

Terms of Service

BETWEEN:

Recitals:

- (A) The Licensor is proprietor of and beneficially entitled to the copyright and all other rights of a like nature conferred in the United Kingdom and throughout the world in the Website and the Works;
- (B) The Licensor is willing to grant a licence to the Licensee to reproduce the Works, the Additional Works and the Adaptations.

1.0 Operative provisions:

Definitions

In this Licence the following expressions shall have the following meanings unless the context otherwise requires:

‘ADAPTATIONS’ means any software development work and related support activities requested by the Licensee and undertaken by the Licensor to adapt the Website for the Licensee to access the Website and the Additional Works and if requested, the Works

‘ADDITIONAL WORKS’ means the data, documents and other information prepared and maintained by the Licensee and placed by the Licensee on the Website

‘COMMENCEMENT DATE’ means the day on which the Works or the Additional Works on the Website are made accessible to the Licensee by entering the Password

‘CONFIDENTIAL INFORMATION’ means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Licensor, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential

‘DEVELOPMENTS’ means any modification, improvement or amendment to the Works devised or developed by the Licensor or as required due to any change of legislation either before or during the term of the Licence

‘ENVIRONMENTAL INFORMATION REGULATIONS’ means the Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations

‘FOIA’ means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance

or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

‘INFORMATION’ has the meaning given under section 84 of FOIA

‘INTELLECTUAL PROPERTY’ means all industrial and intellectual property rights of the Licensor, whether registered or unregistered, including without limitation patents, trademarks and service marks whether registered or unregistered, registered designs, unregistered designs, database rights and copyrights and any applications for any of the foregoing in any part of the world, and the copyright in all drawings, plans, specifications, designs and computer software including the Modules, Developments, Password, Works and Website, and all know-how and confidential information

‘LIBRARIES’ means each of the Subjects, Resources or Knowledge Areas to be accessed through the Website, or such information services as may be requested by the Licensee or developed by the Licensor or by third parties and offered through the Website

‘LICENCE FEE’ means the fees as set out in the Proposal and any subsequent proposals and order forms sent by the Licensor to the Licensee during the term. The Licensor reserves the right to vary the resources, additional libraries or other service(s), annual licence fee(s) upon any request by the Licensee to extend this Licence to access the additional resources or Libraries during the Term

‘PASSWORD’ means the password to be issued by the Licensor to the Licensee to enable the Licensee to access the Website

‘PROPOSAL’ means written confirmation of the Licence Fee and any other fees or costs, sent by letter, email or email attachment, by the Licensor

‘PURPOSE’ means to provide the Licensee with a document management system on the Website for the management of information and documents for the activity or service areas outlined in the Proposal and for any other purpose as set out in the Proposal

‘REQUEST FOR INFORMATION’ means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations

‘WEBSITE’ means the website at www.riams.org, all software and any other successor website or software, created by the Licensor through which the Licensee can access the Works and/or the Additional Works

‘WORKS’ means the documents and information prepared and maintained by the Licensor and placed within the Knowledge Areas or Resources areas of the Website together with any other information or documents made available on the Website and prepared by other government bodies, professional institutions, other RIAMS Licensees, individuals, partnerships, groups, bodies and agencies etc.

Licence

- 2.1 In consideration of the Licence Fee payable as described in Clause 9 the Licensor hereby grants to the Licensee a non-exclusive licence to access and to reproduce the Works and/or the Additional Works and any Adaptations for the Purpose and the Licensor undertakes to issue the Password to the Licensee.
- 2.2 The Licence for the Works shall include all Developments and excludes any responsibility for the Licensor to maintain or manage the Additional Works which will remain the responsibility of the Licensee for the whole of the Term.
- 2.3 The use by the Licensee of the Works shall be restricted to the Purpose and the Licensee shall ensure that the Works are not used or otherwise reproduced in any form for any other purpose whatsoever.

3.0 Technical Support

- 3.1 With effect from the Commencement Date and for the duration of the Licence the Licensor shall provide the Licensee free of charge with such technical support as may reasonably be required by the Licensee to access the Website. The technical support will be limited to giving advice on how to access the Website which will be given by telephone or email only. In the event that technical support is required contact the Licensor on 01239 711793 or email riams@rheglobal.com
- 3.2 The Licensor shall not be liable for any loss whatsoever suffered by the Licensee as a result of the Licensee being unable to access the Website, the Works and the Additional Works at any time for whatever reason.

4.0 Duration

- 4.1 In accordance with G cloud terms.

Restrictions on Licensee

- 5.1 The Licensee shall not:
 - 5.1.1 make any modifications to the Works; or
 - 5.1.2 reproduce the Works in any way which might prejudice its distinctiveness or the goodwill or reputation of the Licensor therein; or
 - 5.1.3 use in relation to the Works any trademarks or other marks or descriptions other than as may be contained within the Works without obtaining the prior written consent of the Licensor; or
 - 5.1.4 sell or share the Works with any other third party.
- 5.2 The Licensee shall keep confidential the Password and shall not disclose or supply other persons or organisations with the Password.
- 5.3 Except as provided in this Licence the Licensee shall have no rights in respect of any trade names or trademarks used by the Licensor in relation to the Works or of the goodwill associated therewith and the Licensee hereby acknowledges that except as expressly provided in this Licence it shall not acquire any rights in respect thereof and that all such rights and goodwill are and shall remain vested in the Licensor.
- 5.4 The Licensee shall at the expense of the Licensor take all such steps as the Licensor may reasonably require to assist the Licensor in maintaining the validity and enforceability of the Intellectual Property of the Licensor in the Works during the term of this Licence.
- 5.5 Without prejudice to the right of the Licensee or any third party to challenge the validity of any Intellectual Property of the Licensor the Licensee shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property of the Licensor and shall not omit or authorise any third party to omit to do any act which by its omission would have that effect or character.

- 5.6 The Licensee shall promptly and fully notify the Licensor of any actual, threatened or suspected infringement of any Intellectual Property of the Licensor which comes to the Licensee's notice and of any claim by any third party so coming to its notice that the reproduction of the Works infringes any rights of any other person and the Licensee shall at the request and expense of the Licensor do all such things as may be reasonably required to assist the Licensor in taking or resisting any proceedings in relation to any such infringement or claim.
- 5.7 The Licensee shall notify the Licensor of any amendments or corrections required to be made to the Works which may be identified by the Licensee.
- 5.8 The Licensee accepts that the terms of use of the Website and the Works and the Additional Works are subject to the disclaimers posted on the Website.

Warranties

- 6.1 The Licensor warrants that it is the owner of the copyright in the Works, that it has granted no other licences in respect of the Works which would conflict with the rights granted hereunder, and that to the best of its knowledge the use of the Works as permitted hereunder will not infringe the rights of any third parties.

Moral Rights

- 7.1 The Licensor warrants that the right to be identified as defined in s 77 of the Copyright, Designs and Patents Act 1988 has not been asserted by the author of the Works in any prior assignment of the Works and that the Licensor is not aware of any other assertion of that right made by an instrument in writing by the author.

Infringements

- 8.1 The Licensor shall take all reasonable steps available to it to restrain infringements by third parties of the copyright in the Works which might, if not restrained, damage the ability of the Licensee to exploit its rights hereunder.

9 Licence Fee

- 9.1 The Licence Fee shall include the cost of any Developments but will not include the cost of any Adaptations requested by the Licensee nor will it include the cost of the Additional Works. Adaptations and the development and maintenance of Additional Works, as requested by the Licensee will incur additional fees which will be detailed in a Proposal to the Licensee.
- 9.2 The Licensee shall pay the Licence Fee to the Licensor on the Commencement Date and every subsequent annual anniversary of the Commencement Date for the duration of the Term.
- 9.3 In the event of an additional Library or Other Resources being added to the Website the fee for that additional Library or Other Resource shall be payable on the date on which it is accessible by the Licensee and on every subsequent annual anniversary of the Commencement Date for the duration of the Term.
- 9.4 The Licence Fee shall be payable (together with value added tax thereon) by the Licensee to the Licensor within 30 days of the date set out in clauses 9.2 and 9.3 above.
- 9.5 The Licensor reserves the right to charge the Licensee interest in respect of the late payment of any sum due under this Licence (as well after as before judgment) at the rate of four per cent (4%) per annum above the base rate from time to time of the Bank of England from the due date therefor until payment.
- 9.6 The Licensor shall be entitled to vary the Licence Fee not more than once in every successive period of 12 months during the currency of this Licence upon giving not less than 10 days notice thereof to the Licensee. No increase shall exceed the latest annual increase in CPI as published by the UK Office of National Statistics, unless it is with the agreement of the Licensee.
- 9.7 Notwithstanding the information set out in clause 1.1 relating to the fee payable for each additional Library the Licensor shall be entitled to vary the cost of each additional Library to be added to the Website.

- 9.8 The Licensor shall be entitled to continue to charge the Licence Fee in the event that the Licensee merges with another organisation and shall be entitled to review the Licence Fee payable by the Licensee on the occurrence of such an event.

10. Termination

- 10.1 As per G Cloud agreement.

11. Waiver

- 11.1 The waiver by either party of a breach or default of any of the provisions of this Licence by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

12. Bribery and Corruption

- 12.1 The Licensee shall be entitled to cancel this Agreement and to recover from the Licensor the amount of any loss or damage resulting from such cancellation to the extent of the license fee paid in advance if:
- 12.1.1 The Licensor shall have offered or given or agreed to give to any person any gift or reward for doing or not doing any action in relation to this Agreement or any other contract with the Licensee; or
- 12.1.2 The like acts shall have been done by any person employed by the Licensor representing or acting on its behalf; or
- 12.1.3 In relation to any contract with the Licensee the Licensor or person employed by it or acting on its behalf shall commit any offence under the Bribery Act 2010 or give any reward receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

13. Notices

- 13.1 Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post to the address of the other party set out in this Licence (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served at the time of delivery (if delivered) or upon the expiration of 48 hours after posting (if sent by post).

14. Invalidity and severability

- 14.1 If any provision of this Licence shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Licence and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

15. Freedom of Information Act

- 15.1 The FOIA gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Licensee will, as a general rule, allow public access to recorded information where possible and the Licensor shall agree to the Licensee making any disclosures in accordance with the Act subject to Section 5 of this Agreement.

- 15.2 The Licensors acknowledge that the Licensee is subject to the requirements of the FOIA and the EIRs. The Licensors shall:
- 15.2.1 provide all necessary assistance and cooperation as reasonably requested by the Licensee in writing to enable the Licensee to comply with its obligations under the FOIA and EIRs;
 - 15.2.2 transfer to the Licensee all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 15.2.3 to the extent that the Licensee is unable to access such information itself, provide the Licensee with a copy of all Information belonging to the Licensee requested in the Request For Information which is in the Licensors' possession or control in the form that the Licensee requires within 5 Working Days (or such other period as the Licensee may reasonably specify) of the Licensee's request for such Information; and
 - 15.2.4 not respond directly to a Request For Information unless authorised in writing to do so by the Licensee.
- 15.3 The Licensors acknowledge that the Licensee may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Licensors. The Licensee shall take reasonable steps to notify the Licensors of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Licensee shall be responsible for determining in its absolute discretion whether any other information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 15.4 The Licensee shall indemnify and keep indemnified and defend at its own expense the Licensors against all costs, claims, damages or expenses incurred by the Licensors or for which the Licensors may become liable due to any failure by the Licensee or its employees or agents to comply with any of its obligations in respect of any Request For Information or otherwise under this clause.
- 16. Entire Licence**
- 16.1 The Licensors shall not be liable to the Licensee for loss arising from or in connection with any representations, agreements, statements or undertakings made prior to the date of execution of this Licence other than those representations, agreements, statements or undertakings confirmed by a duly authorised representative of the Licensors in writing or expressly incorporated or referred to in this Licence.
- 17. Data Protection**
- 17.1 The parties will each comply with their respective duties under all relevant legislation concerning the protection of personal data, including without limitation the UK Data Protection Act 2018 and EU Regulation 2016/679 (the General Data Protection Regulation).
- 17.2 If and to the extent that RHE is required to process personal data on behalf of the Licensee under this Agreement, RHE will:
- (a) Process such personal data only to the extent strictly necessary for the purposes of performing its obligations under this Agreement and (where applicable) in accordance with the written instructions of the Licensee;
 - (b) Put and at all times maintain in place appropriate technical and organisational measures against unauthorised or unlawful processing

- of such personal data and against accidental loss, destruction of or damage to the data. Such measures shall (inter alia) have regard to the specific requirements of this Agreement and the level of harm that may be suffered by a data subject whose personal data is affected by any such unauthorised or unlawful processing or by its loss, destruction or damage;
- (c) Not keep the personal data for longer than is necessary for the purposes of processing the personal data to perform its obligations under this Agreement;
 - (d) Take reasonable steps to ensure the reliability of any of its staff who will have access to the personal data, ensuring that any such staff are:
 - (i) Adequately trained in their duties;
 - (ii) Contractually obliged to maintain the confidentiality of the Licensee's personal data, and
 - (iii) Contractually obliged to process the Licensee's personal data only on the instructions of the Licensee;
 - (e) Inform the Licensee without undue delay if it becomes aware of any accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure of or access to the Licensee's personal data and provide the Licensee with all reasonable assistance in investigating and mitigating the impact of any such data breach. RHE will also provide all reasonable assistance to the Licensee in relation to its obligations to provide adequate notifications to the relevant data protection authorities and affected data subjects;
 - (f) Provide the Licensee with reasonable and timely assistance for the purposes of fulfilling the Licensee's obligations in the event that the Licensee receives from a data subject a request to exercise any of his/her rights under applicable data protection law. If RHE receives from a data subject a request to exercise his/her rights in respect of the Licensee's personal data, RHE will provide notice of this to the Licensee without undue delay;
 - (g) Not without the written consent of the Licensee process any of the Licensee's personal data outside the EEA, nor transfer any of the Licensee's personal data outside the EEA;
 - (h) Allow a representative of the Licensee access to any relevant premises owned or controlled by RHE upon reasonable notice, to inspect the measures, programmes and procedures adopted in performance of and in compliance with this clause 17. RHE will also make available to the Licensee, at the Licensee's request, all information necessary to demonstrate compliance with this clause 17;
 - (i) Upon the termination of this Agreement for whatever reason, return all personal data and all copies of the personal data to the Licensee forthwith or, at the Licensee's choice, destroy all copies of the same and certify to the Licensee that it has done so, unless RHE is prevented by any legal or regulatory requirement from destroying or returning all or part of such data, in which event the data will be kept confidential and will not be actively processed for any purpose;
 - (j) Not subcontract any processing of the Licensee's personal data or otherwise disclose the Licensee's personal data to any third party except as expressly permitted by this Agreement or otherwise

permitted by the Licensee in writing. Where such a sub-contractor is engaged, RHE will:

- (i) Ensure that it has a written contract (the "Processing Subcontract") in place with the relevant subcontractor which imposes on the subcontractor the same obligations in respect of processing of the Licensee's personal data as are imposed on RHE under this Agreement, and in particular this clause 17;
- (ii) Ensure that there are sufficient guarantees in place to ensure the subcontract will meet the requirements of Article 28 of EU Regulation 2016/679;
- (iii) Remain fully liable to the Licensee for its obligations under this clause 17; and
- (iv) Provide a copy of the Processing Subcontract to the Licensee upon request, subject to reasonable confidentiality restrictions that may be applicable. RHE shall ensure that any confidentiality restrictions in the Processing Subcontract do not prevent it showing to the Licensee those provisions which demonstrate RHE's compliance with its obligations under this clause 17.

17.3 For the purposes of this Agreement, the terms '**Data Controller**', '**Data Protection Officer**' and '**Data Subject**' shall have the definitions set out in EU Regulation 2016/679 (the General Data Protection Regulation ('GDPR')).

18. Successors

18.1 This Licence shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

19. Assignment and sub-licensing

19.1 The Licensee shall not be entitled to assign or otherwise transfer this Licence nor any of its rights or obligations hereunder nor sub-license the use (in whole or in part) of the Works without the prior written consent of the Licensor which may be withheld at the Licensor's entire discretion.

20. Headings

20.1 Headings to clauses in this Licence are for the purpose of information and identification only and shall not be construed as forming part of this Licence.

21. Law

21.1 This Licence shall be governed by and construed in accordance with the law of England and Wales and the parties hereto agree to submit to the non-exclusive jurisdiction of the courts of England and Wales.