



LAND & PROPERTY SERVICES (LPS) STANDARD INTELLECTUAL PROPERTY (IP) LICENSING TERMS AND CONDITIONS

1. DEFINITIONS

1.1 Unless the context otherwise requires, in these terms and conditions:

“HMSO” means Her Majesty’s Stationery Office;

“Intellectual Property (“IP”)” means the digital data licensed by Us and supplied to You. It also means databases, utility models, trade marks, trade names, service marks, know-how, designs, drawings, algorithms, computer programs and confidential information;

“Intellectual Property Rights” (“IPR”) means (as appropriate) Copyright, database right, and all other similar proprietary rights (whether registered or not) in the IP owned by the Crown through HMSO as may exist anywhere in the world and licensed under this Contract and all applications and rights to apply for the protection of any of the foregoing. It also means patents and any other process or other similar right or assets capable of protection;

“Sales Policy” as posted on web site www.dfpni.gov.uk/lps;

“We, Our or Us” means Land & Property Services (LPS);

“You or Your” means the Licensee;

1.1.1 references to any statute or statutory provision shall include a reference to any statute or statutory provision, which amends or replaces or has amended or replaced it and vice versa and the same shall apply to statutory instruments; and

1.1.2 these terms and conditions shall be binding upon and shall continue for the benefit of Our successors and assigns or the Department of Finance and Personnel, as the case may be.

2. OWNERSHIP

The Crown owns absolutely, as beneficial owner all rights in the IP. The IP supplied and the Licence granted under this Contract are issued by Our Chief Executive who has a delegation of authority from the Controller of HMSO, in whom is vested by Royal Letters Patent the Crown Copyright in all Government information and works.

3. GRANT OF LICENCE

3.1 In consideration of You paying the Licence fee and performing Your obligations under these terms and conditions, We grant You a non-exclusive, non-transferable Licence to use the IP solely for the Licensed Use.

3.2 The Licence shall commence on the date the IP is issued and shall continue for a minimum period of twelve (12) months or until earlier termination.

3.3 The Licence shall be renewable on the anniversary of the date of issue of the Licence (the “Renewal Date”) by You giving written notice to Us requesting a renewal of the Licence.

3.4 You shall not permit any third party to use the IP nor use the same on behalf of or for the benefit of any third party without Our prior written consent.

4. SUPPORT AND MAINTENANCE

4.1 We will not be obliged to provide support and maintenance services.

4.2 In the event that We discontinue producing, maintaining or supporting all or any part of the IP, We shall give You three (3) months notice of this decision. Once notice is given to You, We shall not be responsible for supplying the IP or support or updates to You or be liable to You for any losses or costs which You may incur as a consequence of Our decision.

5. YOUR OBLIGATIONS

5.1 You will take all reasonable technological and security measures to ensure that all of the IP which You hold, or are responsible for, is secure from unauthorised use or access.

5.2 You will not use the IP, or allow it to be used by others, in any manner which We reasonably feel is inconsistent with the goodwill in Our name.

5.3 Permission to publish must be applied for using LPS form Publishing 1 or Publishing 1A for Internet usage, details of which can be obtained by contacting Our IPR Branch.

6. SUB-LICENCES

You shall provide Us with full details and signed copies of all Sub-Licences granted by You.

7. LICENCE FEES AND ROYALTIES

7.1 The Licence fee shall be payable by You from the date of the commencement of the Licence and on each subsequent renewal date.

7.2 When ordering the IP, You will provide Us with an estimate of the number of hard copies that will be made from the IP requested. Royalty fees are published in LPS form Copying 2 (Copyright Royalties) which is available on www.dfpni.gov.uk/lps

7.3 We will invoice You for the royalties due in accordance with Our published rates. In addition, You will pay VAT and any other taxes at the rate prevailing on the date of the invoice.

7.4 You will pay all invoices within thirty (30) days of the date of the invoice. Interest will be payable at 2% above the base rate of the Ulster Bank Limited on any outstanding balances. Interest shall run from day to day from the due date and shall accrue before and after any judgment and shall be compounded monthly on the amount overdue until payment is made.

8. AUDIT RIGHTS

8.1 Throughout the duration of the Licence You shall keep and maintain accurate complete and detailed records relating to all the transactions and uses arising out of these terms and conditions.

8.2 Upon giving reasonable written notice, We, our advisors or representatives shall have the right to inspect (and where necessary take copies of) the records referred to in Clause 8.1. If upon inspection it is determined that there is an underpayment of the amount properly payable to Us under these terms and conditions, the underpayment shall be paid to Us forthwith together with interest at the rate of two (2)% above the base rate of Ulster Bank Limited from the date payment was due until full payment, whether before or after judgment. If there is an underpayment of five (5)% or more of the amount properly payable at any time to Us under these terms and conditions then You shall also be responsible for the reasonable auditing costs incurred by Us (including the fees of any third party used for such purposes).

8.3 You shall give Us and our advisors and representatives all reasonable access to Your premises and use of all Your facilities so as to enable Us and Our advisors and representatives to fulfil their rights under Clause 8.2.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 You acknowledge the Crown's ownership and proprietary rights in the IP and agree and acknowledge that:

9.1.1 You will not obtain any rights in the IP, except as expressly granted to You under these terms and conditions; and

9.1.2 You will not register or attempt to register any of the IP in any jurisdiction without Our prior written permission.

9.2 You shall immediately give notice in writing to Us if You become aware of any:

9.2.1 infringement or suspected infringement of any of the IP; or

9.2.2 claims made or threatened that the IP infringes the rights of any third party.

9.3 In the case of any infringement or suspected infringement by any third party of the IP:

9.3.1 We shall have sole discretion to decide what action if any to take;

9.3.2 We shall have sole control over and conduct of all claims and legal proceedings;

9.3.3 You will, subject to an indemnity from Us for Your costs, act in accordance with Our reasonable instructions and provide Us with all assistance as We may reasonably require in the conduct of any claims or legal proceedings; and

9.3.4 We will bear the cost of any legal proceedings and shall be entitled to retain all sums recovered in any action for Our own account.

10. IMPROVEMENTS

10.1 You shall immediately disclose to Us, in confidence and in such detail as We may reasonably require, all improvements to the IP that You may develop or acquire during the term of the Licence.

10.2 We shall have a non-exclusive, perpetual, irrevocable, worldwide, royalty-free Licence to use and exploit all improvements disclosed to Us by You under Sub-Clause 10.1 with the right to grant sub-Licences.

11. LIABILITY

11.1 We will remedy, as soon as reasonably practicable, any error in or omission from the IP of which You notify Us.

11.2 It is Your responsibility to ensure that the IP is suitable for Your intended purposes. We accept no liability as to the fitness of the IP supplied in meeting Your needs and We exclude to the fullest extent permissible by law all warranties, conditions or terms that may be implied by statute, statutory instrument, common law, custom or otherwise.

11.3 We will indemnify You and hold You harmless against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that is in Your possession and/or use of the IP infringes the copyright, trade mark rights or other IPR of a third party ('IP Infringement') provided that:

11.3.1 Your possession and/or use of the IP is pursuant to and in accordance with these terms and conditions;

11.3.2 You give Us notice of any IP Infringement immediately on becoming aware of it; and

11.3.3 You give Us the sole conduct of the defence above (We will pay reasonable costs) to any claim or action in respect of an IP Infringement and do not at any time admit liability or otherwise settle or compromise the said claim or action except upon Our express instructions.

11.4 We shall have no liability to You in respect of an IP Infringement if:

11.4.1 the same results from any use of the IP by You other than in accordance with these terms and conditions;

11.4.2 the same results from any use of the IP for a purpose for which it was not designed;

11.4.3 there is any breach by You of Your obligations under these terms and conditions;

11.4.4 there has been any alteration, modification, adjustment or enhancement made by You to the IP that was not authorised by Us; or

11.4.5 there has been any combination, connection, operation or use of the IP with any other equipment, software or documentation and such combination, connection, operation or use was not within the contemplation of the parties at the time of delivery of the IP.

11.5 In the event of an IP Infringement, We shall be entitled at Our expense and option either to:

11.5.1 procure the right for You to continue using the IP;

11.5.2 make, where relevant, such alterations, modifications or adjustments to the IP so that it becomes non-infringing without incurring a material diminution in performance or function; or

- 11.5.3 replace, where relevant, the IP with a non-infringing substitute provided that such substitute does not entail a material diminution in performance or function (where relevant).
- 11.6 If in Our reasonable judgment, We are not able to exercise any of the options set out in 11.5.3 above within ninety (90) days of the date We receive notice of the IP Infringement, We will accept the return of the infringing IP.
- 11.7 This Clause 11 sets out Your exclusive remedy and Our sole liability in respect of any breach of warranty concerning any IP Infringement.
- 11.8 You shall be liable for, and will indemnify Us against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by Us, whether direct or consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of any dispute or contractual, tortious or other claim or proceeding brought against Us by reason of the manufacture, use or sale of any goods and services or the use by You of the IP other than in accordance with these terms and conditions except for liability for death or personal injury resulting from Our negligence, or Our servants or agents and any other liability which We are expressly prohibited from excluding or limiting by law.
- 11.9 Save as otherwise provided in these terms and conditions, We shall be under no liability of any sort (however arising) and without prejudice to the foregoing shall not be liable for any damage, injury, loss (whether direct, consequential or otherwise), loss of profits or costs, charges or expenses, however arising.
- 11.10 Our total and aggregate liability in connection with these terms and conditions will not at any time exceed an amount equal to the total monies paid by You to Us in the twelve (12) months preceding the date on which the claim arose.
- 11.11 You warrant that You have not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding relating to the IP other than as expressly set out in the Licence.
- 12. PERIOD OF CONTRACT AND TERMINATION**
- 12.1 These terms and conditions shall be effective from the commencement date and subject to the provisions of this Clause 12 and shall continue in force for the period of the Licence.
- 12.2 We shall be entitled forthwith to terminate the Licence by written notice to You if:
- 12.2.1 You commit any continuing or material breach of any of the provisions of these terms and conditions and, in the case of such a breach which is capable of remedy, fail to remedy the same within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 12.2.2 an encumbrancer takes possession or a receiver is appointed over any of Your property or assets;
- 12.2.3 You make any voluntary arrangement with Your creditors or become subject to an administration order;
- 12.2.4 You go into liquidation (except for the purposes of an amalgamation, reconstruction or other re-organisation and in such manner that the company resulting from the re-organisation effectively agrees to be bound by or to assume the obligations imposed on that other party under these terms and conditions);
- 12.2.5 You cease, or threaten to cease, to carry on business; or
- 12.2.6 there is a change of Your control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988.
- 12.3 For the purpose of Clause 12.2.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 12.4 Termination or expiry of the Licence shall not affect the parties' accrued rights and remedies.
- 12.5 In the event of termination:
- 12.5.1 You shall provide the estimate referred to in Clause 7.2 above and immediately pay all outstanding sums to Us and upon production of further invoices You shall pay other sums due but not previously invoiced prior to date of termination or expiry;
- 12.5.2 the Licence granted to You shall immediately cease; and
- 12.5.3 at Our option (but at Your expense) You shall either destroy the IP in Your possession, power or control, (including any security copy) or return the IP to Us. You shall also procure that a duly authorised executive provides a sworn statement or affidavit verifying that this has been done.
- 13. EVENTS BEYOND THE CONTROL OF EITHER PARTY**
- 13.1 Neither party shall be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under these terms and conditions due to events beyond their control. Such delay or failure shall not constitute a breach of these terms and conditions and the time for performance of the affected obligation shall be extended by such period as is reasonable.
- 13.2 The party claiming events beyond their control shall notify the other party in writing of the reasons for such an event (and the likely duration, which should not be in excess of three (3) months) promptly after the occurrence of the same and should use their reasonable endeavours to minimise the effect and duration of the event.
- 14. ASSIGNMENT**
- 14.1 You shall not be entitled to assign, novate or transfer the whole or any part of the benefit of the Licence or any obligation under it to any party.
- 14.2 We as part of the Crown shall be entitled to specifically assign, novate or transfer the whole or any part of the Licence or any obligation under it to any part of the Crown.

- 15. EXCLUSIVITY**
These terms and conditions are not exclusive.
- 16. SEVERABILITY**
If any provision of the Licence is held to be unenforceable, invalid or illegal that shall not affect the enforceability, validity or legality of any other provision.
- 17. WAIVER**
No failure or delay by any party in exercising any right, power or privilege under the Licence shall impair such right, power or privilege or be construed as a waiver thereof. The rights and remedies of any party herein provided are cumulative and not exclusive of any rights and remedies provided by law.
- 18. NOTICES**
All notices which are required to be given under the Licence shall be in writing and shall be sent to the address of the recipient set out on page one (1) or such other address as the recipient may designate by notice given in accordance with these terms and conditions.
- 19. ENTIRE CONTRACT**
These terms and conditions represent the entire contract and understanding between the parties. The IP shall be supplied in accordance with the Sales Policy except to the extent that any provision of those terms and conditions of supply is inconsistent with any provision of the Licence, in which event the latter shall prevail.
- 20. LAW**
These terms and conditions shall be governed by and construed in accordance with the law of Northern Ireland and each party agrees to submit to the exclusive jurisdiction of the Courts of Northern Ireland.

