

LICENCE AGREEMENT

For the use of intellectual property of the Dienst Der Hydrografie, the Netherlands within products and services intended for non-navigational, non-commercial, scientific, academic, technical or consultancy purposes of the end-user including limited end-user re-use rights

LICENCE AGREEMENT NUMBER: NL 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:

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|------|-------------------------------|---|
| 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 party listed below has granted its permission to the LICENSOR to grant licences for the commercial re-use of the LICENSOR’S MATERIAL on its behalf through this Agreement: <ul style="list-style-type: none"> - Dienst Der Hydrografie,
Frederikkazerne/gebouw 32, Van der Burchlaan 31, 2597 PC Den Haag of the Netherlands |
| 2.6. | “DETERMINATION” | Has the meaning given in clause 6.14 below. |
| 2.7. | “END-USER” | Any person permitted by the LICENSEE to use the LICENSEE’S MATERIAL. |
| 2.8. | “EXPERT” | Has the meaning given in clause 6.10.2 below. |
| 2.9. | “FREE DISTRIBUTION AMOUNTS” | The quantity of LICENSEE’S MATERIAL that may be distributed free of charge for the purposes of promotion and demonstration during each ACCOUNTING PERIOD as specified in Schedule B. |

- 2.10. "LICENCE PERIOD" The period commencing from the COMMENCEMENT DATE continuing indefinitely unless terminated by either PARTY in accordance with clause 20 below.
- 2.11. "LICENSEE'S MATERIAL" The material produced by the LICENSEE as a result of the operation of this Agreement.
- 2.12. "LICENSOR'S MATERIAL" The material described in clause 4 below.
- 2.13. "PARTIES" The persons identified in clause 1 above who individually are sometimes referred to as 'the PARTY'.
- 2.14. "PERMITTED PURPOSES" Has the meaning given in clause 3.3 below.
- 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 following purposes (unless otherwise stated in clause 4 below):
- 3.2.1. internal research and development;
 - 3.2.2. internal quality assurance processes relating to the LICENSEE'S MATERIAL;

- 3.2.3. creating and manufacturing the LICENSEE'S MATERIAL using only that LICENSOR'S MATERIAL shown in Schedule B for each LICENSEE'S MATERIAL; and
- 3.2.4. distributing the LICENSEE'S MATERIAL to END-USERS in the form and format specified in this Agreement and subject to the END-USER restrictions specified in this Agreement, within the TERRITORY either directly or using distributors or agents.
- 3.3. The LICENSEE shall not reproduce or adapt the LICENSOR'S MATERIAL to create and manufacture LICENSEE'S MATERIAL for purposes other than for within products and services intended for non-navigational (which includes products and services for monitoring the location of vessels or other objects from a shore-based system, for crisis management, maritime security, command and control of vessels from a shore-based system or for providing training, including simulators, relating to those activities), non-commercial, scientific, academic, technical or consultancy purposes of the end-user including limited end-user re-use rights (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. Otherwise than as expressly permitted in this Agreement, the LICENSEE shall not reproduce or adapt the LICENSOR'S MATERIAL in a manner that in the reasonable opinion of the LICENSOR is either a facsimile reproduction or so confusingly similar to any product previously published by the LICENSOR or the CUSTODIANSHIP ORGANISATION that a reasonable third party may consider it to be published by or on behalf of the LICENSOR or the CUSTODIANSHIP ORGANISATION.
- 3.5. Unless otherwise agreed, in writing, by the PARTIES, the LICENSEE shall supply the LICENSOR with the following:
- 3.5.1. two representative samples of each product or service range listed in Schedule B within thirty days of production and before it is distributed; and
- 3.5.2. two copies of all products or services within those product or service ranges within thirty days of production and either before they are distributed or simultaneously with their first distribution.
- Such supply shall be without charge and under an irrevocable licence such that the LICENSOR and the CUSTODIANSHIP ORGANISATION may use the LICENSEE'S MATERIAL for their internal purposes during the LICENCE PERIOD and for 12 years thereafter. The LICENSOR, the CUSTODIANSHIP ORGANISATION and any third parties acting on their behalf, shall only use the supplied LICENSEE'S MATERIAL as necessary to exercise the LICENSOR's rights or perform its obligations under this Agreement or to protect their intellectual property rights. The LICENSOR and the CUSTODIANSHIP ORGANISATION shall ensure that their employees and any third parties acting on its behalf in using any of the supplied LICENSEE'S MATERIAL are bound by an undertaking in substantially the same terms as clause 9.3 below. The LICENSEE acknowledges that such supply of the LICENSEE'S MATERIAL to the LICENSOR and the CUSTODIANSHIP ORGANISATION does not represent a quality assurance in any form by them. The LICENSOR and the CUSTODIANSHIP ORGANISATION acknowledge that the LICENSEE is not responsible for supporting LICENSEE'S MATERIAL supplied in accordance with this clause 3.5.

- 3.6. If the LICENSEE'S MATERIAL is used by the END-USER in digital form, in addition to supplying LICENSEE'S MATERIAL in accordance with clause 3.5 above the LICENSEE shall supply to the LICENSOR and the CUSTODIANSHIP ORGANISATION any tools required for their use for the same purpose and under the same licence as clause 3.5 above if so requested by the LICENSOR.

4. The LICENSOR'S MATERIAL

- 4.1. Save as otherwise provided either by this Agreement or by any other agreement between the PARTIES or between the CUSTODIANSHIP ORGANISATION and the LICENSEE, 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 or the CUSTODIANSHIP ORGANISATION unless requisite third party permission has been obtained by the LICENSEE.
- 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 ORGANISATION):

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 ORGANISATION 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. published by the CUSTODIANSHIP ORGANISATION within its commercial range of navigational charts which are listed in its published catalogue; or
 - 4.2.1.1.3. supplied by the LICENSOR to the LICENSEE pursuant to clause 3.1 above; or
 - 4.2.1.1.4. published by any licensee of the LICENSOR or the CUSTODIANSHIP ORGANISATION from such navigational charts or supplied material.
- 4.2.1.2. Chart data shall include all updates to that data published by the LICENSOR or the CUSTODIANSHIP ORGANISATION.
- 4.2.1.3. For the avoidance of doubt, chart data includes any information published within the navigational chart (including tabulated data published within navigational charts used to determine the rate and direction of horizontal tidal streams).
- 4.2.1.4. 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:

- 4.2.1.4.1. a list of navigational charts currently published by the LICENSOR or the CUSTODIANSHIP ORGANISATION and a summary, expressed to the nearest 5%, of the third parties whose material was used in the compilation of the charts;
- 4.2.1.4.2. a list of all cells where the cell content of CUSTODIANSHIP ORGANISATION material 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. Tidal data – simplified harmonic constants

- 4.2.2.1. The LICENSEE shall only use the simplified harmonic constants shown in clause 4.2.2.3 below with the LICENSOR's simplified harmonic method of calculating tidal predictions (including the angles and factors information) published in the latest edition of NP 201, NP 202, NP 203 and NP 24, the Admiralty Tide Tables.
- 4.2.2.2. The LICENSOR publishes the simplified harmonic constants annually between February and July for the following year. The LICENSEE shall notify its END-USERS of the year to which any simplified harmonic constants within the LICENSEE'S MATERIAL relate.
- 4.2.2.3. A list of the licensed simplified harmonic constants can be found in the following spreadsheets which form part of this Agreement:
 - 4.2.2.3.1. For 2006 simplified harmonic constants: "(NL) [Commercial licence agreement – Clause 4.2.2.3.1 – 2006 SHM – 28 September 2005.xls](#)"
 - 4.2.2.3.2. For 2007 simplified harmonic constants: "(NL) [Commercial licence agreement – Clause 4.2.2.3.2 – 2007 SHM – 2006.08.17.xls](#)"
 - 4.2.2.3.3. For 2008 simplified harmonic constants: "(NL) [Commercial licence agreement – Clause 4.2.2.3.3 – 2008 SHM – 2007.10.08.xls](#)"
 - 4.2.2.3.4. For 2009 simplified harmonic constants: "(NL) [Commercial licence agreement – Clause 4.2.2.3.4 – 2009 SHM – 2008.05.20.xls](#)"

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 CUSTODIANSHIP ORGANISATIONS and who's copyright or other intellectual property rights belong to the CUSTODIANSHIP ORGANISATION 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 C, together with the name of the relevant intellectual property owner.

4.2.4. Tidal stream data

- 4.2.4.1. Tidal stream data shall consist of all horizontal tidal stream data published by and belonging to the CUSTODIANSHIP ORGANISATION which are supplied to the LICENSEE by the LICENSOR or the CUSTODIANSHIP ORGANISATION for the purpose of this Agreement.

- 4.2.4.2. Tidal stream data shall be supplied in three fixed areas as follows:

- 4.2.4.2.1. Southern North Sea (including approaches to Europort, Scheveningen, IJmuiden and Den Helder);
- 4.2.4.2.2. Zeeland; and
- 4.2.4.2.3. Waddenzee (including Den Helder).

- 4.2.4.3. Tidal stream data shall include all updates to that data supplied by the LICENSOR or the CUSTODIANSHIP ORGANISATION.

4.2.5. Other data

- 4.2.5.1. The material, if any, described in this clause which consists of the copyright material or other intellectual property collected by and/or belonging to the CUSTODIANSHIP ORGANISATION which are supplied to the LICENSEE by the LICENSOR.

- 4.2.5.2. As a limitation to the grant in clause 3.2 above, the LICENSEE may only use the material described in this clause 4.2.5 for the following purposes:
 - 4.2.5.2.1. internal research and development; and
 - 4.2.5.2.2. internal quality assurance processes relating to the LICENSEE'S MATERIAL.

- 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. The LICENSEE shall ensure that the LICENSEE'S MATERIAL is only available for use by the END-USER for a limited period which shall be no longer than 48 months. Such periods can be extended for further periods no longer than 48 months within 6 months of expiry of the current period. The LICENSEE shall ensure that at the end of such periods that the LICENSEE'S MATERIAL is either technically disabled or the END-USER returns the LICENSEE'S MATERIAL to the LICENSEE with an undertaking, supported by a binding warranty, that the LICENSEE'S MATERIAL is no longer being used.
- 5.5. The LICENSEE may grant limited rights to END-USERS to use and re-use the LICENSEE'S MATERIAL. The LICENSEE may only grant such limited use and re-use rights to END-USERS if it also procures that END-USERS agree to restrictions on those re-use rights. The limited rights to use and re-use and the restrictions are shown in Schedule D. The LICENSEE shall use its reasonable endeavours to ensure END USERS comply with those restrictions. The LICENSEE shall inform the LICENSOR of any failures by END USERS to comply with those restrictions or breaches of its END-USER licence agreements that come to its attention as soon as possible.
- 5.6. Subject to clause 5.6 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 except where it is being used as the delivery mechanism to a contractor approved in accordance with clause 12.1 below and the LICENSEE has used all reasonable endeavours to ensure that it can only be accessed by the contractor.
- 5.7. The LICENSEE shall not place or permit others to place the LICENSEE'S MATERIAL on a computer accessible to third parties whether via the Internet or otherwise except where:
- 5.7.1. it is being used as the delivery mechanism to a distributor or END-USER and the LICENSEE has used all reasonable endeavours to ensure that it can only be accessed by the intended distributor or END-USER and the delivery mechanism can be audited and the number of copies supplied and the details of the recipient independently verified;
 - 5.7.2. the sole purpose is promotion of the LICENSEE'S MATERIAL and the LICENSEE'S MATERIAL to be placed on a computer accessible to third parties is limited to:
 - 5.7.2.1. digital raster images consisting of no more than 256,000 pixels;
 - 5.7.2.2. textual extracts up to 250 words in aggregate from any single item of LICENSOR'S MATERIAL;
 - 5.7.2.3. tidal predictions for the current day and six subsequent days

- and the LICENSEE shall ensure that no more than one such digital raster image or textual extract may be reproduced and made available within any one window at any one time and the images show a clear notice that they are “Not to be used for navigation”; or
- 5.7.3. an unlimited number of digital raster image extracts from the LICENSEE’S MATERIAL are placed on a computer accessible to third parties for the sole purpose of promoting the LICENSEE’S MATERIAL if such images are at a resolution lower than thirty-six dots per inch, are not geo-referenced and show a clear notice that they are “Not to be used for navigation”.
- 5.8. The LICENSEE may permit END-USERS the limited right to place the LICENSEE’S MATERIAL on a computer accessible to third parties whether via the Internet or otherwise where the LICENSEE’S MATERIAL to be placed on a computer accessible to third parties is limited to digital raster images consisting of no more than 256,000 pixels. The LICENSEE shall not permit the END-USER to reproduce and make available more than one such digital raster image at any one time and require the END-USER to include:
- 5.8.1. the acknowledgement “© Copyright Netherlands Hydrographic Office, [the year of first publication]. All rights reserved.”; and
- 5.8.2. the licence agreement number NL XX - 000 – Name or another reference that allows the LICENSOR to identify the END-USER as a customer of the LICENSEE.

6. Payment

- 6.1. In consideration of the LICENSOR granting the rights within this Agreement, the LICENSEE shall pay the LICENSOR:
- 6.1.1. a licence fee for each copy of the LICENSEE’S MATERIAL distributed to END-USERS which the LICENSOR shall calculate in accordance with Schedule A to this Agreement; and
- 6.1.2. sums in respect of supplies made pursuant to clause 3.1 above and as described in Schedule A to this Agreement.
- 6.2. The actual licence fees for each LICENSEE’S MATERIAL shall be shown in Schedule B for each product or service range.
- 6.3. The FREE DISTRIBUTION AMOUNTS in Schedule B (or the actual quantity distributed if lower) shall be free of all licence fees.
- 6.4. All charges in this Agreement are, unless otherwise stated, shown exclusive of taxes or duties
- 6.5. The LICENSEE shall pay all taxes or duties in accordance with the terms of any applicable regulations such that the LICENSOR receives all fees in full.
- 6.6. 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 sold or otherwise distributed (including distributed free of charge) by the LICENSEE and its distributors and agents during that ACCOUNTING PERIOD in sufficient detail to allow the LICENSOR to calculate the licence fees. The report shall include the following information (in hard copy, as an electronic file in ASCII delimited format or as otherwise mutually agreed by the PARTIES), namely:

- 6.6.1. the product identification number and title for each version or edition published;
 - 6.6.2. the publication/edition date or edition number of each product;
 - 6.6.3. the number of units sold, the number of units otherwise distributed and the number of units distributed free of charge; including sufficient information to determine the appropriate pricing factors stated in this Agreement.
- 6.7. Based on the report prepared and submitted by the LICENSEE in accordance with clause 6.6 above, 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.
- 6.8. 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 such agreement within three months of the request.
- 6.9. Where a certificate is provided pursuant to clause 6.8 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.
- 6.10. 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 6.10) 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 DAYS' 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 6.10) 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.

- 6.10.1. 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.
- 6.10.2. If any AUDITOR's report or reports show, to the reasonable satisfaction of the LICENSOR, the LICENSEE to have:
- 6.10.2.1. deliberately failed to account for any payment due under this Agreement; or
- 6.10.2.2. 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
- 6.10.2.3. 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 6.11 below.
- 6.11. 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 Institute of Chartered Accountants in England and Wales.
- 6.12. Subject to clause 6.13 below the DETERMINATION of the EXPERT shall be binding upon the PARTIES.
- 6.13. No DETERMINATION of the EXPERT shall specify that any amendment to this Agreement shall be made.
- 6.14. 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.

- 6.15. If the EXPERT shall become unable to act or shall fail for any reason to determine the dispute within the period prescribed in clause 6.14 above then either PARTY may apply to the President from time to time of the Institute 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.
- 6.16. 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 6.16.
- 6.17. 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. The LICENSOR shall have the right to amend the licence and supply fees in clause 6.1 above 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.

8. *Acknowledgements and notices*

- 8.1. The LICENSEE shall ensure that the acknowledgements and notices specified in paragraph 2 of each annex of Schedule B appear at a suitable place against or within the LICENSEE'S MATERIAL in such a manner that they are prominent and easily accessible to END-USERS.
- 8.2. The LICENSEE shall further ensure that the acknowledgements and notices appears within any END-USER licence or similar agreements entered into by END-USERS.
- 8.3. The LICENSEE shall ensure that no reference to the Crown, the Controller of Her Majesty's Stationery Office, the LICENSOR or the CUSTODIANSHIP ORGANISATION is made in or in association with any form of promotion or advertisement without the prior written consent of the LICENSOR.

- 8.4. The LICENSEE shall not make or authorise others to make any claim that the LICENSOR or the CUSTODIANSHIP ORGANISATION in any way endorses the LICENSEE'S MATERIAL save where otherwise agreed by the PARTIES in writing.
- 8.5. The LICENSEE shall not make or permit others to make any inaccurate or misleading statement about the LICENSOR, the CUSTODIANSHIP ORGANISATION or their products and services.
- 8.6. The LICENSEE may re-write, translate or abbreviate the acknowledgements and/or notices specified above 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" and the "NLHO" 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 and 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 ORGANISATION or their licensors as appropriate. The LICENSEE 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 ORGANISATION 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 that all material belonging to or under the control of the LICENSOR to which the LICENSEE gains access or receives directly or indirectly as a result of the operation of this Agreement 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 ORGANISATION.
- 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 ORGANISATION 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 or the CUSTODIANSHIP ORGANISATION'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 or the CUSTODIANSHIP ORGANISATION'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 or the CUSTODIANSHIP ORGANISATION 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 or the CUSTODIANSHIP ORGANISATION 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 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.

- 9.6. The LICENSEE shall ensure that all the LICENSOR's and the CUSTODIANSHIP ORGANISATION's 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 agreement between the PARTIES.

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

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 6.6 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 or their equivalents in the CUSTODIANSHIP ORGANISATION's country.
- 11.3. The obligation at clause 11.1 above shall not apply to the disclosure of the CONFIDENTIAL INFORMATION to the CUSTODIANSHIP ORGANISATION but the LICENSOR shall procure that the CUSTODIANSHIP ORGANISATION 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 LICENSEE warrants its understanding that the licence fees in this Agreement have been calculated on the basis that the LICENSOR and the CUSTODIANSHIP ORGANISATION will exclude or limit their liability as set out in clauses 13.4 below and 13.5 below.
- 13.3. The LICENSOR and the CUSTODIANSHIP ORGANISATION do not limit or exclude their liability for death or personal injury caused by the negligence of their employees, agents or contractors.
- 13.4. Except as described in clause 13.3 above, the LICENSOR's and the CUSTODIANSHIP ORGANISATION'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 or the CUSTODIANSHIP ORGANISATION's employees, agents or contractors shall be limited to the sum of all licence fees due to the LICENSOR in accordance with clause 6.1.1 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 or the CUSTODIANSHIP ORGANISATION 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.
- 13.5. Notwithstanding anything else contained in this Agreement, the LICENSOR and the CUSTODIANSHIP ORGANISATION 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 or the CUSTODIANSHIP ORGANISATION 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.
- 13.6. 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:
- 13.6.1. any breach of this Agreement by the LICENSEE or its contractors, distributors, agents or employees;
- 13.6.2. 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;
- 13.6.3. 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.
- 13.7. Such indemnity at clause 13.6 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.
- 13.8. For the avoidance of doubt such indemnity at clause 13.6 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.
- 13.9. 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.
- 13.10. 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.
- 13.11. 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 13.4 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 except the limited rights in clause 5.5 above. For the avoidance of doubt, this clause is not intended to limit the LICENSEE's rights to appoint contractors in accordance with clause 12 above of 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. The LICENSOR shall not unreasonably withhold its consent and shall provide its decision on any request to assign within five WORKING DAYS of receiving such a request from the LICENSEE. If the LICENSOR fails to respond to the LICENSEE within five WORKING DAYS then the LICENSOR automatically gives its 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 13.6 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 three years' notice in writing to the other PARTY with such termination occurring at the end of the ACCOUNTING PERIOD that includes the date three years 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 5.6 above of the main Agreement;
 - 20.2.2. clause 8.1 above of the main Agreement;
 - 20.2.3. clauses 9.1 above, 9.4 above, 9.4 above, 9.5 above and 9.7 above of the main Agreement; and
 - 20.2.4. clause 15.1 above 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 20.11 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. Except as stated in clause 20.11 below, in the event of the termination of this Agreement by notice pursuant to clause 20.1 above or 20.5 above the LICENSEE shall as soon as practicable and at its own expense restrict use of any pre-existing LICENSEE'S MATERIAL to that strictly necessary to provide support to END-USERS for a maximum period of 1 year from the date of termination.
- 20.11. In the event of the termination of this Agreement for any reason, the LICENSEE shall be entitled to archive the LICENSEE's MATERIAL indefinitely. Except as additionally provided in clause 20.10 above, the LICENSEE shall be entitled to retrieve and use (but not reproduce or adapt) the LICENSEE's MATERIAL only for the purposes of:
- 20.11.1. Internal quality control auditing; and
 - 20.11.2. 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

Licence and supply fees

1. This Schedule A shows the methodology the LICENSOR will use to determine the licence and supply fees for each of the LICENSEE'S MATERIAL shown in Schedule B. Once calculated, the LICENSOR shall show the actual licence fees payable within Schedule B.
2. The methodologies used are described in a series of Annexes to this Schedule, one Annex for each type of data licensed under this Agreement and described in clause 4 of the main Agreement.
3. The total supply and licence fees are determined by adding together the individual supply and licence fees calculated from each methodology (where it applies).

Annexes to this Schedule

4. The table below shows the annexes to this Schedule.

<u>Annex 1 to Schedule A</u>	Chart data
<u>Annex 2 to Schedule A</u>	Tidal data (simplified harmonic constants)
<u>Annex 3 to Schedule A</u>	Bathymetry data (surveys)
<u>Annex 4 to Schedule A</u>	Tidal Stream Data

Annex 1 to Schedule A

1. *Licence fees for the re-use of chart data*

- 1.1. If the LICENSEE'S MATERIAL is derived from the chart data described in clause 4.2.1 of the main Agreement, then the following licence fees will apply, in addition to any other licence fees that apply.
- 1.2. The following are the additional requirements (which are either mandatory or optional) to qualify for the licence fee described in this Annex 1 to Schedule A:
- 1.2.1. **Mandatory:** The LICENSEE shall only permit the END-USER to use the LICENSEE'S MATERIAL for the PERMITTED PURPOSES.
 - 1.2.2. **Mandatory:** The LICENSEE shall technically disable access to the LICENSEE'S MATERIAL within one month of expiration or termination of an END-USERS licence agreement.
 - 1.2.3. **Optional:** The LICENSEE may provide either the technical ability to allow the LICENSEE'S MATERIAL to be used by more than one END-USER simultaneously or permit the LICENSEE'S MATERIAL through an END-USER licence agreement to be used by more than one END-USER. If the LICENSEE chooses to use this option, the LICENSEE shall use its best endeavours to ensure that only the permitted number of END-USERS can use the LICENSEE'S MATERIAL.
 - 1.2.4. **Mandatory:** The LICENSEE shall only grant END-USER licence agreements for a maximum of four years. Such END-USER licence agreements may be renewed for up to a further four years during the final year of the END-USER licence agreement on condition that such END-USER licence agreements are revised to reflect any amendments made to this Agreement up to the date of renewal.
 - 1.2.5. **Optional:** If the LICENSEE'S MATERIAL is provided digitally, the LICENSEE may permit the END-USER to make one full copy of the LICENSEE'S MATERIAL for archive or backup purposes.
 - 1.2.6. **Optional:** If the LICENSEE'S MATERIAL is provided digitally, the LICENSEE may permit END-USERS to replicate the screen image to other devices within the same physical location or within 300 metres so long as such images cannot be used independently by more than the permitted number of END-USERS.
 - 1.2.7. **Optional:** The LICENSEE may provide END-USERS with the facility for the END-USERS to update the LICENSEE'S MATERIAL from updating material published by the LICENSOR in the form of notices to mariners.
 - 1.2.8. **Mandatory:** The LICENSEE shall restrict the update service provided to the END-USER from the LICENSOR'S MATERIAL to only include updates within the same (or smaller) geographical area, compiled at the same or smaller scale, already licensed to the END-USER.
- 1.3. For the purpose of determining licence fees, chart data has been grouped into cells. Each cell of chart data covers a $\frac{1}{2}^{\circ} \times \frac{1}{2}^{\circ}$ area, measured from the south west corner of each whole or half degree meridians of longitude and latitude. The spreadsheet dated 24 January 2007 and titled "[\(NL\) Commercial licence agreement - NLHO cell values – 2007.01.24.xls](#)" which forms part of this Agreement, shows a list of all cells where the cell content of the CUSTODIANSHIP ORGANISATION is greater than 0%. The LICENSOR reserves the right to reassess and change the value of any cell and may include new cells. The LICENSOR shall give the LICENSEE no less than 6 months notice of any such changes and such changes shall then take effect from the start of the next ACCOUNTING PERIOD after the end of the notice period.

1.4. The basic licence fee for the use of chart data is calculated by totalling the value of all cells covered (in whole or part) by the LICENSEE'S MATERIAL, taking into account the cell content and the compilation scale of the data within each cell as follows:

- 1.4.1. Count the number of A, B, C, D or E cells covered by the LICENSEE'S MATERIAL but exclude any cells if no chart data has been reproduced from those cells (e.g. the area of the LICENSEE'S MATERIAL covering the cell is actually blank space) (see paragraph 1.5 below of this Annex 1 to Schedule A).
- 1.4.2. Apply any discounts to any cell within the LICENSEE'S MATERIAL that is reproduced from chart data originally published at a smaller scale than 1:30,000 (see paragraph 1.6 below of this Annex 1 to Schedule A).
- 1.4.3. The final licence fee for chart data shall be calculated by applying additional charging factors to the basic licence fee. These additional factors are determined by how the LICENSEE'S MATERIAL is provided to END-USERS as follows:
 - 1.4.3.1. Assess the duration of the LICENSEE'S MATERIAL, compare them with the criteria at paragraph 1.8.5 below of this Annex 1 to Schedule A and apply the highest appropriate multiplier.
 - 1.4.3.2. If applicable, assess the number of END-USERS that shall access the LICENSEE'S MATERIAL, compare them with the criteria at paragraph 1.8.6 of this Annex 1 to Schedule A and apply the highest appropriate multiplier.

1.5. Cell content

- 1.5.1. The LICENSOR has assigned each cell a value depending on the amount of sea area it covers and the total proportion of the cell derived from the LICENSOR'S MATERIAL.
- 1.5.2. The LICENSOR determined the cell content by multiplying the percentage of the LICENSOR'S MATERIAL in the cell by the percentage of the cell covered by water.
- 1.5.3. The LICENSOR determined the cell value by reference to the cell content in the table below.

Band	Cell content	Cell value
A	≥ 75%	1.00 unit
B	≥ 50% and < 75%	0.75 units
C	≥ 25% and < 50%	0.50 units
D	≥ 5% and < 25%	0.25 units
E	< 5%	0.00 units

1.5.4. The cell values for each cell are shown in the spreadsheet described in paragraph 1.3 of this Annex 1 to Schedule A.

1.6. Scale content

- 1.6.1. A discount shall then be applied to each cell covered by the LICENSEE'S MATERIAL if it was created from data originally compiled at a natural scale smaller than 1:30,000. The applicable discounts are shown in the table below.

Scale	Discount applied to unit
≤ 1:30,000	0%
> 1:30,000 and ≤ 1:75,000	50%
> 1:75,000 and ≤ 1:150,000	65%
> 1:150,000 and ≤ 1:350,000	90%
> 1:350,000 and ≤ 1:1,250,000	97%
> 1:1,250,000	100%

- 1.6.2. If the LICENSEE'S MATERIAL was created from many sources at different scales, then the LICENSOR shall assume that the LICENSEE has used the largest scale available from the LICENSOR unless the LICENSEE can demonstrate to the satisfaction of the LICENSOR they have used a smaller scale. The largest scale available for each cell is shown in the spreadsheet described in paragraph 1.3 of this Annex 1 to Schedule A.

1.7. Basic licence fee

- 1.7.1. The cell price before any discounts or factors are applied is as follows (for the applicable period in which the LICENSEE'S MATERIAL was sold):

Period	Cell price
1 January 2005 to 30 June 2006	€30.00
1 July 2006 to 31 December 2007	€30.40
1 January 2008 onwards	€30.90

- 1.7.2. The basic licence fee shall be calculated by totalling the value of all cells covered (in whole or part) by the LICENSEE'S MATERIAL, taking account of any discounts applicable to the compilation scale of the data within each cell as defined in paragraph 1.3 of this Annex 1 to Schedule A and then multiplying this by the cell price. For example, the LICENSEE'S MATERIAL cover two A cells and a C cell, all at an original compilation scale of 1:50,000 – the basic licence fee would be $(1.00 + 1.00 + 0.50) \times 50\% \times €30.00 = €37.50$ if sold between 1 January 2005 and 30 June 2006.
- 1.7.3. The LICENSOR shall exclude any cells from the calculation if the LICENSEE has reproduced no chart data from those cells (e.g. the area of the LICENSEE'S MATERIAL covering the cell is actually blank space).

1.8. Additional charging factors

- 1.8.1. The LICENSOR shall apply the following factors to each of the LICENSEE'S MATERIAL once it has assessed its geographical content (i.e. determined the basic licence fee).

1.8.2. Product content

- 1.8.2.1. Where the LICENSEE has only used a sub-set of the features within the chart data, the basic licence fee shall be modified by the sum of all the listed modifiers shown in the table below subject to a maximum modifier of 1. A modifier will be applied regardless of how many features of that type are used.

Topic layer and themes	Modifier to cell price
<p>BE Bathymetry and elevation <i>Definition:</i> The natural shape of the Earth's surface on land and under the sea.</p> <p><i>Description:</i> Depth and height contours, spot heights and soundings, digital elevation model.</p> <p><i>Themes</i></p> <ul style="list-style-type: none"> - BE11 Bathymetry – the elevation and shape of the seabed. - BE 12 Elevation – the elevation and shape of the land. - BE 13 Surface mode – the elevation and shape of the seabed in grid format. - BE 14 Coastline and depth areas – the area between specified depth or height contours that are represented by a single entity/shape. 	0.80
<p>NP Natural and physical features <i>Definition:</i> Natural topography of the coastal and marine environment including the biological, physical and chemical features within it.</p> <p><i>Description:</i> The type and landscape setting of the marine environment including the geology, seabed, water column and coastal landforms. Biological and physical components include biota, habitats, fish spawning and nursery areas and current streams, rocks and some human impacts such as dams, canals and dykes.</p> <p><i>Themes</i></p> <ul style="list-style-type: none"> - NP 21 Sea cover – an area of sea displaying a particular physical or natural property (e.g. an area of sea-ice, sand waves and water turbulence). - NP 22 Land cover – An area of land displaying a particular physical or natural property (e.g. an area of swamp). 	0.05

Topic layer and themes	Modifier to cell price
<ul style="list-style-type: none"> - NP 23 Flora and fauna – information on the distribution of animals and plants - NP 24 Hydrology – an area of inland water. - NP 25 Geology – information on the structure of the Earth’s crust and superficial sediment deposits. 	
<p>SO Man-made structures and obstructions <i>Definition:</i> Man-made physical structures and obstructions.</p> <p><i>Description:</i> Man-made physical structures including oil and gas wells, pipelines and cables. Man-made physical structures of a more general socio-economic purpose (e.g. general obstructions, buoyage, roads and railways).</p> <p><i>Themes</i></p> <ul style="list-style-type: none"> - SO 31 Shoreline constructions – land and coastal infrastructure. - SO 32 Obstructions – an object on the seabed of known or unknown source that is neither a wreck nor infrastructure and which may hinder safe passage or other activity (e.g. a discarded shopping trolley, unidentified sonar contact). - SO 33 Offshore installations – a man-made permanent structure that is either fixed, floating, on or below the seabed, and that is used for industrial purposes (e.g. oil and gas production, power generation, waster disposal). - SO 34 Navigational aids – a man-made object that allows or aids navigation (e.g. fog signal, buoy or light beacon). The range of the aid is included (e.g. the arc of a light house). - SO 35 Wrecks – the ruined remains of a stranded or sunken vessel which has been rendered useless. 	0.05
<p>SE Socio-economic marine use <i>Definition:</i> Specified areas where one or more activities have been designated, are known to occur or are restricted.</p> <p><i>Description:</i> Largely non-physical human boundaries defining areas or zones of</p>	0.05

Topic layer and themes	Modifier to cell price
<p>economic or social importance such as military areas, wind farm sites, navigation zones, dredging areas, fishing areas and national boundary limits.</p> <p><i>Themes</i></p> <ul style="list-style-type: none"> - SE 41 Administration and regulation – a designated local administrative boundary or limit. - SE 42 National limits – a designated national boundary or distance limit. - SE 43 Activities and licence areas – a place or area designated or known to be used for a particular purpose or activity (e.g. military exercise, dumping ground, offshore development or oil and gas licence areas). - SE 44 Transportation and routes – a location where transportation or navigation and associated activities is designated or known to occur (e.g. an airport, beach landing point or shipping lane). - SE 45 Aquaculture and fisheries – a location where fishing activities is designated or known to occur or an area used to record fishing statistics. 	
<p>CE Conservation and environmental protection</p> <p><i>Definition:</i> Designated boundaries for the purposes of conservation and environmental protection of natural and cultural heritage.</p> <p><i>Description:</i> Boundaries for designations and management, e.g. sites of special scientific interest (SSSI), conservation and environmental protection of special areas of conservation (SAC), archaeological sites, shellfish beds. Monitoring and assessment points, e.g. bathing waters, nitrate conservation, designations, protection, management, cultural, historical, heritage, archaeological, natural, monitoring, assessment, SSSI, SAC, special protection areas (SPA), Ramsar areas and marine nature reserves (MNR).</p> <p><i>Themes</i></p> <ul style="list-style-type: none"> - CE 51 Water quality designations - CE 52 Water quality 	0.05

Topic layer and themes	Modifier to cell price
<ul style="list-style-type: none"> - CE 53 Protected areas - CE 54 Archaeology and heritage 	
<p>CO Climate and oceanography <i>Definition:</i> Climate and weather information, tides and currents or locations where measurement or monitoring is or has been known to occur.</p> <p><i>Description:</i> Climatic, meteorological and oceanographic observations and predictions of a mainly temporal nature.</p> <p><i>Themes</i></p> <ul style="list-style-type: none"> - CO 61 Tides and tidal currents - CO 62 Winds and waves - CO 63 Measurement locations – the place where oceanographic or other scientific instrumentation is or has been deployed for the purpose of scientific measurement or environmental monitoring. 	0.00

1.8.3. Product format

1.8.3.1. The basic licence fee shall be modified depending on the format the LICENSEE'S MATERIAL is supplied to the END-USER as follows:

Format	Modifier to cell price
Raster (bitmap) format	0.7
Vector format	1.3
Vector and raster format	1.5

1.8.4. Product protection system

1.8.4.1. The basic licence fee shall be modified depending on the technical protection system used to ensure the LICENSEE'S MATERIAL cannot be reproduced by unauthorised third parties as follows:

Protection system	Modifier to cell price
No technical protection system	1.0
Unique identifying watermark or fingerprint included within all data supplied with the LICENSEE'S MATERIAL	0.9
Industry standard encryption system	0.7

1.8.5. Product duration

1.8.5.1. The basic licence fee shall be modified by a charging factor determined by how long the product is legitimately available to the END-USER.

1.8.5.2. The licence fee shall be higher if the LICENSEE’S MATERIAL is accessible to the END-USER for more than a year; it shall be lower if the LICENSEE’S MATERIAL is accessible for less than 9 months as follows:

End-user licence duration	Duration level	Applicable duration charging factor
Greater than 12 months and less than or equal to 48 months	D1	1/12 (0.0833) per month
Greater than or equal to 9 months and less than or equal to 12 months	D2	1.0
Greater than or equal to 6 months and less than 9 months	D3	0.8
Greater than or equal to 3 months and less than 6 months	D4	0.6
Greater than 0 months and less than 3 months	D5	0.4

1.8.5.3. In the interests of safety, the LICENSOR shall permit the LICENSEE to allow END-USERS to access the LICENSEE’S MATERIAL for an additional month after the end of the END-USER licence period on the condition that the LICENSEE frequently and prominently notifies the END-USER that the licence period has expired.

1.8.6. Multi-user licensing (local users)

1.8.6.1. The basic licence fee shall be modified by a charging factor determined by how many people are permitted to use the LICENSEE’S MATERIAL locally.

1.8.6.2. A local user accesses the LICENSEE’S MATERIAL directly using a computer with appropriate software. The LICENSEE’S MATERIAL is ‘in use’ on a computer when it is loaded into the temporary memory (i.e. RAM) or installed into the permanent memory (e.g. hard disk drive) of that computer. Client workstations that run software that can access the LICENSEE’S MATERIAL via an application server (often known as a thin client) constitute local users.

Maximum number of local users or workstations	Usage level	Usage factor
1	UL1	1.0
2	UL2	1.5
3 to 5	UL3	2.0
6 to 10	UL4	3.0

Maximum number of local users or workstations	Usage level	Usage factor
11 to 20	UL5	4.0
21 to 50	UL6	5.0
51 to 100	UL7	6.0
101 to 150	UL8	7.0
151 to 200	UL9	8.0
More than 200	UL10	Price on application

1.8.6.3. The LICENSOR shall determine the maximum number as the lower of either the number of workstations from which people shall access the LICENSEE'S MATERIAL or the total number of local users who have access to the LICENSEE'S MATERIAL (this does not have to be concurrent access).

1.8.6.4. The LICENSOR shall determine the number of people as qualifying for the above multi-user charging factor only if they (or their workstations) are normally (more than 50% of their working time) based in the same physical site. The LICENSOR will treat people or workstations on other physical sites as being a separate sale for which a separate licence fee will be payable.

1.8.7. Multi-user licensing (remote users)

1.8.7.1. A remote user accesses the LICENSEE'S MATERIAL via a restricted World Wide Web service such as WebGIS. The LICENSEE'S MATERIAL is not loaded into memory (either temporary or permanent) but is displayed only as a single raster image on the client workstation within an Internet browser (or similar).

1.8.7.2. If the LICENSEE permits the END-USER to allow remote user access to the LICENSEE'S MATERIAL by a restricted World Wide Web service (for example using a virtual private network) and the raster image contain more than 256,000 pixels or there is more than one raster image available at any one time then the basic licence fee shall be modified by a charging factor determined by how many people are permitted to use the LICENSEE'S MATERIAL remotely.

Maximum number of remote users	Usage level	Usage factor
1 to 10	UR1	1.0
11 to 20	UR2	1.5
21 to 50	UR3	2.0
51 to 100	UR4	3.0

Maximum number of remote users	Usage level	Usage factor
101 to 200	UR5	4.0
201 to 500	UR6	5.0
501 to 1000	UR7	6.0
1001 to 1500	UR8	7.0
1501 to 2000	UR9	8.0
More than 2000	UR10	Price on application

Annex 2 to Schedule A

1. *Licence fees for the re-use of tidal data (simplified harmonic constants)*

- 1.1. If the LICENSEE'S MATERIAL is derived from the tidal data described in clause 4.2.2 of the main Agreement, then the following licence fees will apply, in addition to any other licence fees that apply.
- 1.2. The LICENSOR makes no charge for the LICENSEE to reproduce tidal material listed in clause 4.2.2 of the main Agreement where such reproduction is limited to the minimum required to determine the time of high waters for reference ports which are then used within calculations to calculate the rate and direction of horizontal tidal streams from chart data.
- 1.3. Except as stated in paragraph 1.2 above of this Annex 2 of Schedule A, if the LICENSEE reproduces tidal data in the LICENSEE'S MATERIAL in digital format then the LICENSOR shall charge the LICENSEE a fixed price for each copy of LICENSEE'S MATERIAL distributed that contains reproductions or derivations of the tidal material listed in clause 4.2.2 of this Agreement according to the number of tidal stations included with the distributed LICENSEE'S MATERIAL:

Number of ports in product or service	Licence fee per copy distributed
For up to 100 ports	€0.75
For between 101 and 300 ports	€1.50
For between 301 and 600 ports	€2.25
For 601 ports or more	€3.00

Annex 3 to Schedule A

1. **Supply and licence fees for the re-use of bathymetry data (surveys)**

- 1.1. If the LICENSEE'S MATERIAL is derived from the bathymetry data described in clause 4.2.3 of the main Agreement, then the following supply and licence fees will apply, in addition to any other supply and licence fees that apply.
- 1.2. The LICENSEE shall ensure that when selling the LICENSEE'S MATERIAL that is derived from the bathymetry data, it shall clearly publish a separate price for that element of the LICENSEE'S MATERIAL that is so derived.
- 1.3. The LICENSOR shall charge the LICENSEE a supply fee of Euros €840.00 per year, commencing the nearest 1 January to the COMMENCEMENT DATE. This fee includes the cost of supplying the data during the applicable calendar year.
- 1.4. The LICENSOR shall charge the LICENSEE a licence fee calculated according to the following formula and calculated in arrears for all sales made during the previous ACCOUNTING PERIOD:

$$[\text{Royalty Rate}] \times [\text{proportion of LICENSEE'S MATERIAL derived from the bathymetry data}] \times [\text{gross sales revenue}]$$

where:
 - the royalty rate is 25%
 - the proportion of LICENSEE'S MATERIAL derived from the bathymetry data is calculated by the LICENSOR based on the geographic coverage of the bathymetry data compared to the total geographic coverage of the LICENSEE'S MATERIAL expressed as a percentage
 - the gross sales revenue is the total revenue received by the LICENSEE from the sale of the LICENSEE'S MATERIAL
- 1.5. In the event of the disposal of the LICENSEE'S MATERIAL below the fair market value of similar material on the open market then a fixed rate fee based on such fair market value will be applied in lieu of the licence fee at paragraph 1.4 above of this Annex 5 to Schedule A.

Annex 4 to Schedule A

1. *Licence fees for the re-use of tidal stream data*

- 1.1. If the LICENSEE'S MATERIAL is derived from the tidal stream data described in clause 4.2.4 of the main Agreement, then the following licence fee will apply, in addition to any other licence fees that apply.

- 1.2. If the LICENSEE reproduces tidal stream data in the LICENSEE'S MATERIAL in combination with chart data then the LICENSOR shall charge the LICENSEE an additional fee calculated as 5% of the final licence fee for chart data as determined in Annex 1 of Schedule A.

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 [Product/service name]

Annex 2 to Schedule B [Product/service name]

Annex 1 to Schedule B

1. General description of the range

1.1.	Product or service title	
1.2.	General description of product 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	<ul style="list-style-type: none"> • Chart data • Tidal data (simplified harmonic constants) • Bathymetry data (surveys) • Tidal stream data
1.5.	Form and format (including the look and feel, facsimile restrictions and translation rights (language or format))	
1.6.	Security and encryption	
1.7.	Description of any updating service associated with the product or service	

2. Acknowledgements and notices

2.1.	Additional acknowledgements	<p>Acknowledgements</p> <p>There are two acknowledgements.</p> <p>“This product has been derived in part from material obtained from the Netherlands and UK Hydrographic Offices with their permission.”</p> <p>“© Copyright Netherlands Hydrographic Office, [the year of first publication]. All rights reserved.”</p>
2.2.	Notices	<p>Notices</p> <p>[There is one notice:] [There are two notices:]</p> <p><u>Notice 1</u></p>

	<p>["THIS PRODUCT IS NOT TO BE USED FOR NAVIGATION"]</p> <p><u>Notice 2</u> "NOTICE: The Netherlands and UK Hydrographic Offices (NLHO and UKHO) make no warranties or representations, express or implied, with respect to this product. The NLHO and UKHO have not verified the information within this product or quality assured it."</p>
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3. Licence fees

<p>3.1. Pricing mechanism applied to this product / service range:</p>	<ul style="list-style-type: none"> • Chart data • Tidal data (simplified harmonic constants) • Bathymetry data (surveys) • Tidal stream data
<p>3.2. Duration and usage levels assumed for the purpose of calculating the licence fees shown in paragraph 4.1 below of this Annex 1 to Schedule B</p>	<p>Duration factor: [factor]</p> <p>Usage factor: [factor]</p> <p>Note: If the product or service is sold with a different duration or usage factor, then the licence fee for that product or service will be recalculated by the LICENSOR in accordance with Annex 1 to Schedule A.</p>
<p>3.3. FREE DISTRIBUTION AMOUNTS</p>	<p>The LICENSEE may distribute fully working copies of [product/service name] to its distributors and agents solely for promotional purposes and to journalists solely to review it.</p> <p>The LICENSEE may also make a demonstration version of [product/service name] available free of charge to potential END-USERS to generate sales. [Insert restrictions on what the demonstration version can do – e.g. restricts access to only a small part of the data or stops working after 30 days.]</p> <p>THE LICENSEE may also promote [product/service name] in promotional literature and on the Internet in accordance with clause 5.7 of the main Agreement.</p> <p>In the event of any suspected misuse of the demonstration copies by END-USERS, the LICENSOR reserves the right to withdraw or amend its permission for this facility.</p>

4. Licence fee assessments

- 4.1. The actual licence fees payable for each product that exists within this product range is shown in the spreadsheet dated [XX MONTH YYYY] and titled:

NL - XX - 000 - Name - Schedule B Annex 1 –
YYYY-MM-DD.xls

Annex 2 to Schedule B

1. General description of the range

1.1.	Product or service title	
1.2.	General description of product 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	<ul style="list-style-type: none"> • Chart data • Tidal data (simplified harmonic constants) • Bathymetry data (surveys) • Tidal stream data
1.5.	Form and format (including the look and feel, facsimile restrictions and translation rights (language or format))	
1.6.	Security and encryption	
1.7.	Description of any updating service associated with the product or service	

2. Acknowledgements and notices

4.2.	Additional acknowledgements	<p>Acknowledgements</p> <p>There are two acknowledgements.</p> <p>“This product has been derived in part from material obtained from the Netherlands and UK Hydrographic Offices with their permission.”</p> <p>“© Copyright Netherlands Hydrographic Office, [the year of first publication]. All rights reserved.”</p>
4.3.	Notices	<p>Notices</p> <p>[There is one notice:] [There are two notices:]</p> <p><u>Notice 1</u></p>

	<p>["THIS PRODUCT IS NOT TO BE USED FOR NAVIGATION"]</p> <p><u>Notice 2</u> "NOTICE: The Netherlands and UK Hydrographic Offices (NLHO and UKHO) make no warranties or representations, express or implied, with respect to this product. The NLHO and UKHO have not verified the information within this product or quality assured it."</p>
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3. Licence fees

<p>3.1. Pricing mechanism applied to this product / service range:</p>	<ul style="list-style-type: none"> • Chart data • Tidal data (simplified harmonic constants) • Bathymetry data (surveys) • Tidal stream data
<p>3.2. Duration and usage levels assumed for the purpose of calculating the licence fees shown in paragraph 4.1 below of this Annex 2 to Schedule B</p>	<p>Duration factor: [factor]</p> <p>Usage factor: [factor]</p> <p>Note: If the product or service is sold with a different duration or usage factor, then the licence fee for that product or service will be recalculated by the LICENSOR in accordance with Annex 1 to Schedule A.</p>
<p>3.3. FREE DISTRIBUTION AMOUNTS</p>	<p>The LICENSEE may distribute fully working copies of [product/service name] to its distributors and agents solely for promotional purposes and to journalists solely to review it.</p> <p>The LICENSEE may also make a demonstration version of [product/service name] available free of charge to potential END-USERS to generate sales. [Insert restrictions on what the demonstration version can do – e.g. restricts access to only a small part of the data or stops working after 30 days.]</p> <p>THE LICENSEE may also promote [product/service name] in promotional literature and on the Internet in accordance with clause 5.7 of the main Agreement.</p> <p>In the event of any suspected misuse of the demonstration copies by END-USERS, the LICENSOR reserves the right to withdraw or amend its permission for this facility.</p>

4. Licence fee assessments

- 4.1. The actual licence fees payable for each product that exists within this product range is shown in the spreadsheet dated [XX MONTH YYYY] and titled:

NL - XX - 000 - Name - Schedule B Annex 1 –
YYYY-MM-DD.xls

Schedule C

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

Schedule D

RE-USE RIGHTS AND RESTRICTIONS OF END-USERS

1. Responsibilities of the LICENSEE

- 1.1. If the LICENSEE grants END-USERS the rights to re-use the LICENSEE'S MATERIAL shown in this Schedule then the LICENSEE shall procure that END-USERS agree to any restrictions that apply to them within this Schedule.
- 1.2. The LICENSEE shall use its reasonable endeavours to ensure END USERS comply with those restrictions.
- 1.3. The LICENSEE shall inform the LICENSOR of any failures by END USERS to comply with those restrictions or breaches of its END-USER licence agreements that come to its attention as soon as possible.

2. END-USER rights to use and re-use the LICENSEE'S MATERIAL

- 2.1. The LICENSEE may grant its END-USERS the following rights to re-use the LICENSEE'S MATERIAL in a computer mapping system where facilities may include plotting, processing, manipulating and transmission of data for their internal business use, for statutory purposes, to share with other licensed END-USERS of the LICENSEE'S MATERIAL or to make a security copy subject to the restrictions shown in paragraph 3 below of this Schedule.
 - 2.1.1. Internal business use
 - 2.1.1.1. Internal business use is defined as the use of the LICENSEE'S MATERIAL in the ordinary day-to-day activities involved in the internal administration and running of the END-USER's organisation.
 - 2.1.1.2. Such use of the LICENSEE'S MATERIAL is only permitted in the following circumstances:
 - 2.1.1.2.1. solely and explicitly for the administration and operation of the END-USER's organisation (which excludes its supply to any third party unless expressly permitted in this Schedule);
 - 2.1.1.2.2. in reports and submissions to third parties (where such activities relate to the internal business or administration of the END-USER's organisation and the END-USER shall advise them that such reproductions of LICENSEE'S MATERIAL shall not be used for any other purpose), provided such reports and submissions do not carry advertising in respect of third parties. Such use shall include electronic transmission of a graphic image if such images are in raster format produced solely for the purposes of allowing such third parties to view and print one copy;
 - 2.1.1.2.3. by the END-USER's contractors undertaking any activity for the END-USER which the END-USER is

permitted to undertake itself under this Schedule but solely and explicitly to provide the LICENSEE'S MATERIAL for the purpose of enabling the contractor to provide goods and services to the END-USER or to tender for the provision of such goods and services. The END-USER shall require the contractor to destroy all copies of the LICENSEE'S MATERIAL when the contract is complete, including those held in paper or electronic format. The END-USER may permit the contractor to retain a single archive copy which is relevant and necessary to document the goods or services delivered to the END-USER;

2.1.1.2.4. within any professional services provided by the END-USER to its clients, provided that:

2.1.1.2.4.1. the provision of copies of the LICENSEE'S MATERIAL is not a service in itself and does not form a significant part of any service offered by the END-USER;

2.1.1.2.4.2. copies of the LICENSEE'S MATERIAL are only provided in paper form or by electronic transmission of a graphic image if such images are in raster format produced solely for the purposes of allowing the recipient to view and print one copy;

2.1.1.2.4.3. the use to which such clients shall put the copies of the LICENSEE'S MATERIAL shall be personal (in the case of a consumer client) or for the administration and operation of its business (in the case of a business client).

2.1.2. Statutory use

2.1.2.1. The END-USER is permitted to use the LICENSEE'S MATERIAL to meet a statutory obligation.

2.1.2.2. A statutory obligation means any express written obligation imposed by an enactment upon the END-USER which requires the use of the LICENSEE'S MATERIAL to meet that obligation. This excludes a general obligation which does not specifically refer to a product or service which is to be delivered by the END-USER.

2.1.2.3. Enactment means a legislative act of the CUSTODIANSHIP ORGANISATION's national or local government including without limitation any such enactment made after the date of this Agreement.

- 2.1.2.4. The END-USER must only use the LICENSEE'S MATERIAL as necessary to meet the specific need for which it is required by the statutory obligation.
- 2.1.2.5. The END-USER may not publish electronically in a manner which allows vector data derived from the LICENSEE'S MATERIAL to be extracted from the published materials. For the avoidance of doubt, this means in whole, part or derived vector data.
- 2.1.3. Sharing with other licensed END-USERS of the LICENSEE'S MATERIAL
 - 2.1.3.1. The END-USER may provide copies of the LICENSEE'S MATERIAL to any other customer of the LICENSEE which is party to a current agreement with the LICENSEE on specific terms to use the LICENSEE'S MATERIAL, provided that:
 - 2.1.3.1.1. it shall advise such customers that any such LICENSEE'S MATERIAL shall only be used under the terms of such customer's agreement with the LICENSEE;
 - 2.1.3.1.2. within 30 days of the end of each quarter, it shall advise the LICENSEE of the names and addresses of each such customer to which it has supplied the LICENSEE'S MATERIAL. For these purposes, a quarter shall be a period of three months commencing on the first day of January, April, July or October in each year; and
 - 2.1.3.1.3. it shall include with the media embodying such LICENSEE'S MATERIAL a notice in terms approved by the LICENSEE stating that the media contains data which is the property of the LICENSEE and its licensors and that any unlawful use or copying other than for purposes within their agreement with the LICENSEE is prohibited.
- 2.1.4. Security copy
 - 2.1.4.1. END-USERS may produce a security copy of the LICENSEE'S MATERIAL appropriate for safeguarding the data in the END-USER's system.

3. END-USER restrictions

- 3.1. The following restrictions must be applied to any licensed END-USER.
 - 3.1.1. END-USERS shall not be permitted to sub-license any of the rights they have been granted.
 - 3.1.2. Where the LICENSEE'S MATERIAL is available, in part or whole, on an internal network or on a remotely accessible server operated by an electronic hosting service, the END-USER must either take steps itself or enter into a written agreement in relation to the facilities provided by the electronic hosting service to provide the appropriate industry standard

safeguards restricting third party access to any data of the END-USER's which include or incorporate any copies of the LICENSEE'S MATERIAL.

- 3.1.3. For the avoidance of doubt, the LICENSOR's permission for the supply of copies of the LICENSEE'S MATERIAL to third parties specified in paragraph 2.1.1.2.3 of Schedule D is given on the basis that the LICENSEE shall procure that the END-USER remains responsible and primarily liable to the LICENSOR for any acts and omissions of such contractors.
- 3.1.4. END-USER use and re-use does not extend to the use of copies of the LICENSEE'S MATERIAL:
- 3.1.4.1. by any associated undertakings of the END-USER, including associated, subsidiary, affiliated, holding or any parent or group companies or any other undertaking; or
- 3.1.4.2. save in the case of contractors providing goods or services pursuant to paragraph 2.1.1.2.3 of Schedule D or providers of professional services pursuant to paragraph 2.1.1.2.4 of Schedule D, for any financial gain or commercial purposes of the END-USER, where the copies of the LICENSEE'S MATERIAL are used on their own or in combination with any other products or services of the END-USER or which convey any financial gain for the benefit of any other person other than the END-USER or its employees.
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