORGANISATIONS or their products and services.
- 8.4. The LICENSEE may re-write, translate or abbreviate the acknowledgements and/or notices specified in clauses 5.5 above or this clause 8 if, in the sole opinion of the LICENSOR, there is no material difference between the versions. As a minimum requirement, any re-written or abbreviated acknowledgement must include reference to the "UKHO", Keeper of Public Records and the port locations of the relevant CUSTODIANSHIP ORGANISATIONS and proper names shall not be translated. The LICENSEE shall supply the LICENSOR with copies of all re-written, translated or abbreviated versions of the acknowledgement(s) and/or notice(s) within five WORKING DAYS of such re-writing, translation or abbreviation and shall not distribute any LICENSEE'S MATERIAL bearing such texts before receiving the LICENSOR's written approval to do so, which shall take no more than five WORKING DAYS and shall not be unreasonably withheld. If the LICENSOR fails to respond to the LICENSEE within five WORKING DAYS then the LICENSOR automatically gives its consent.

9. Intellectual property rights

- 9.1. Copyright, all other intellectual property rights and any goodwill in the LICENSEE'S MATERIAL, excluding any of the LICENSOR'S MATERIAL where incorporated within the LICENSEE'S MATERIAL as a reproduction, translation or adaptation, shall remain at all times the property of the LICENSEE or their licensors as

appropriate. The LICENSOR shall acquire no rights in any such material except as expressly provided in this Agreement.

- 9.2. Copyright, all other intellectual property rights and any goodwill in the LICENSOR'S MATERIAL, including where incorporated within the LICENSEE'S MATERIAL as a reproduction, translation or adaptation, shall remain at all times the property of the LICENSOR, the CUSTODIANSHIP ORGANISATIONS or their licensors as appropriate. The LICENSEE shall acquire no rights in any such material except as expressly provided in this Agreement.
- 9.3. The LICENSEE undertakes the LICENSOR'S MATERIAL shall not be used by the LICENSEE or accessed by any of its employees or any other person acting on its behalf for any purpose other than strictly as necessary to exercise its rights or perform its obligations under this Agreement. The LICENSEE shall ensure that its employees and any other persons acting on its behalf in using the LICENSOR'S MATERIAL are bound by an undertaking in substantially the same terms as this clause 9.3.
- 9.4. The LICENSEE warrants that at the time of signing this Agreement the LICENSEE has not infringed the copyright or any other intellectual property right in any material under the control of the LICENSOR or the CUSTODIANSHIP ORGANISATIONS.
- 9.5. The LICENSEE undertakes that it will not intentionally infringe the copyright or any other intellectual property right in any material under the control of the LICENSOR or the CUSTODIANSHIP ORGANISATIONS or seek to exploit the goodwill associated with that material.
- 9.6. Nothing in this Agreement shall prejudice the right of the LICENSEE to challenge the LICENSOR'S assertion of ownership of copyright or any other intellectual property right in the LICENSOR'S MATERIAL, but in the event of such challenge this Agreement shall continue in full force and effect including but not limited to the LICENSEE'S obligation under clause 6 above in respect of reproductions of the LICENSOR'S MATERIAL which are the subject of such challenge and the LICENSEE shall notify the LICENSOR in writing specifying the LICENSOR'S MATERIAL in question and setting out the reason(s) why the LICENSEE challenges the LICENSOR'S right to assert ownership of copyright or any other intellectual property right in the specified LICENSOR'S MATERIAL. The PARTIES shall then seek to resolve their difference by negotiating in good faith, agreeing:
 - 9.6.4. any changes necessary to this Agreement to reflect the agreed position; and
 - 9.6.5. any payments to be made by either LICENSEE or LICENSOR (as necessary); and
 - 9.6.6. how costs incurred by either PARTY shall be borne.

In the event that the PARTIES cannot reach agreement on the ownership of copyright or any other intellectual property right in the LICENSOR'S MATERIAL within one calendar month of the LICENSEE notifying the LICENSOR in accordance with this clause 9.6 (or other period mutually agreed by the PARTIES in writing) then the LICENSEE shall either drop its claim or promptly and in any event within two calendar months of notifying the LICENSOR in accordance with this clause 9.6 initiate such procedures as may be necessary to obtain the decision of an independent and competent body as to whether the LICENSOR has the right to assert ownership of copyright or any other intellectual property right in the specified LICENSOR'S MATERIAL and use all reasonable endeavours to expedite the making by such independent and competent body of a decision in accordance with this clause 9.6; and in the event that a decision in accordance with this clause 9.6 is

that the LICENSOR has no right to assert ownership of copyright or any other intellectual property right in the LICENSOR'S MATERIAL in question the LICENSOR shall take immediate steps to:

9.6.7. refund to the LICENSEE any payments made by the LICENSEE to the LICENSOR in respect of sales of copies of the LICENSOR'S MATERIAL in question from the date of the notification given by the LICENSEE in accordance with this clause 9.6 and the date of the relevant decision; and

9.6.8. amend clause 4 above and Schedules B and D of this Agreement by amending or deleting as appropriate from such clause 4 above and Schedules B and D reference(s) to the LICENSOR'S MATERIAL in respect of which such a decision has been made;

provided that nothing in this clause 9.6 shall prevent the LICENSOR from appealing against any decision or finding and, if successful, re-instating relevant reference(s) to LICENSOR'S MATERIAL in clause 4 above and Schedule B of this agreement and charging fees to the LICENSEE accordingly including fees in respect of any and all payments previously refunded in accordance with clause 9.6.4 above.

9.7. The LICENSEE shall ensure that all the LICENSOR's and the CUSTODIANSHIP ORGANISATIONS' trade marks or other identifying features are removed from the LICENSEE'S MATERIAL, except as otherwise provided either in this Agreement or in any other express written agreement between the PARTIES.

9.8. The LICENSEE shall not adopt or use any trade mark, symbol or device that incorporates, is confusingly similar to, or is a simulation or colourable imitation of, the trade marks of the LICENSOR and/or the CUSTODIANSHIP ORGANISATIONS.

10. Actions for infringement

10.1. If the LICENSEE becomes aware of any infringement of any rights in the LICENSOR'S MATERIAL or the LICENSEE'S MATERIAL, whether or not arising from the LICENSEE's performance of this Agreement, the LICENSEE shall notify the LICENSOR as soon as possible. The LICENSEE shall provide all necessary information and reasonable assistance requested by the LICENSOR to ensure that the notified infringement is brought to an end as soon as possible. The LICENSOR shall reimburse the LICENSEE for costs and expenses reasonably and properly incurred in providing such information and rendering such assistance.

10.2. Where the LICENSEE'S MATERIAL is involved and the LICENSOR decides in its sole discretion to enter into any dispute resolution procedure, the LICENSEE shall provide the LICENSOR with such reasonable assistance as the LICENSOR may require including but not limited to providing such evidence as the LICENSOR may request and by appearing as a witness in support of the LICENSOR's case.

11. Confidentiality

11.1. The LICENSOR shall hold the following information (the 'CONFIDENTIAL INFORMATION') supplied by the LICENSEE in confidence unless such information is otherwise legitimately available to third parties:

11.1.1. the private residential address of the LICENSEE if they are entering into this Agreement in a personal capacity unless they can provide no other address to the LICENSOR for communications; and

11.1.2. the existence of this Agreement prior to first publication of the LICENSEE'S MATERIAL; and

- 11.1.3. all information shown in Schedules B and D of this Agreement; and
 - 11.1.4. all information supplied to the LICENSOR in accordance with clauses 6.1.2 above and 12.1 below of this Agreement; and
 - 11.1.5. any information marked 'confidential' by the LICENSEE.
- 11.2. The obligation at clause 11.1 above shall not apply in the case that any disclosure is required by any applicable law, any order of the court, or any requirement of the UK Parliament.
- 11.3. The obligation at clause 11.1 above shall not apply to the disclosure of the CONFIDENTIAL INFORMATION to CUSTODIANSHIP ORGANISATIONS but the LICENSOR shall procure that CUSTODIANSHIP ORGANISATIONS hold that information in confidence on a similar basis as this clause 11.

12. Contracting

- 12.1. The LICENSEE may not contract out work for the purpose of executing the rights granted in this Agreement without first providing to the LICENSOR the full contact details of the proposed contractor involved in the creation of the LICENSEE'S MATERIAL and obtaining the LICENSOR'S written consent prior to entering into such agreement. The LICENSOR shall take no more than five WORKING DAYS to notify the LICENSEE of its decision and shall not unreasonably withhold its consent. If the LICENSOR fails to notify the LICENSEE of its decision within five WORKING DAYS then the LICENSOR automatically gives its consent.
- 12.2. The LICENSEE shall impose and enforce the following conditions on any such contractor.
- 12.2.1. all contractors shall be subject to the same restrictions as the LICENSEE under this Agreement;
 - 12.2.2. no contractor shall reproduce the LICENSOR'S MATERIAL or LICENSEE'S MATERIAL for their own purpose except for the purpose of back-up and operational security; and
 - 12.2.3. no contractor shall appoint sub-contractors to carry out work on the LICENSOR'S MATERIAL or LICENSEE'S MATERIAL.

13. Warranty and indemnity

- 13.1. The LICENSOR warrants that it is entitled to grant this licence to the LICENSEE and that, except for that material shown as belonging to third parties, the LICENSOR either owns all intellectual property rights in the LICENSOR'S MATERIAL or the LICENSOR is permitted to grant licences for the intellectual property rights of the CUSTODIANSHIP ORGANISATIONS in the LICENSOR'S MATERIAL.
- 13.2. The LICENSOR warrants that it grants licences according to the principles and practices in the statement of its Chief Executive published on the LICENSOR'S website.
- 13.3. The LICENSOR warrants that it has used reasonable skill and care to ensure that, at the point of supply from the LICENSOR'S place of business, the LICENSOR'S MATERIAL belonging to the LICENSOR is free from defects arising from faulty materials or workmanship of the LICENSOR. The LICENSOR makes no warranty in respect of any part of the LICENSOR'S MATERIAL belonging to the CUSTODIANSHIP ORGANISATIONS.

- 13.4. The LICENSEE warrants its understanding that the licence fees in this Agreement have been calculated on the basis that the LICENSOR will exclude or limit its liability as set out in clauses 13.6 below and 13.7 below.
- 13.5. The LICENSOR does not limit or exclude its liability for death or personal injury caused by the negligence of its employees, agents or contractors.
- 13.6. Except as described in clause 13.5 above, the LICENSOR's total liability to the LICENSEE, whether directly to it or by reason of indemnity or contribution in respect of the LICENSEE's liability to any third party, or any acts or omissions of the LICENSOR's employees, agents or contractors shall be limited to the sum of all licence fees due to the LICENSOR in accordance with clause 6 above during the ACCOUNTING PERIOD in which the claim arose and the preceding ACCOUNTING PERIOD. This limit of liability shall apply separately to each and every claim against the LICENSOR provided that where any act or omission or series of two or more acts or omissions give rise to more than one claim, the limits shall apply to the aggregate of all claims as though they were a single claim.
- 13.7. Notwithstanding anything else contained in this Agreement, the LICENSOR shall not be liable to the LICENSEE for:
- 13.7.1. the LICENSEE's loss of profits, revenues or goodwill or loss of anticipated savings or gains (including any such loss or damage incurred by the LICENSEE as a result of any payment by the LICENSEE to a third party as a result of an action brought by a third party);
 - 13.7.2. any indirect or consequential loss (including any such loss or damage incurred by the LICENSEE as a result of any payment by the LICENSEE to a third party as a result of an action brought by a third party) even if the loss was reasonably foreseeable or the LICENSOR had been advised by the LICENSEE of the possibility of it being incurred and whether arising from negligence, breach of contract or of statutory duty or otherwise; or
 - 13.7.3. any claim which has not been notified to the LICENSOR within thirty days of the date on which the LICENSEE knew, or should have reasonably known of the existence of grounds for such claim.
- 13.8. The LICENSEE shall indemnify and keep the LICENSOR and the CUSTODIANSHIP ORGANISATIONS indemnified, both during the term of this Agreement and for 12 years after the termination of this Agreement from and against all claims, actions, suits, damages, liabilities, losses, charges and proceedings that the LICENSOR or the CUSTODIANSHIP ORGANISATIONS may incur or be put to as a result of:
- 13.8.1. any breach of this Agreement by the LICENSEE or its contractors, distributors, agents or employees;
 - 13.8.2. the unauthorised or illicit use by any END-USER or third party of the LICENSOR'S MATERIAL or the LICENSEE'S MATERIAL that has been supplied to such END-USER or third party by the LICENSEE, its distributors or agents;
 - 13.8.3. any loss or damage caused to a third party by any error or defect in the LICENSEE'S MATERIAL arising from the LICENSEE's modification of the LICENSOR'S MATERIAL in the LICENSEE's production of the LICENSEE'S MATERIAL.

- 13.9. Such indemnity at clause 13.8 above shall not extend to cover unauthorised or illicit END-USER or third party use of the LICENSOR'S MATERIAL or the LICENSEE'S MATERIAL where the LICENSEE has used its reasonable endeavours to inform END-USERS and third parties of the limitations of this Agreement and to ensure that such use cannot take place.
- 13.10. For the avoidance of doubt such indemnity at clause 13.8 above shall include but not be limited to claims brought by other sovereign states or bodies operating under delegated authority or powers for such sovereign states.
- 13.11. The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are excluded to the fullest extent permitted by law.
- 13.12. The PARTIES have taken advice in relation to this Agreement and in particular the provisions of this clause 13 as they respectively consider appropriate and have carefully considered all the terms set out in this clause 13. The PARTIES each confirm that all exclusions of and limitations to the liability of the other PARTY as set out in this clause 13 are reasonable in the circumstances.
- 13.13. The PARTIES shall give notice to each other as a soon as they become aware of any actual or threatened claim against them or the other PARTY by any third party in connection with the LICENSEE'S MATERIAL.

14. Conduct of third party claims

- 14.1. In the event that the LICENSEE receives from any third party a claim for damages arising out of or in connection with this Agreement and attributable to any act or omission of the LICENSOR's employees agents or contractors and the LICENSEE seeks the LICENSOR's indemnity for or contribution to any damages, costs or any other expenditure to which it is as a consequence put this clause 14 shall apply.
- 14.2. Upon receipt of such a third party claim the LICENSEE shall:
- 14.2.1. promptly, and in any event within 5 WORKING DAYS of its receipt, notify the LICENSOR of the existence of such claim and provide to the LICENSOR copies of all relevant documents;
 - 14.2.2. not, without the express permission of the LICENSOR, defend, settle or otherwise compromise such claim;
 - 14.2.3. render to the LICENSOR such reasonable assistance as the LICENSOR may require in order to come to a determination in accordance with clause 14.3 below;
 - 14.2.4. ensure that any expenditure incurred by it on legal advice in relation to such claim is reasonably and properly incurred; and
 - 14.2.5. comply with any direction of the LICENSOR given in accordance with clauses 14.4 below or 14.5 below,
- and the LICENSOR shall not be liable to indemnify, make a contribution to or otherwise compensate the LICENSEE for any losses, damages, costs or any other expenditure incurred by the LICENSEE in its defence or settlement of such claim if the LICENSEE has not complied with its obligations under this clause 14.2.
- 14.3. Upon receipt from the LICENSEE of a notification in accordance with clause 14.2.1 above the LICENSOR shall promptly, and in any event within 5 WORKING DAYS of receipt of such notification, confirm to the LICENSEE in writing whether the LICENSOR considers the claim to arise out of or in connection with this Agreement

and whether it is attributable to the acts or omissions of its employees, agents or contractors.

- 14.4. In the event that the LICENSOR confirms that it considers the claim to be so attributable it shall within 5 WORKING DAYS of receipt of the LICENSEE's notification in accordance with clause 14.2.1 above (or within such other period as the PARTIES may jointly agree) determine whether the LICENSEE should defend or settle the claim and shall direct the LICENSEE accordingly.
- 14.5. In the LICENSEE's defence or settlement of any claim the LICENSOR may in its discretion:
 - 14.5.1. direct the LICENSEE's conduct in defending such claim; or
 - 14.5.2. direct the LICENSEE as to the sum in which it may settle such claim.
- 14.6. The LICENSOR agrees that any direction that it may give the LICENSEE in accordance with clauses 14.4 above and 14.5 above will be given reasonably and in the public interest, and that such direction shall, so far as it is possible to do so in the public interest, be given in the best interests of both PARTIES.
- 14.7. Any indemnity or contribution paid by the LICENSOR to the LICENSEE as a result of the operation of this clause 14 shall be subject to the provisions of clause 13.6 above.
- 14.8. In the event that the LICENSOR receives from any third party a claim for damages arising out of or in connection with this Agreement and attributable to any act or omission of the LICENSEE's employees agents or contractors and the LICENSOR seeks the LICENSEE's indemnity for or contribution to any damages, costs or any other expenditure to which it may as a consequence be put, the LICENSOR shall promptly, and in any event within 2 WORKING DAYS of its receipt, notify the LICENSEE of the existence of such claim and provide to the LICENSEE copies of all relevant documents.
- 14.9. Upon receipt of notification issued in accordance with clause 14.8 above the LICENSEE may elect to take conduct of the claim and shall within 5 WORKING DAYS of its receipt of the notification inform the LICENSOR in writing of its decision, and prior to the expiry of such 5 WORKING DAYS or receipt of the LICENSEE's decision, as the case may be, the LICENSOR shall not take any action in relation to settlement, compromise or defence of the claim.
- 14.10. If the LICENSEE elects pursuant to clause 14.9 above to take conduct of the claim it shall be entitled to settle or defend the claim as it sees fit and the LICENSOR shall upon the request of the LICENSEE render to the LICENSEE all reasonable assistance to enable the LICENSEE to settle or defend the claim.

15. Assignment and sub-licensing

- 15.1. The LICENSEE is not entitled to sub-license any of its rights or obligations under this Agreement.
- 15.2. The LICENSEE is not entitled to assign any of its rights or obligations under this Agreement without the LICENSOR's prior written consent.
- 15.3. The LICENSOR shall be entitled to assign or contract out its rights and obligations under this Agreement upon the LICENSOR giving written notice of such assignment or contracting out to the LICENSEE.

16. Change of details

- 16.1. The LICENSEE shall inform the LICENSOR of any change of name or address within five WORKING DAYS of such change.

17. *Rights of third parties*

- 17.1. Except as provided at clause 15 above but notwithstanding anything to the contrary elsewhere in this Agreement, no right is granted to any person who is not a PARTY to this Agreement in its own right and the PARTIES declare that they have no intention to grant any such rights.

18. *Severability*

- 18.1. If any part, term or provision of this Agreement which in the reasonable discretion of the LICENSOR is not of a fundamental nature is held to be illegal or unenforceable the validity or enforceability of the remainder of the Agreement shall not be affected.
- 18.2. If any part, term or provision of this Agreement which in the reasonable discretion of the LICENSOR is of a fundamental nature and is held to be illegal or unenforceable then the PARTIES shall negotiate in good faith replacement lawful and enforceable provisions that enable the Agreement to have the effect intended by the illegal or unenforceable provision. Unless otherwise agreed between the PARTIES in writing, the PARTIES shall have six months to negotiate such replacement provisions, and if agreement cannot be reached in that period, or it is not possible to construct such provisions, then the Agreement shall be terminated immediately and the LICENSEE shall deal with all material relevant to this Agreement as provided for in clause 20.9 below.

19. *Entire agreement*

- 19.1. This Agreement represents the entire and only agreement between the PARTIES and supersedes any previous agreement between the PARTIES upon the matters referred to herein.
- 19.2. Save for any fraudulent misrepresentation made by one of the PARTIES to the other, no representations, warranties, inducements or promises made by one PARTY to the other and no other arrangements whether oral or otherwise not embodied herein shall add to or vary this Agreement or be of any effect, save, with the exception of the LICENSOR's rights under clause 7.1 above, and for any written amendment to this Agreement mutually agreed by the PARTIES.

20. *Termination*

- 20.1. The PARTIES may (without prejudice to their other rights (whether arising under this Agreement or otherwise) terminate this Agreement at any time by mutual written consent or at any time by giving one years' notice in writing to the other PARTY with such termination occurring at the end of the ACCOUNTING PERIOD that includes the date one year after the date of such notice.
- 20.2. The LICENSOR may at any time by written notice to the LICENSEE terminate this Agreement with immediate effect if there has been an irremediable breach of the terms and conditions of this Agreement by the LICENSEE. The LICENSOR considers breaches of the following clauses to be irremediable:
- 20.2.1. clause 5.4 above of the main Agreement;
 - 20.2.2. clauses 9.3 above, 9.4 above, 9.5 above and 9.8 above of the main Agreement; and
 - 20.2.3. clause 15.1 of the main Agreement.
- 20.3. In the event that there has been a remediable breach of the terms and conditions of this Agreement by the LICENSEE, the LICENSOR may:

- 20.3.1. require by written notice the LICENSEE to remedy such breach within either 1 month or within such other longer period as the LICENSOR might reasonably set; and
- 20.3.2. if the LICENSEE fails to remedy such breach within the specified period terminate this Agreement with immediate effect by notice in writing to the LICENSEE.
- 20.4. The LICENSOR may in its sole discretion and without waiving any right of termination arising from a failure of the LICENSEE to pay on any other occasion or occasions or any other right of termination howsoever arising (whether under this Agreement or otherwise) refrain from exercising its right to terminate this Agreement in the event that the LICENSEE fails to fulfil on any single occasion its obligation to pay in accordance with clause 6 above provided always that full payment with interest is made to the LICENSOR within 14 days of receipt of the demand for payment. Simple interest shall be payable on such late payments and shall be calculated at a rate of 4% per annum above the latest published annual average of the Bank of England repo rate (IUAABEDR) calculated on a daily basis for each day from the date payment was due.
- 20.5. The LICENSOR may (without prejudice to its other rights (whether arising under this Agreement or otherwise)) terminate this Agreement at any time by written notice if:
 - 20.5.1. the LICENSEE enters into a voluntary arrangement;
 - 20.5.2. an administration order is made in respect of the LICENSEE;
 - 20.5.3. a receiver or an administrative receiver is appointed to manage the affairs of the LICENSEE;
 - 20.5.4. a resolution or petition to wind up the LICENSEE is passed or presented (other than for the purpose of amalgamation or reconstruction);
 - 20.5.5. any circumstances arise that entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator; or
 - 20.5.6. any circumstances arise that entitle a creditor to present a winding-up petition or a winding up order is made by the Court.
- 20.6. Upon termination of this Agreement all outstanding payments and other obligations arising from this Agreement shall become due and payable as soon as practicable and no later than 30 days after termination. The LICENSEE shall also ensure that, at the LICENSEE's expense, the LICENSOR'S MATERIAL is immediately destroyed or returned to the LICENSOR as required by the LICENSOR.
- 20.7. Termination of this Agreement shall be without prejudice to the rights and liabilities of either PARTY that may have accrued up to and on the date of termination.
- 20.8. Termination of this Agreement shall not require termination of any END-USER licence agreement entered into in accordance with this Agreement prior to termination.
- 20.9. Except as stated in clause 20.10 below, in the event of the termination pursuant to clause 20.2 above, 20.3.2 above or 18.2 above the LICENSEE shall as soon as practicable destroy or procure that others destroy any LICENSEE'S MATERIAL held by the LICENSEE or its employees or contractors or other persons acting on its behalf as a result of the operation of this Agreement.
- 20.10. In the event of the termination of this Agreement for any reason, the LICENSEE shall be entitled to archive the LICENSEE's MATERIAL indefinitely. The LICENSEE shall be entitled to retrieve and use (but not reproduce or adapt) the LICENSEE's MATERIAL only for the purposes of:

- 20.10.1. Internal quality control auditing; and
- 20.10.2. Defending itself from claims from third parties.

21. No waiver

- 21.1. No waiver of any term or condition of this Agreement shall be effective unless made in writing and signed by the PARTY against which enforcement of the waiver is sought.
- 21.2. The waiver of any remedy arising from breach of any term or condition of this Agreement shall not be construed as a waiver of any subsequent breach of any other such term or condition.

22. Governing law

- 22.1. This Agreement shall be governed by and construed and interpreted in accordance with English Law and the PARTIES submit to the exclusive jurisdiction of the English Courts.

Schedule A

1. *Licence fees*

- 1.1. For web use, the licence fee is £0.10 per thousand PAGE IMPRESSIONS, subject to a minimum fee of £500 in each ACCOUNTING PERIOD for each website (domain name).

Schedule B

The LICENSEE'S MATERIAL

- 1.1. The LICENSEE'S MATERIAL consists of a range of products and services which are defined separately in Annexes to this Schedule B. Each Annex describes one product or service range.
- 1.2. Each product range or service is defined by its title, a description of its contents, its field of use, how and in what form it is supplied, the END-USER licensing model including END-USER licensing restrictions and may include additional requirements for acknowledgements and warnings. In addition, if the product or service range is made up of pre-defined products or services, then an additional table will show the licence fees due on each product or service.

Annexes to this Schedule

- 1.3. The list below shows the annexes to this Schedule.

Annex 1 to Schedule B [Website / domain]

Annex 1 to Schedule B

1. General description of the range

1.1.	Product or service title [and url]	
1.2.	General description of website including its intended purpose or field of use	
1.3.	Geographic coverage of product or service	
1.4.	LICENSOR'S MATERIAL reproduced to create the product or service	<p>Chart data</p> <p>Bathymetric Survey data</p> <p>Distance Tables data</p> <p>Lights and Fog Signals data</p> <p>Maritime Limits data</p> <p>Ocean Passages data</p> <p>Offshore Installations data</p> <p>Practice and Exercise Area (PEXA) data</p> <p>Radio Signals data</p> <p>Sailing Directions data (text only)</p> <p>Tidal Data (Simple Harmonic Constants and Tidal Predictions)</p> <p>Tidal Streams data</p> <p>Wrecks, obstructions</p>

Schedule C

CUSTODIANSHIP ORGANISATIONS

1. The third parties list below have granted their permission to the LICENSOR to grant licences on their behalf to reproduce, adapt and/or translate their intellectual property where it has been incorporated within the LICENSOR'S MATERIAL. Some of the listed third parties have not granted permission for all their intellectual property to be reproduced, adapted and/or translated. These third parties, and the limitations, are shown below.

<u>Colloquial Name</u>	<u>Name</u>
Aberdeen	Aberdeen Harbour Board
Alderney	States of Alderney Harbour Authority
Ardrossan	Clyde - Peel Ports
Argyll	Argyll & Bute Council
Armadale	Caledonian Maritime Assets Ltd
Avonmouth	First Corporate Shipping Limited (Bristol Port Company)
Ayr (ABP)	Associated British Ports Groups (All ABP ports except Humber)
Barrow (ABP - NW Ports)	Associated British Ports Groups (All ABP ports except Humber)
Barry (ABP - S. Wales)	Associated British Ports Groups (All ABP ports except Humber)
Belfast	Belfast Harbour Commissioners
Bideford	Torrige District Council (Bideford)
Birkenhead	Mersey - Peel Ports
Blyth	Blyth Harbour Commission
Boston	Port of Boston Ltd
Bridgwater (Port of Bridgwater)	Sedgemoor District Council
Brightlingsea	Brightlingsea Harbour Commissioners
Bristol: Royal Portbury Dock	First Corporate Shipping Limited (Bristol Port Company)
Brixham	Torbay Council - Tor Bay Harbour Authority
Brodick	Caledonian Maritime Assets Ltd
Bude	Cornwall Council (Municipal Harbours)
Bute	Argyll & Bute Council
Caernarfon	Caernarfon Harbour Trust
Cairnryan	Port of Cairnryan Ltd
Cardiff (ABP - S. Wales)	Associated British Ports Groups (All ABP ports except Humber)
Castlebay	Caledonian Maritime Assets Ltd
Chatham	Medway - Peel Ports
Chichester	Chichester Harbour Conservancy
Clydeport	Clyde - Peel Ports
Coll	Caledonian Maritime Assets Ltd
Colonsay	Caledonian Maritime Assets Ltd
Conwy Harbour	Conwy County Borough Council

Cowes	Cowes Harbour Commission
Cromarty Firth	Cromarty Firth Port Authority
Dart Harbour	Dart Harbour and Navigation Authority
Dee (River Dee Conservancy)	Environment Agency (River Dee Conservancy)
Dover	Dover Harbour Board
Dundee (Port of Dundee)	Forth Ports Limited
Exeter Port Authority	Exeter City Council
Falmouth	Falmouth Harbour Commissioners
Falmouth Docks & Engineering	Falmouth Docks & Engineering (A&P Group)
Falmouth (Prince of Wales Pier)	Cornwall Council (Municipal Harbours)
Felixstowe	Harwich Haven Authority
Fishguard	Stena Line Ports Ltd
Fleetwood (ABP - NW Ports)	Associated British Ports Groups (All ABP ports except Humber)
Folkestone	Folkstone Harbour Company
Forth Ports	Forth Ports Limited
Fowey	Fowey Harbour Commissioners
Fraserburgh	Fraserburgh Harbour Commissioners
Gairloch	Highland Council Harbours Authority
Garlieston Harbour	DGFirst - Dumfries and Galloway Council
Garston (ABP - NW Ports)	Associated British Ports Groups (All ABP ports except Humber)
Glasgow	Clyde - Peel Ports
Glensanda Harbour	Aggregate Industries UK Ltd (Glensanda Harbour)
Gloucester	Gloucester Harbour Trustees
Goole (ABP)	Associated British Ports Groups (ABP Humber)
Gourock	Caledonian Maritime Assets Ltd
Great Yarmouth	Great Yarmouth Port Authority
Greenock	Clydeport Operations Limited
Grimsby (ABP)	Associated British Ports Groups (ABP Humber)
Guernsey	States of Guernsey Harbour Authority
Hamble	River Hamble Harbour Authority
Hartlepool	PD Ports
Harwich	Harwich Haven Authority

Hayle	Hayle Harbour Authority
Helmsdale	Highland Council Harbours Authority
Heysham	Mersey - Peel Ports
Hinkley Point C	Hinkley Point C Harbour Authority
Holyhead	Stena Line Ports Ltd
Hull (ABP)	Associated British Ports Groups (ABP Humber)
Hunterston	Clyde - Peel Ports
Immingham (ABP)	Associated British Ports Groups (ABP Humber)
Inverness	Inverness Harbour Trust
Ipswich (ABP)	Associated British Ports Groups (All ABP ports except Humber)
Isle of Man	Isle of Man Harbours Division
Isle of Whithorn Harbour	DGFirst - Dumfries and Galloway Council
Jersey	Jersey Harbours
Kennacraig	Caledonian Maritime Assets Ltd
King's Lynn (ABP)	Associated British Ports Groups (All ABP ports except Humber)
King's Lynn Conservancy Board	King's Lynn Conservancy Board
Kinlochbervie	Highland Council Harbours Authority
Kirkcudbright Harbour	DGFirst - Dumfries and Galloway Council
Kyle of Lochalsh	Highland Council Harbours Authority
Lancaster	Lancaster Port Commission
Langstone	Langstone Harbour Board
Largs	Caledonian Maritime Assets Ltd
Larne	Larne Harbour Ltd
Lerwick	Lerwick Port Authority
Littlehampton	Littlehampton Harbour Board
Loch Ryan (Outer)	DGFirst - Dumfries and Galloway Council
Loch Ryan Port (Cairnryan)	Stena Line Ports Ltd
Lochaline	Caledonian Maritime Assets Ltd
Lochboisdale	Caledonian Maritime Assets Ltd
Lochboisdale (Outer)	Lochboisdale Development Ltd
Lochinver	Highland Council Harbours Authority
Lochranza	Caledonian Maritime Assets Ltd

Londonderry	Londonderry Port and Harbour Commissioners
Lough Foyle	Londonderry Port & Harbour Commissioners
Lowestoft (ABP)	Associated British Ports Groups (All ABP ports except Humber)
Lymington	Lymington Harbour Commissioners
Mallaig	Mallaig Harbour Authority
Manchester Ship Canal	Mersey - Peel Ports
Marazion	St Aubyn Estates (Cornwall)
Milford Haven	Milford Haven Port Authority
Mistley	Harwich Haven Authority
Montrose	Montrose Port Authority
Mostyn	Port of Mostyn
Mousehole	Mousehole Harbour Authority
Mowi Kyleakin Pier	Mowi Kyleakin Pier
Neath	Neath Port Authority
Newhaven	Newhaven Port and Properties Ltd
Newlyn	Newlyn Pier & Harbour Commissioners
Newport (ABP - S. Wales)	Associated British Ports Groups (All ABP ports except Humber)
Newquay	Cornwall Council (Municipal Harbours)
Oban	Caledonian Maritime Assets Ltd
Orkney Islands	Orkney Islands Council
Padstow	Padstow Harbour Commissioners
Paignton	Torbay Council - Tor Bay Harbour Authority
Par	Imerys Minerals Ltd (Port of Par)
Pembroke Port	Milford Haven Port Authority
Penrhyn	Cornwall Council (Municipal Harbours)
Penzance	Cornwall Council (Municipal Harbours)
Perth	Perth & Kinross Council
Peterhead	Peterhead Port Authority
Plymouth (ABP)	Associated British Ports Groups (All ABP ports except Humber)
Plymouth (Cattewater)	Cattewater Harbour Commissioners
Poole	Poole Harbour Commissioners
Port Ellen	Caledonian Maritime Assets Ltd

Port of Liverpool	Mersey - Peel Ports
Port of London	Port of London Authority
Port Talbot (ABP - S. Wales)	Associated British Ports Groups (All ABP ports except Humber)
Port William Harbour	DGFirst - Dumfries and Galloway Council
Portland Harbour	Portland Harbour Authority Ltd
Portreath	Cornwall Council (Municipal Harbours)
Portree	Highland Council Harbours Authority
Portscatho	Cornwall Council (Municipal Harbours)
Portsmouth	Portsmouth International Port
Portwrinkle	Cornwall Council (Municipal Harbours)
Ramsgate	Port of Ramsgate - Thanet District Council
Rye Harbour	Environment Agency (Rye Harbour)
Salcombe	Salcombe Harbour
Sark	Sark Harbours and Pilotage Committee
Scrabster	Scrabster Harbour Trust
Seaham	Seaham Harbour Dock Company
Sheerness	Medway - Peel Ports
Shetland Islands	Shetland Islands Council
Shoreham	Shoreham Port Authority
Silloth (ABP - NW Ports)	Associated British Ports Groups (All ABP ports except Humber)
Southampton (ABP)	Associated British Ports Groups (All ABP ports except Humber)
St. Ives	Cornwall Council (Municipal Harbours)
St Mary's Harbour	St Mary's (Isles of Scilly)
St Michael's Mount	St Aubyn Estates (Cornwall)
Stornoway	Stornoway Port Authority
Stranraer (East Pier)	Stena Line Ports Ltd
Stranraer (West Pier)	DGFirst - Dumfries and Galloway Council
Sunderland	Port of Sunderland
Swansea (ABP - S Wales)	Associated British Ports Groups (All ABP ports except Humber)
Tarbert (Isle of Harris)	Caledonian Maritime Assets Ltd
Tees	PD Ports
Teignmouth (ABP)	Associated British Ports Groups (All ABP ports except Humber)

Teignmouth Harbour Commission	Teignmouth Harbour Commission
Tiree (Gott Bay)	Caledonian Maritime Assets Ltd
Tobermory Harbour	Tobermory Harbour Authority
Tor Bay	Torbay Council - Tor Bay Harbour Authority
Torquay	Torbay Council - Tor Bay Harbour Authority
Troon (ABP)	Associated British Ports Groups (All ABP ports except Humber)
Truro	Cornwall Council (Municipal Harbours)
Tyne	Port of Tyne Authority
Uig	Highland Council Harbours Authority
Ullapool	Ullapool Harbour Trustees
Warrenpoint	Warrenpoint Harbour Authority
Wemyss Bay	Caledonian Maritime Assets Ltd
Western Isles / Comhairle nan Eilean Siar (CNES)	Comhairle Nan Eilean Siar (CNES) Ports & Harbours
Weymouth & Portland Borough Council	Weymouth & Portland Borough Council
Whitstable	Canterbury City Council - Whitstable Harbour
Wisbech	Port of Wisbech Authority
Workington	Port of Workington
Yarmouth (Isle of Wight)	Yarmouth Harbour (Isle of Wight)
<u>Irish Authorities</u>	
An Daingean (Dingle)	Fishery Harbour Centres; Department of Agriculture, Food and the Marine
Arklow	Arklow Harbour Commissioners
Bantry Bay	Port of Cork Company
Commissioners of Irish Lights	Commissioners of Irish Lights
Cork (Port of Cork)	Port of Cork Company
Drogheda	Drogheda Port Company
Dublin Port Company	Dublin Port Company
Dun Laoghaire Harbour Company	Dun Laoghaire Harbour Company
Dundalk	Dublin Port Company
Dunmore East	Fishery Harbour Centres: Department of Agriculture, Food and the Marine
Foynes	Shannon Foynes Port Company
Galway Harbour Company	Galway Harbour Company
Howth	Fishery Harbour Centres: Department of Agriculture, Food and the Marine

Killybegs	Fishery Harbour Centres: Department of Agriculture, Food and the Marine
Kinsale	Cork County Council
Limerick	Shannon Foynes Port Company
New Ross	Port of New Ross (Wexford CC)
Ros A'Mhil - (Rossaveel)	Fishery Harbour Centres: Department of Agriculture, Food and the Marine
Rosslare	Iarnrod Eirann - Rosslare Europort
Shannon (River Shannon)	Shannon Foynes Port Company
Waterford	Port of Waterford Company
Wexford Harbour	Wexford Harbour (Wexford CC)
Wicklow	Wicklow County Council
<u>Other port authorities</u>	
Gibraltar	Gibraltar Port Authority
<u>National hydrographic offices</u>	
Argentina	Servicio de Hidrografia Naval
Belgium	Belgian Hydrographic Office
Croatia	Hrvatski Hidrografski Institut, Croatia
Iceland	Iceland Coast Guard (Hydrographic Dept)
Malta	Malta Hydrographic Office, Ports and Yachting Directorate, Transport Malta
Netherlands	Dienst Der Hydrografie, Netherlands
Oman	National Hydrographic Office, Oman
Portugal	Instituto Hidrográfico, Portugal
South Africa	Hydrographic Office, South Africa
Spain	Instituto Hidrográfico de la Marina, Spain
Suriname	Maritime Authority of Suriname
<u>Other data providers</u>	
CAA (PEXA)	Civil Aviation Authority
Crown Estate	The Crown Estate
DEFRA	Department of Environment, Food & Rural Affairs
Land & Property Services	Land and Property Services, Northern Ireland
MCA	Maritime & Coastguard Agency
NLB	Northern Lighthouse Board
SOPAC (South Pacific Community)	SPC Applied Geoscience and Technology Division
Trinity House	Corporation of Trinity House
Wessex Archaeology	Wessex Archaeology

2. The LICENSOR shall have the right to amend the list of CUSTODIANSHIP ORGANISATIONS in paragraph 1 of Schedule C above as the LICENSOR considers necessary.

3. The LICENSOR shall endeavour to give the LICENSEE 6 months notice of any additions to the list and such additions shall then take effect from the start of the next ACCOUNTING PERIOD after the end of the notice period unless mutually agreed to take effect earlier.
4. The LICENSOR shall endeavour to give the LICENSEE 6 months notice of any deletions from the list and such deletions shall then take immediate effect after the end of the notice period.

Schedule D

1. ***Bathymetry data (surveys) supplied to the LICENSEE***

1.1. The following table shows all bathymetry data (surveys) supplied by the LICENSOR to the LICENSEE for the purposes of this Agreement.

Reference number	Title	Authority	Date supplied to LICENSEE

2. ***Maritime limits data supplied to the LICENSEE***

2.1. The following table shows all maritime limits data licensed by the LICENSOR to the LICENSEE for the purposes of this Agreement.

Reference number	Title	Date supplied to LICENSEE

3. ***Offshore installation data supplied to the LICENSEE***

3.1. The following table shows all offshore installation data supplied by the LICENSOR to the LICENSEE for the purposes of this Agreement.

Reference number	Title	Authority	Date supplied to LICENSEE

4. ***PEXA data supplied to the LICENSEE***

4.1. The following table shows all PEXA data supplied by the LICENSOR to the LICENSEE for the purposes of this Agreement.

Reference number	Title	Authority	Date supplied to LICENSEE

5. ***Wreck and obstruction data supplied to the LICENSEE***

5.1. The following table shows all wreck and obstruction data supplied by the LICENSOR to the LICENSEE for the purposes of this Agreement.

Reference number	Title	Authority	Date supplied to LICENSEE