

# Special licence – Non-commercial

Ref: **Z16700**

## PARTIES

**ENVIRONMENT AGENCY** whose principal office is at Horizon House, Deanery Road, Bristol, BS1 5AH (the “Agency”) (1) and

**You** the person or organisation downloading the Information from DataShare with the intention of using it, (the “Licensee”) (2)

## BACKGROUND

This licence applies if you are seeking permission for Non-Commercial re-use of Agency information which means that:

1. You will not make any Commercial Use of the Information, and
2. You will prohibit others from making any Commercial Use of the Information.

## LICENCE

We, the Environment Agency (“**We**”), and you, the recipient of the Information (“**You**”) agree that:

1. This agreement (the “agreement”) which is dated on the date of signing below includes these paragraphs, the Schedules below and the Standard Terms and Conditions for an Environment Agency Information/Intellectual Property Licence in Appendix 1.
2. If it is not possible to interpret consistently the Special Conditions in Schedule 6 below and the Standard Terms and Conditions in Appendix 1 the Special Conditions will prevail.
3. “Information” can include information, data, records, documents and other Content of any kind and any part thereof.
4. **YOU MUST NOT USE THE INFORMATION UNLESS YOU AGREE TO ALL THE TERMS. Any such use is deemed to be an acceptance of the terms thereby immediately creating a binding contract between us.**

## SCHEDULE 1 – Licence fees – Internal use charges

Not applicable

## SCHEDULE 2 – Approved External Use

Not applicable

## SCHEDULE 3 – The Information

The Information (or any part of it) that You download from the DataShare service where such downloaded data is permitted by us, in accordance with your registration, such permission being conditional upon your registration details being correct.

## SCHEDULE 4 – Contact Details

The Data and Information Officer, Data Sharing and Access Team, at the above Principal Office address, email address [data.info@environment-agency.gov.uk](mailto:data.info@environment-agency.gov.uk)

## SCHEDULE 5 – Commencement Date and Term

This agreement commences on the date the Information is downloaded and shall last for so long as needed for the licensed uses.

## SCHEDULE 6 – Special Conditions

No.	Insert Details
B2.	Special Conditions applicable for all Non-Commercial Licensees
B2.1	<p>The following uses are licensed for the purposes of Standard Condition 5.1:</p> <ul style="list-style-type: none"> <li>• Non-Commercial Internal Use of the Information or any Derived Information;</li> <li>• Approved External Use identified in Schedule 2 and to license such Information or Derived Information contained within such use to End Users for Non-Commercial Use provided that the Agency is</li> </ul>

	acknowledged as the copyright owner where applicable.
<b>B2.2</b>	The Licensee shall take reasonable care when supplying Information or Derived Information externally taking into account any relevant Information Warning.

**SCHEDULE 7 – Information Warning**

No.	Insert Details
1	See details of any Information Warning or guidance supplied to you.

**Signed on behalf of the Agency**

Name	Natalie Cole
Job Title	Data and Information Process Officer
Signature	
Date	15 <sup>th</sup> December 2011

## Appendix 1 - Standard terms and conditions for an Environment Agency Information / Intellectual Property Licence

### 1. Definitions and Interpretation

1.1. In this agreement the following words shall have the following meanings unless the context otherwise requires:

**“Agency Primary Source”** means the relevant primary Dataset or Content source created and (where applicable) maintained for the statutory functions of the Agency which is national (if such exists) or local (if not national).

**“Approved External Uses”** means the Licensee’s specific and identified External Uses that are extant at the Commencement Date (or are added by the parties from time to time pursuant to condition 20) that are set out in and fully meet the descriptions included in Schedule 2.

**“Archival Use”** means a) Internal Use by the Licensee or its contractors to retain copies of the Information or b) any External Use that had previously been Approved External Use to the extent necessary to answer technical support questions or to comply with any statutory or regulatory requirement in either case for a period not exceeding six years.

**“As-Is”** This means a copy of the whole or Part of the original information that is unaltered and un-adapted and not merged with other information other than by:

- layout, font, size, colour and other minor display changes,
- digital file compression,
- putting into an encrypted or protected format such as a protected ZIP file or a locked pdf but not un-encrypting original Information that is already in a protected format,
- bundling with other information or with a cover sheet provided that the original information remains discrete,
- changing into a different proprietary format of the same kind where functionality is largely unchanged is still As-Is (e.g. jpeg to tiff, or mov. to avi, Word to OpenDocument, from one raster format to another raster format etc).

**“Commercial”** means Internal Use for any purpose within a Commercial Body, or

- offering a product or service containing Information or Derived Information for direct monetary compensation such as the sale of a book or newsletter with a cover charge even if it does not cover all costs, or
- offering a product or service based on Information for indirect commercial advantage by a Commercial Body,

that is not Public Sector Use or Statutory Supply (in all of the cases above).

**“Commercial Body”** means an organisation that is primarily engaged in a profession, even if it has public task functions (unless it is a body that is set up under a constitution/ memorandum of association/trust deed which prevents it from distributing any of its income whether as money or in any other form to its Committee, board or members and limits payments to employees to salaries and a bonus scheme that is not designed to distribute all profits or surplus income but has provisions for distribution of surplus income for some public good (usually charitable) purpose ) or is engaged in trade or commerce.

**“Confidential Information”** means any information relating to this agreement disclosed by one party to the other under this agreement or coming to the Licensee’s or the Agency’s attention directly or indirectly as a result of this agreement whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such provided that such information is confidential in nature.

**“Consistency Principle”** means the principle whereby End Users of Information receive Information that is the same from whichever person they obtain the Information.

**“Consultant”** means a person who provides professional services to a client and as a necessary but minor part of that service includes Agency Information or Derived Information as background supporting material to the services.

**“Content”** has the same meaning as in the Re-Use of Public Sector Information Regulations 2005 but may also include computer programs.

**“Contractor Use”** means passing of Information or Derived Information to a person (Contractor) who is contracted to provide services to the information provider, when:

- use is limited to the purposes of that contract, and
- all terms of the original licence are applied to the Contractor, and
- the person letting the contract remains responsible for those terms, and
- the Contractor does not pass the Information to any person other than the Licensee or a subcontractor who complies with these conditions and
- the Contractor destroys all copies of the Information or Derived Information supplied (and anything Copy Derived from that) at the end of the contract.

**“Copy Derived”** means derived Information that is not the result of As-Is use and either:

- includes a copy of the original Information as a whole or as a Part, and/or
- the original Information can be reverse engineered from it, by which is meant the original Information can be recreated by technical or other means in full or in Part from a derivative or a series of similar derivatives of it, and/or
- is a derivative that is Substitutable.

**“Dataset”** means a collection of thematically linked data, facts, intelligence, or advice in any recorded form (but not including documents) in the same format whether or not the collection is all in one place or in a single database or other single system.

**“Derived Information”** unless the context requires otherwise means Copy Derived Information or Process Derived Information.

**“End User”** means any person using information supplied in pursuance of an Approved External Use for its own Internal Use.

**“End User Licence Agreement”** and **“EULA”** mean the terms under which the Licensee supplies Information or Derived Information to End Users (see condition 6)

**“External As-is Use”** means use that is not Internal Use that involves the creation of As-Is Information.

**“External Derived Use”** means use that is not Internal Use that involves the creation of Derived Information.

**“External Use”** means External As-Is Use and/or External Derived Use.

**“Fees”** means Licence Fees and any charges applicable to External Use.

**“Fixed Format”** means Information that is formatted in such a way as to be static and unalterable (or not easily alterable without the loading of special software). It will typically include hard copy, portable document format (pdf), image format (such as jpeg, gif, tiff and bmp) and video format (such as mpeg, avi and wmv).

**“Information”** means the Datasets (including sets of documents) or other Content identified in Schedule 3.

**“Information Warning”** means information required by Schedule 7 to be taken into account when using the Information or Derived Information.

**“Intellectual Property Rights”** means any patent, copyright, database right, registered design, trademark or other industrial or intellectual property together with any applications for any of the foregoing.

**“Internal Use”** means use of Information or Derived Information that is not a supply of it externally other than for Contractor Use, Professional Use, Regulatory Use, or display of fixed image information to third parties either for

demonstration purposes (including marketing and training) on the licensee's or third party premises (but not in removable documents) or display on a website operated for Non-Commercial purposes with no use rights granted other than to read.

**"Licence Fees"** means the Agency's marginal costs of supply charges and licensing charges as identified in Schedule 1 together with Third Party Royalties

**"No Detriment Principle"** means that any intended use of Information must not represent a risk of:

- being misleading to the End User; or
- detriment to the Agency's ability to achieve its objectives; or
- detriment to the environment, including the risk of reduced future enhancement; or
- being prejudicial to the effective management of information held by the Agency; or

**"Non-Commercial"** means use that is not Commercial.

**"Notice"** means a notice given in accordance with condition 21.

**"Part"** In relation to information means any discrete part of the original information that is contained in a larger set of information.

**"Principles"** means the Transparency Principle, the Consistency Principle and the No Detriment Principle.

**"Process"** means a rules based procedure that includes some user input such as:

- Methods, techniques, expert systems, flow charts, etc whether or not electronic, but **not** including MS (Management System) documentation;
- Computer programs, macros, artefacts, and other electronic tools and utilities etc.

**"Process Derived"** describes an output derived from information that is not the result of As-Is or Copy Derived use that requires the physical input of the original information into a Process that involves some form of copying and/or manipulation (usually this will involve modelling).

**"Professional Use"** means, in respect of a particular client and particular transaction or matter, i) internal use by a Consultant for a client and ii) As-Is Fixed Format supply of Environment Agency information by a Consultant to a client, where:

- a) the information is obtained directly from the Environment Agency (and any applicable Licence Fees paid) or by way of an Environment Agency value added reseller approved product or Copy Derived derivative product, as and when needed for and on behalf of a particular client
- b) the information supplied to a client relates to a site in single ownership and can include any other information necessary for an environmental assessment of that site; and
- c) the client is not granted any licence to copy, adapt or sublicense the information other than to take one back up copy or to supply As-Is Fixed Format copies necessary for that client matter (or the Consultant can supply such copies on behalf of the client) provided that no charge is made for such supplies; and
- d) no charge is made by the Consultant to its client for the information other than a charge for professional services and disbursements; and
- e) where the information is Environment Agency information, ownership is attributed to the Environment Agency

**"Public Sector Use"** means use of Information or Derived Information:

- for Internal Use by a public sector body, a body that is subject to the Environmental Information Regulations 2004, or a body having a public task;
- by a public sector body in products or services to other parts of EU and UK Government or public sector bodies, or
- by a public sector body in products or services to any body outside the UK where the supply is in pursuance of international treaties or conventions

provided that in **each** case of Public Sector Use:

- all use (including that by any permitted recipient body) is in pursuance of that body's statutory functions or public task, and
- any charge reflects only the additional marginal costs incurred in the provision of those products or services.

Note: The marginal costs of a UK trading fund (or any similar government body) can include all charges that are required by legislation or binding government rules in relation to making supplies to other public sector bodies

**"Regulatory Use"** means inclusion by or on behalf of a person of Fixed Format information either As-Is or as Derived Information in any documentation where this is reasonably necessary in connection with any process of a court, tribunal or regulatory body (but not including a trade association) affecting that person

**"Re-use"** shall have the same meaning as in Regulation 4 of the Re-use of Public Sector Information Regulations 2005.

**"Source Update Frequency"** means the frequency with which an Agency Primary Source is updated.

**"Standard Condition"** means one or more of the Standard Terms and Conditions in Appendix 1 also referred individually as a numbered "condition".

**"Statutory Supply"** means a supply of information by a public sector body required to do so under the Environmental Information Regulations 2004, the Freedom of Information Act 2000, the Data Protection Act 1998 or any other statutory provision requiring information to be supplied, provided that recipients are limited to Internal Use.

**"Substitutable"** in relation to Information means that a derivative of original Information serves substantially the same purpose as the original Information, has not been changed to something different and is effectively imparting the same or substantially the same knowledge.

**"Terminal Use Restriction"** means the limit on the number of terminals permitted, specified in Schedule 1, to gain direct access to (this includes viewing) the Information or any Copy Derived Information and for the purposes of this condition "terminals" means servers, desktop or portable computers, personal digital assistants, mobile phones or any other electronic means of viewing or using information.

**"Third Party Claim"** means any claim for compensation or any other legal remedy (including remedies in respect of negligence) in connection with this agreement or the Information by any person other than the Licensee or the Agency.

**"Third Party Royalties"** means the charges payable to third parties as identified in Schedule 1 (Internal Use) and Schedule 2 (External Use).

**"Transparency Principle"** means the principle that End Users should not be misled in any way about matters relating to the Information which affect its potential usefulness or as regards its source.

**"Working Day"** means Monday to Friday inclusive from 9:00am to 5:30pm, excluding UK public holidays.

**"written"** includes fax and email and any other electronic text.

**"Year"** means each period of twelve months commencing on the Commencement Date and each anniversary thereof.

1.2. Unless the context otherwise requires:

- 1.2.1 a reference to any statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it or them as from time to time amended, consolidated or re-enacted;
- 1.2.2 words importing a gender shall include all genders;
- 1.2.3 reference to any person includes any legal entity, including without limitation a natural person or incorporated entity; and
- 1.2.4 words importing a singular include the plural and vice versa.

## 2. Background

- 2.1 The Agency wishes to appoint licensees of its Information to facilitate environmental work done on its behalf or in connection with its responsibilities and to increase environmental awareness through increased dissemination of its information and other Content.
- 2.2 The Licensee has offered or agreed to act as or is already a Licensee and the Agency has agreed to the Licensee being so engaged on the terms and conditions set out in this agreement.
- 2.3 The Agency and the Licensee acknowledge that the Consistency Principle and the Transparency Principles are in the interests of fairness and improved service to End Users.

## 3. Term

This agreement shall commence with effect from the Commencement Date and shall continue for a period (the "Term") specified in Schedule 5 when it will expire automatically without notice, subject to earlier termination as set out in conditions 12. The term may be extended by mutual agreement between the parties in accordance with condition 20.

## 4. Supply of Information to the Licensee by the Agency

- 4.1 The Agency shall supply to the Licensee the Information (where these are specified in Schedule 3) from the Agency Primary Source held by the Agency (to the extent that the Licensee does not already hold such Information) and use all reasonable endeavours to do so on the Commencement Date or as soon as practicable thereafter
- 4.2 Where the Information exists in electronic form the Agency shall supply it in that form but shall at its discretion choose the electronic media.

## 5. Licence

- 5.1 In consideration of the mutual obligations in this agreement and the payment (if applicable) by the Licensee of the Fees the Agency hereby grants to the Licensee a non-transferable, non-exclusive revocable licence subject to the terms of this agreement to supply Information or Derived Information in a Statutory Supply, make the uses specified in the Special Conditions and to take any copies of the Information reasonably needed in connection with licensed use including backup copies.
- 5.2 This licence is given to the Licensee personally and not to any affiliated company or organisation.

## 6. Obligations of the Parties

### 6.1 The Licensee shall:

#### INFORMATION

- 6.1.1. not use the Information or any Derived Information other than as licensed by this agreement or under a separate licence from the Agency and for the avoidance of doubt this condition does not prohibit products or derivatives that do not contain Information or comprise Derived Information;
- 6.1.2. not use any other Agency information unless under a separate licence from the Agency and where the Information replaces earlier information supplied not use that earlier information otherwise than for Archival Use (no Archival Use Fee is payable if replacement information is licensed);
- 6.1.3. not (otherwise than to a Contractor) supply the Information to anyone else if it is not an Approved External Use nor supply any other Agency information to any other person and in particular ensure that any web hosting or web mapping services are consistent with this obligation and not given any greater licence to use the Information than is permitted by way of Contractor Use;

#### EXTERNAL SUPPLY OF INFORMATION OR DERIVED INFORMATION

- 6.1.4. comply with any Terminal Use Restriction and any restriction on use of the Information that derive from third party rights in respect of the Information that are identified in Schedule 3;
- 6.1.5. take all reasonable technical, contractual and other security measures to protect the integrity and

security of Information and to prevent any use of the Information contrary to this agreement and any breach of this sub-condition which has a demonstrable effect shall be capable of being treated as a material breach of this agreement;

#### PUBLICITY & MARKETING

- 6.1.6. not hold itself out, in relation to the Agency, as an authorised Licensee of anything supplied nor hold itself out as having any other relationship with the Agency unless expressly authorised by the Agency in writing;
- 6.1.7. not refer to the Agency or use Information in any marketing or publicity material without prior approval of the Agency in writing;

#### END USER TERMS AND CONDITIONS

- 6.1.8. ensure that any supply to a third party in pursuance of this agreement of As-is or Copy Derived Information is on the terms of an End User Licence Agreement (EULA) which:
- prohibits any External Use that is not separately licensed by the Agency;
  - requires the As-Is or Copy Derived Information to be destroyed at the end of the term of the EULA;

#### COMPLIANCE WITH THE PRINCIPLES

- 6.1.9. do nothing which might contravene the Principles and any breach of this sub-condition which has a demonstrable effect shall be capable of being treated as a material breach of this agreement provided that provision of truthful responses to enquiries put to the Licensee which are purely factual in nature shall not be capable of constituting a breach of this agreement unless they are a breach of condition 11;

#### NOTIFICATIONS BY THE LICENSEE

- 6.1.10. The Licensee will notify the Agency if:
- it becomes aware that it is in breach of the licence agreement,
  - it suspects or discovers any possible infringement of the Agency's Intellectual Property Rights in the Information by a third party, or
  - it suspects or discovers that use of the Information might be an infringement of any third party's Intellectual Property Rights or of any third party's contractual rights derived therefrom or be any other breach of confidentiality or statute, or
  - it receives any third party claim or a significant complaint or report in connection with this agreement or the Information and will, subject to any legally binding confidentiality, supply copies of any relevant documentation to the Agency.

### 6.2 The Agency shall:

- 6.2.1 supply to the Licensee such information and assistance as the Licensee may reasonably request, to the Contact identified in Schedule 4, for the purposes of this agreement in connection with the processes and procedures used to create the information unless such information is confidential to the Agency or supply would breach any intellectual property rights, contractual restrictions or other third party confidentiality in disclosing them;
- 6.2.2 treat equitably the Licensee and other comparable licensees

## 7. Payment

- 7.1 Fees are as detailed in Schedules 1 and 2 and are, subject to any Special Conditions, payable in advance of this agreement.
- 7.2 The Licensee shall keep true, accurate and sufficient accounts and records to enable the amount of all payments required under this agreement to be determined. The Licensee shall keep such accounts and records during the life of this agreement and six years after its termination or expiry.

**8. Liability****8.1 QUALITY AND FITNESS FOR PURPOSE**

The Agency does not warrant that the Information will always be accurate, complete or up to date or that the Information will provide any particular facilities or functions or be suitable for any particular purpose. The Licensee must ensure that the Information meets its needs and is entirely responsible for the consequences of any use of the Information.

**8.2 ELECTRONIC FORMAT**

If an electronic format has been used, the Agency applies reasonable endeavours to ensure that but cannot guarantee that the media on which the Information is provided will always be free from defects, computer viruses, worms, trojan horses, software locks or other similar code of a destructive or unwelcome nature. The Licensee should carry out all necessary checks prior to loading the Information on to its computer system.

**8.3 ECONOMIC AND INDIRECT LOSS**

Other than in respect of the obligation in condition 6 to comply with the Principles, the warranty in condition 10 and condition 11, neither party shall be liable to the other or any other person (whether in contract or in negligence or in other tort or otherwise) for:

- a. any economic losses (including without limitation loss of revenues, profits, contracts, business or anticipated savings) other than Fees; or
- b. any loss of goodwill or reputation; or
- c. any special, indirect or consequential losses in any case whether or not such losses were within the contemplation of the parties at the date of this Licence (including loss of business, profit, reputation or goodwill) arising out of or in connection with this agreement or its subject matter.

**8.4 MAXIMUM LIABILITY**

The Agency's and the Licensee's maximum aggregate liability to the other (including legal costs) in connection with this agreement shall not (apart from payment of Fees and the indemnities in condition 17) exceed the total sum of Fees due under this agreement or such other sum as shall be indicated in Special Conditions.

**8.5 NOTICE OF CLAIMS**

Neither party shall be liable for any claim between the parties (not being in relation to a Third Party Claim) arising under this agreement unless Notice of the claim is given to the other within six months of becoming aware of the circumstances giving rise to such claim, or of such time as the relevant party ought reasonably to have become aware of such circumstances.

**8.6 DEFECTS IN OWNERSHIP**

The Agency shall not be liable under this agreement for any defect in its Intellectual Property Rights to the Information if:

- 8.6.1 it has used reasonable endeavours to ensure that Information where the defect occurs (being one of those separately identified and numbered sections in Schedule 3 or any addition thereto) is in the generality the property of the Agency or property of a third party who has licensed the Agency to supply its information; and
- 8.6.2 such defect in Intellectual Property Rights in that part of the Information after the application of the provisions in condition 10 on remedying infringements would not require the withdrawal of that part in full or a significant part thereof, it being accepted that less than five percent (5%) (measured either as to value, geographically, or by quantity) would not be significant.

**8.7 DEATH AND PERSONAL INJURY**

Nothing in this condition 8 shall limit or exclude either party's liability for death or personal injury arising from its negligence.

**8.8 REPRESENTATIONS**

Except as expressly provided in this agreement, all representations, conditions and warranties whether express or implied (by statute or otherwise) are hereby

excluded to the fullest extent permitted by law provided that this shall not exclude statutory or common law rights in respect of negligence.

**9. Audits**

9.1 Not more than once in any Year and for 6 years post termination the Licensee shall permit the Agency or its agents to have access to its records of dealings in respect of the Information on not less than 5 Working Days' Notice in order to verify the amount of Fees due from the Licensee, compliance with the Principles and whether any other provision of the agreement has been breached and to take and retain copies of such records for its own use.

9.2 If the results of the verification under condition 9.1 reveal a significant breach of the agreement is identified, the cost of the verification shall be paid by the Licensee, but otherwise such cost shall be borne by the Agency.

9.3 If the results of any verification under condition 9.1 identify additional Fees due to the Agency such Fees shall be payable by the Licensee.

9.4 The Agency shall be entitled to invoice the Licensee for any costs due to it under condition 9.2 and any Fees due under Condition 9.3 and the Licensee shall pay such sums within 20 Working Days of the date of the Agency's invoice together with VAT at the then prevailing rate.

**10. Intellectual Property Rights****10.1 NO TRANSFER OF RIGHTS**

No Intellectual Property Rights are transferred or licensed to the Licensee save those which are expressly provided in this agreement (see in particular condition 5).

**10.2 WARRANTY**

The Agency warrants that subject to the provisions on defects in ownership contained in condition 8 it has all other powers and rights necessary to grant to the Licensee the licences set out in condition 5.

**10.3 REMEDYING OF DEFECTS**

If any use of any part of the Information in accordance with this agreement infringes any Intellectual Property Rights the Agency shall use all reasonable endeavours to obtain the right (without charge) for the Licensee to continue to use and to distribute the infringing Information. If however the Agency is unable to do this, without prejudice to the above warranty in this condition and any other remedy the Licensee may have, the Agency shall use all reasonable endeavours to modify (or replace) the infringing Information so as to be as close to the usefulness of the original Information as reasonably possible or (if this is not possible) remove the infringing Information from Schedule 3.

**10.4 NO SPECIFIC PERFORMANCE**

Neither party shall be entitled to bring an action for specific performance of the other party's obligations under this agreement where the performance of such obligation would be in breach of the Intellectual Property Rights of a third party.

**11. Confidentiality**

11.1 The Licensee and the Agency agree:

11.1.1 to keep Confidential Information in strict confidence and secrecy;

11.1.2 not to use any Confidential Information other than for the purposes of this agreement;

11.1.3 to restrict the disclosure of any part of Confidential Information to such of their respective employees, agents and contractors who need access to it to enable them to perform their obligations under or in connection with this agreement and to bring to the attention of such persons the duty of confidentiality under this condition before allowing them access to Confidential Information unless they are already bound by alternative equivalent obligations; and

11.1.4 not to disclose any Confidential Information to any other third parties without the prior written consent of the other.

11.2 This condition 11 shall survive the expiry of this agreement or its termination howsoever caused.

11.3 This condition 11 shall not apply to Confidential Information:

- 11.3.1 which when it was disclosed was in the public domain otherwise than because of a breach of an obligation of confidentiality; or
- 11.3.2 that a party could be required to disclose by law; or
- 11.3.3 that has been disclosed in accordance with the Public Interest Disclosure Act 1998, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or the Re-use of Public Sector Information Regulations 2005; or
- 11.3.4 received by a party from a third party at liberty to disclose it; or
- 11.3.5 supplied to a third party whose Intellectual Property Rights have been used in connection with the Information and who has reasonably asked for such Confidential Information in order to verify payments due to them.
- 11.4 Neither party shall be entitled to bring an action for specific performance of the other party's obligations under this agreement where the performance of such obligation would breach a legally binding confidentiality requirement of a third party.
- 12. Termination**
- 12.1 The Agency shall be entitled to terminate this agreement by Notice in accordance with the following provisions :
- 12.1.1 With 60 Working Days Notice if the Licensee is in material breach of any of the terms of this agreement, the Notice identifies that breach and, in the case of a breach capable of remedy, indicates that termination will not follow if the Licensee remedies that breach in such manner as may be described in the notice, within that period of 60 Working Days; or
- 12.1.2 With 20 Working Days Notice if the Licensee has persistently (and not less than 5 times in any 12 month period) committed a non-material breach of any of the terms of this agreement, the Notice identifies that breach and, in the case of such breach capable of remedy, indicates that 20 Working Days is available, to remedy that breach in such manner as may be described in the notice, in addition and before the 20 Working Days period before termination commences; or
- 12.1.3 With 20 Working Days Notice if the Licensee undergoes a change of ownership or control (other than a change that is within the public sector) to which the Agency has, within 20 Working Days of becoming aware of such change, reasonably and properly taking into account the Principles, and objected; or
- 12.1.4 immediately, if a resolution is passed or an order is made for the winding up of the Licensee (save for the purpose of a bona fide re-construction or amalgamation) or the Licensee becomes subject to an administration order, or a receiver or administrative receiver is appointed over any of the Licensee's property or assets, or the Licensee is dissolved; or
- 12.2 The Licensee shall be entitled to terminate this agreement by 20 Working Days' Notice for any reason.
- 12.3 The rights to terminate this agreement given by this condition 12 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 13. Consequences of Termination**
- 13.1 Subject to the provisions of this condition, on expiry or termination of this agreement the Licensee's entitlement to use the Information shall, cease.
- 13.2 All copies of the Information or any Copy Derived Information in the Licensee's possession (and for the avoidance of doubt this includes persons making Contractor Use) shall, subject to Archival Use authorised by this condition below, be destroyed.
- 13.3 Continued use by an End User of Information or Derived Information supplied under this agreement prior to expiry or termination is licensed by the Agency for the remainder of the period of any EULA that is compliant with this agreement. This condition shall survive termination or expiry of this agreement.
- 13.4 the Licensee will be issued on request an Archival Use licence subject to further payment of annual Licence Fees, where Licence Fees are payable under this agreement, with a discount of 80% on Licence Fees (other than Third Party Royalty Fees) without any Licence Fee cap if such was applicable in the agreement.
- 13.5 Internal Use Licence Fees shall in the first Year be payable in full for that Year regardless of when it is terminated and in subsequent years be due for the full year (of 1 April to 31 March) in which this agreement is terminated but, subject to the provisions on Archival Use, not thereafter.
- 13.6 On expiry of this agreement Internal use Licence Fees shall be due pro rata up to the date of expiry.
- 14. Force Majeure, National Security and Agency's Operating Requirements**
- 14.1 Neither party shall be liable to the other for any delay in or failure of performance of its obligations under this agreement (other than an obligation to pay money) arising from any cause beyond its reasonable control including, without limitation, any of the following: Act of God; governmental act (including acts of regulatory authorities); statutory obligation; industrial action; any change in the law or the interpretation of the law by the courts; war; fire; flood; explosion or civil commotion ("Force Majeure").
- 14.2 If a party is affected by Force Majeure it shall forthwith give Notice to the other party of the nature and extent of such Force Majeure.
- 14.3 If Force Majeure prevails for a continuous period in excess of 20 Working Days the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 14.4 The Agency shall not be liable to the Licensee for delay in performing its obligations under this agreement if such delay arises out of the overriding need to comply with its statutory obligations.
- 15. Assignment**
- The Licensee may not transfer or in any other way make over to any third party the benefit of this agreement either in whole or in part without the express prior written consent of the Agency such consent not to be unreasonably withheld or delayed.
- 16. Waiver**
- Failure by either party to exercise or enforce any rights available to it, or any forbearance, delay or grant of indulgence, will not (subject to condition 17 below) be construed as a waiver of its rights under this agreement or otherwise.
- 17. Indemnities**
- 17.1 Each party shall indemnify the other against all costs (including reasonable and proper legal costs), claims, damages, demands and expenses arising directly or indirectly out of any Third Party Claim in accordance with the following principles:
- 17.1.1 the Licensee shall (subject to the sub-conditions below) be responsible for any claims which arise in connection with the supply or use of the Information in so far as that claim arises from any breach of the agreement by the Licensee or a Licensee Agent;
- 17.1.2 the Agency shall, subject to the provisions on defects in ownership in condition 8, be responsible for any claims that use of the Information infringes any United Kingdom Intellectual Property Rights or has been supplied in breach of a legally binding confidentiality requirement;
- 17.1.3 nothing in these indemnities shall have the effect of requiring one party to indemnify the other to the extent that the other has been negligent or in wilful default;

- 17.2 The Agency or the Licensee (as the case may be) shall:
- 17.2.1 forthwith on receipt of a written request from the Licensee or the Agency (as the case may be) give to the other the sole conduct of the defence and settlement of any such claim and at no time admit liability; and
- 17.2.2 act in accordance with the reasonable instructions of the other and give all such assistance as it may reasonably require to defend or settle such claim.

17.3 This condition 17 shall not apply when both parties are public sector bodies.

#### 18. Entire agreement

This agreement constitutes the entire agreement between the parties and supersedes all oral or written agreements, representations, understandings or arrangements relating to its subject matter other than subsequent written alterations to this agreement mutually agreed by the parties. The parties irrevocably and unconditionally waive any right to rescind this agreement by virtue of any misrepresentation and to claim damages for any misrepresentation save in each case where such misrepresentation was made fraudulently.

#### 19. Severance

If any part of the agreement is found by a court of competent jurisdiction or other competent authority to be unenforceable, then that part will be severed from the remainder of the agreement which will continue to be valid and enforceable to the fullest extent permitted by law.

#### 20. Variation

##### CHANGES BY THE LICENSEE

20.1 The Licensee may request by Notice that this agreement be amended, modified, varied or supplemented and such request shall be accompanied at that time or subsequently by such additional information in connection therewith that the Agency reasonably requires.

20.2 The Agency may also by Notice propose reasonable consequential variation of any other part of the agreement (including, without limitation, Schedules 1, 3, 6 and 7) and if such changes are proposed the date a variation takes effect will be not earlier than the date such consequential variations are agreed.

20.3 Variations requested by the Licensee and consequential variations proposed by the Agency must be agreed by both parties in writing signed by or on behalf of the Agency and the Licensee and neither party shall unreasonably refuse such requests for a variation.

##### CHANGES BY THE AGENCY

20.4 The Agency may by Notice:

- 20.4.1 withdraw any of the Information from Schedule 3 by giving at least twelve calendar months Notice with reasons if it reasonably believes that any of the Principles would be substantially prejudiced; or
- 20.4.2 withdraw any of the Information (or attributes thereof) from Schedule 3 by giving at least 20 Working Days' Notice with reasons if would be in breach of any legislation or a direction by any relevant regulatory body by continuing to license that part of the Information; or
- 20.4.3 vary description (other than attributes) of, or add attributes to, Information in Schedule 3, or amend Schedule 6 or Schedule 7 by giving at least 20 Working Days' Notice with reasons if such change is justified by any of the Principles or if there is a requirement imposed on the Agency in respect of third party rights in, or used in the creation of, any part of the Information; or
- 20.4.4 amend Licence Fees not earlier than the review date stated in Schedule 1; or
- 20.4.5 replace Appendix 1 Terms and Conditions of this agreement on or following the next major review date identified in Schedule 5.

20.5 In respect of changes made by the Agency under condition 20.4 above in respect of Fees, Special Conditions, or the Terms and Conditions:

20.5.1 the Agency will allow the Licensee 20 Working Days after receipt of the Notice proposing changes to make representations to such changes,

20.5.2 after receipt of such representations the Agency shall give the Licensee 30 Working Days' Notice after the Agency has responded to the Licensee's representations prior to such variations taking effect.

20.6 The Agency shall endeavour to apply the same variations as far as possible to other licensees of similar information for similar purposes.

20.7 Variations to this agreement shall not apply to Information or Derived Information already supplied by the Licensee.

20.8 If the Agency updates its standard conditions for comparable licensees or enters into any agreement with a comparable licensee on different terms and conditions to those in this agreement and the differences are not attributable to different circumstances, it will publish such new conditions or supply a copy thereof to the Licensee and allow (but not oblige) the Licensee to terminate under condition 12 and to enter into new agreement on such new terms and conditions if there is no other change.

#### 21. Notices and Consents

21.1 Notices under this agreement shall be written, in English, in advance by the period specified in this agreement (or after the event if so specified) and shall be sent to the address of the party as set out in this agreement (or such other address in the United Kingdom as either party may notify to the other in accordance with this condition).

21.2 Notices shall be marked for the attention of the contact identified in Schedule 4.

21.3 Notices may be sent by first class mail (or other comparable and reputable postal services) or by email.

21.4 Correctly addressed notices sent by first class mail shall be deemed to be delivered 2 Working Days after posting.

21.5 Correctly addressed emails shall be deemed to be delivered when sent provided that a confirmation copy is sent by first class mail within 24 (twenty four) hours.

21.6 Nothing in these standard conditions shall prevent the sender of any Notice from choosing a longer period than the minimum required.

21.7 Any consent, approval or agreement given pursuant to this agreement shall be in writing and in the case of the Licensee shall be signed in accordance with the contacts records in Schedule 4, which may be varied in writing by either party from time to time.

#### 22. Relationship of Parties

Nothing in this agreement shall:

22.1 create a partnership or joint venture between the parties, nor shall this agreement constitute one party the agent of the other or give either party authority to act or hold itself out as having authority to act on behalf of the other; or

22.2 confer or purport to confer on any third party any benefit or rights in respect of the terms of this agreement.

#### 23. Dispute Resolution

23.1 All disputes under or in connection with this agreement shall be referred first to the parties' respective managers with responsibility for the day to day management of this agreement.

23.2 Either party may thereafter initiate, at any time, the other party's standard internal complaints process (or if none exists refer the dispute up to the next level of management).

23.3 After the relevant complaints procedure or referral is completed (within the relevant timescales set out therein or in the absence of a timescale, the time shall be deemed to be 20 Working Days), the dispute may be referred by either party to the parties' respective Chief Executive Officers.

23.4 If the parties' respective Chief Executive Officers are unable to resolve the dispute within 10 Working Days from it being referred to them, the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.

- 23.5 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 20 Working Days after the appointment of the mediator.
- 23.6 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
- 23.7 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 23.8 Nothing in this condition shall restrict the Parties' rights to seek interim relief.

**24. Rights Of Third Parties**

No third parties shall have rights to enforce any part of this agreement under the Contracts (Rights of Third Parties) Act 1999.

**25. Governing Law**

This agreement shall be governed and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts in the event of a dispute.