



AHLC Solutions Ltd

Governance as a Service

Terms and Conditions Document

G-Cloud 15

Cloud Software

AHLC Solutions Limited

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Governance as a Service

Terms and Conditions (Subject to Contract)

1. Definitions

"Affiliates" means any part of either party's group of companies located around the world including its successors and permitted assigns, its holding company, and its subsidiaries and subsidiaries of its holding company (having the meaning identified in section 1159 of the Companies Act 2006).

"Agreement" means this document its Schedules and its related Ordering Documents. "Additional Term" means a twelve month period.

"Authorised Representatives" means any employee, director, officer, sub-contractor, agent or advisor, including where relevant, those of Affiliates.

"Clients" means the clients of the Company or clients of Affiliates as applicable.

"Confidential" & "Confidentiality" means such technical and/or commercial information, including but not limited to any Materials, Data, drawings, sketches or designs, samples or prototypes disclosed or supplied by either AHLC Solutions Ltd or the Company.

"Data" means information relating to the Company, its Affiliates or Authorised Representatives which is inputted into the Software.

"Documentation" means the manuals, user instructions, operating manuals, specification document and all other documents relating to the Materials supplied by AHLC Solutions Ltd to the Company in written, documentary or electronic form to enable the proper operation and functionality of the Software.

"Escrow" means a deposit with, and retention by an Escrow Agent of, the Source Code.

"Escrow Agent" means an agent to be identified by the Company and agreed between the parties (AHLC Solution's consent not to be unreasonably withheld).

"Intellectual Property Rights" means all vested, contingent and future intellectual property rights including but not limited to copyright, trademarks, design rights, trade names, patents, know-how, trade secrets, database rights or any similar right exercisable in any part of the world including any application for the registration of any patents or registered designs or similar rights in any part of the world.

"Managed Services" means outsourcing and other similar services provided by the Company or its Affiliates to their Clients.

"Materials" means the Software, Documentation and the Media.

"Media" means the media on which the Software and the Documentation are recorded or printed.

"Object Code" means the Source Code in machine readable format.

"Ordering Document" means a document describing the Software, services, fees and other related terms requested by the Company and issued by AHLC Solutions to the Company from time to time.

"Software" means the programs and services listed in Schedule 1 and any Ordering Document in any form whatsoever (such as Object Code or internet based web pages) provided by AHLC Solutions to Company including all updates, enhancements, modifications, versions, and all replacement or amended Software from time to time offering as a minimum the same or similar functionality as originally delivered and as detailed in Schedule 1 or any Ordering Document.

"Source Code" means the source code of the Software.

"Support Services" means the AHLC Solutions Technical Support Policy detailed in Schedule 3 for technical maintenance and support services to be provided by AHLC Solutions to the Company throughout the term of this Agreement.

"Trigger Event" means the insolvency of AHLC Solutions.

"User" means a unique individual who uses or accesses the Software or Materials.

2. General

References to statutory provisions include those statutory provisions as amended or re-enacted under Scottish Law.

3. Delivery

AHLC Solutions shall deliver one copy of the Software electronically or on disc or CD-ROM to the Company at the address for the Company stated above within 5 days of this Licence.

4. Right to Use

Upon the Company's acceptance of the terms of this Agreement and conditional on payment of all required fees set out in an Ordering Document, AHLC Solutions grants to the Company and its Affiliates a perpetual, worldwide, non-exclusive, non-transferable, right to use the Materials identified in the Ordering Documents, without limitation or restriction otherwise than contained in this Agreement and any Ordering Document, for the duration and extent for which the Company has paid the appropriate licence fees (as evidenced by one or more valid Ordering Documents and for the following purposes:

- a) for the Company and its Affiliates to use the Software;
- b) for the Company and its Affiliates to develop, modify and maintain the Software (but only after the occurrence of a Trigger Event);

For the purposes of this Clause, "use" of the Software shall be restricted to use of the Software in Object Code form (and, after the occurrence of a Trigger Event, in Source Code form) for the normal business purposes of the Company or any Affiliate, but will include any act which is reasonably incidental to such use, including (without limitation) the creation of as many copies of the Software as may be necessary to enable use of the Software in accordance with this Clause and the maintenance of a reasonable number of back-up or test copies of the Software. Upon the occurrence of a Trigger Event, the licence term will automatically become perpetual. Upon such occurrence and if no Escrow has been established, AHLC Solutions shall, at the Company's request deliver the current commercial version of Source Code to the Company, and The Company shall have the right to use the Source Code for the sole purpose of supporting and maintaining the Software.

The Company shall at any time be entitled to request that the parties negotiate the terms of an escrow agreement for the Source Code to be placed in Escrow. The Company shall be responsible for all Escrow set-up activities and costs, and AHLC Solutions agrees to use its reasonable efforts to assist the Company where necessary. The Company agrees to pay AHLC Solutions all costs relating to Escrow related requests, including but not limited to the deposit, maintenance, testing of AHLC Solutions Materials and any other action relating to Escrow as requested by the Company from time to time.

Nothing in this Agreement shall entitle the Company or its Affiliates to transfer, sell, rent, lease or divest control of the Software other than in accordance with the terms of this Agreement to an unauthorised third party after the occurrence of a Trigger Event.

5. Beneficiary of the Use of the Software

The Software is for the sole use of the Company, its Affiliates and its Authorised Representatives for their own use and for providing Managed Services. The Company may not rent, lease or deploy to or allow use by Clients, or use the Software beyond the terms of this Agreement without the express written consent of AHLC Solutions.

6. Term

Subject to the terms of this Agreement, this Agreement is effective upon the Effective Date, and shall remain in effect for 12 months. This Agreement will be automatically extended (whether from the Effective Date or from the expiry of an Additional Term) (a "Renewal Date") for successive Additional Terms unless terminated in accordance with the terms of Clause 16. Upon termination, the Company agrees to pay to AHLC Solutions any applicable fees due under an Ordering Document.

7. Payment

All rights granted in this Agreement are conditional upon payment of the appropriate fees. Invoices are due and payable 30 days from the end of the month of the date of invoice. The Company agrees to pay or reimburse all sales, use, VAT or excise taxes, duties or assessments arising on or measured by amounts payable to AHLC Solutions hereunder. The Company is not responsible for AHLC Solutions income taxes. If the Company fails to pay, undisputed invoices within a 30 day period after a written notice of non payment by AHLC Solutions, AHLC Solutions reserve the right to charge interest from the date payment

was due to the date of actual payment (both dates inclusive) at the rate of 2 per cent per month above the Bank of England base rate. Such interest shall be paid on demand by AHLC Solutions.

8. Geographical Constraints

The Materials are licensed for worldwide use.

9. Title & Ownership

The Materials and any and all copies of it and related materials will remain the property of AHLC Solutions. The Software is licensed, not sold. There is no transfer to the Company of any title to or ownership of the Software and the licence granted under this Agreement should not be construed as a sale of any right in the Software. Any supplemental software code provided to the Company as part of this Agreement shall be considered part of the Software and subject to the terms and conditions of this Agreement.

The Data and any and all copies of it will remain the property of Vertex. There is no transfer of ownership or right of title to AHLC Solutions of the Data.

10. Intellectual Property Rights

AHLC Solutions shall retain all right, title and interest in and to the Materials and all Intellectual Property Rights of whatever nature including all modifications and/or enhancements to the Software, regardless of the source of inspiration for any such enhancement or modification and regardless of whether the Company has provided input regarding such modifications and/or enhancements. The Company shall immediately notify AHLC Solutions if it becomes aware of any infringement or any unauthorised use of the Materials by any person.

AHLC Solutions will defend the Company, at its own expense, from any allegation, claim, demand, action or proceedings against the Company that the use of the Software infringes the Intellectual Property Rights of a third party ("Infringement Claim") to the extent it is based upon an Infringement Claim from the Company's use of the Materials in the United Kingdom and shall fully indemnify and hold harmless the Company from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Company as a result of or in connection with any such Infringement Claim.

The Company agrees that it will notify AHLC Solutions as soon as reasonably possible in writing of any such claim or action of which it has notice and give AHLC Solutions full information and reasonable assistance in connection therewith. AHLC Solutions will at its own expense have the sole right to control the defence of, and to settle or compromise, any such Infringement Claim. If the Materials are, or in AHLC Solutions opinion might be, held to infringe as set forth above, AHLC Solutions may, at its option:

1. a) procure for the Company and its Affiliates the right to continue using the Software in accordance with the terms of this Agreement;
2. b) modify the Software so that it ceases to be infringing;
3. c) replace the Software with non-infringing software;

provided that if AHLC Solutions modifies or replaces the Software, the modified or replacement software must comply with the warranties contained in Clause 18 and the Company shall have the same rights in respect thereof as it would have had under those clauses had the references to the date on which such modification or replacement was made.

If these options, in AHLC Solutions opinion, are commercially unreasonable, the Company will return the infringing Software to AHLC Solutions, and AHLC Solutions sole liability, in addition to its obligations and liabilities to pay awarded damages, costs and expenses as set forth above, shall be to refund the license fee the Company paid AHLC Solutions for the Materials under this Agreement and any associated Ordering Document pro-rata to the number of whole months remaining until the next Renewal Date.

The Company shall retain all Intellectual Property Rights of whatever nature and all rights, titles and interests in and to the Data. AHLC Solutions shall immediately notify the Company if it becomes aware of any infringement or any unauthorised use of the Data by any person.

AHLC Solutions will have no liability for any Infringement Claim arising as a result of:

- a) The Company's use of the Software in combination with any items not supplied by AHLC Solutions where such claim relates solely to those other items; b) any modification of the Software by the Company or any other party entitled to use the Software under this Agreement;

b) use of other than the latest version of the Materials if use of the latest version would avoid the infringement, but only where AHLC Solutions has previously notified the Company (and provided the latest non-infringing version) that the latest version would avoid such infringement and if such latest version can be implemented by the Company without obstacle;

c) use outside the scope of the granted licence.

To the extent permitted by law, this clause 10 states AHLC Solutions entire liability to the Company of the Materials concerning Infringement Claims, including but not limited to, patent, copyright and trade secret rights.

11. Copyright

The Software is proprietary commercial software developed at private expense by AHLC Solutions. AHLC Solutions reserves all Intellectual Property Rights to the Software and its documentation under copyright laws and international copyright treaties as well as other intellectual property laws and treaties as well as trade secret or similar laws applicable to the locality where the Company uses the Software. In accordance with copyright law the Company may not, and the Company may not allow any third party to, decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any Source Code or underlying ideas of the Software by any means whatsoever; remove any product identification, copyright legend or other notices; modify, translate, adapt, vary, incorporate into or with other software or create a derivative work of any part of the Software; attempt to use the Software, or any portion thereof, in excess of the Company's licence rights under this Agreement.

12. Agent or Subcontractor Use

Except where the Company has entered into an outsourcing or other managed service agreement with an agent or subcontractor, Authorised Representatives employed or contracted directly by the Company or its Affiliates may use or maintain the Software only on the Company's behalf, subject to such party agreeing to abide by all the Company's obligations under this Agreement for the protection of the interests of AHLC Solutions, including obligations of Confidentiality and protection of the Software. The Company shall at all times be responsible for compliance with the terms of this Agreement.

13. Transfer Rights

Subject to Clauses 4, 5 and 12 of this Agreement, the Company shall not:

- i. transfer the Software, or the right to use the Software, to any other party;
- ii. make the Software available for the use by, or to the benefit of, any other party; or
- iii. assign, transfer, pledge or otherwise dispose of its rights and obligations under this licence;

without the express written authority of AHLC Solutions.

However, transfer and assignment internal to the Avnet group of companies is permitted without express written authority of AHLC Solutions.

14. Unauthorised Use by, or Disclosure to, Third Parties

The Company shall take all reasonable precautions to maintain Confidentiality in respect of the Materials to prevent unauthorised use by, or disclosure to, unauthorised third parties.

15. Audit Rights

The Company shall institute reasonable measures to ensure compliance with the terms and conditions of the Agreement. Upon 30 days written notice, AHLC Solutions may audit the Company's use of the Materials. The Company agrees to cooperate with AHLC Solutions and provide reasonable assistance and access to information required to complete the audit. The Company agrees to pay within 30 days of written notification any fees applicable to the Company's use of the Materials in excess of the Company's licence rights under this Agreement. Such audit shall not unreasonably disrupt the Company's normal business activities.

16. Termination

The Company may terminate this Agreement, effective on the next Renewal Date, by giving AHLC Solutions written notice of termination at least 60 days prior to the next Renewal Date (as defined in Clause 6). The Company may immediately terminate this Agreement upon written notice to AHLC Solutions if AHLC Solutions fails to comply with any material provision of this Agreement and does not remedy such breach within 30 days of such notice. This Agreement will terminate upon 30 days written notice from AHLC Solutions if the Company fails to comply with any material provision of this Agreement and does not remedy such breach within said 30 day period. In the event of termination by AHLC Solutions in accordance with this Clause,

the Company's licence rights will immediately terminate, the Company must immediately stop using all Materials, permanently delete installations of the Software and return to AHLC Solutions all copies of the Documentation and Media and certify to AHLC Solutions in writing that the Company has fully complied with this clause.

17. Surviving Clauses

The following sections and the obligations embodied therein will survive any termination of this Agreement: "Right of Use", "Confidentiality" "Copyright", "Limited Warranty" "Licence Term", "Limitation of Liability", "Equitable Remedies", "Transfer Rights", "Notices", "Waiver/Severability", "Resolution of Disputes", "Force Majeure" "Intellectual Property" "Intellectual Property Rights Indemnity" and "Complete Agreement".

18. Limited Warranty

AHLC Solutions warrants it is either the owner or authorised licensee of the Materials and is able to grant the rights set out in this Agreement. The Company accepts that no Software is error free and under the terms of this Licence, AHLC Solutions will guarantee that for a period of 90 days from the Effective Date of this Agreement the Software will perform substantially in accordance with the written Documentation that accompany the Software; In the event that the Software fails to comply with this guarantee, AHLC Solutions will at its option, either (a) repair or replace the Software or (b) return the price the Company paid under the terms of the Ordering Document, subject to the Company returning all Materials. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, modification, variation, addition or misapplication caused by the Company which is outside the scope of its rights under this Agreement. The Company agrees that this Limited Warranty is the Company's sole guarantee in relation to the Software. To the extent permitted by law, this Limited Warranty is in lieu of all other warranties. AHLC Solutions disclaims all other warranties, express or implied, including any warranty of satisfactory quality or fitness for a particular purpose; or any warranty arising from the course of dealing between the parties or from infringement of third party intellectual property. As a precaution, the Company is strongly advised to back-up its files regularly.

AHLC Solutions warrants that the support services provided by AHLC Solutions shall be substantially as described in the Technical Support Policy and will use reasonable efforts, care and skill to solve any problems or issues.

19. Limitation of Liability

Without prejudice to Clauses 10 and 23, AHLC Solutions will accept no liability whatsoever for any indirect, incidental or consequential damages arising from the use of the Software or Support Services, including but not limited to direct, indirect, special, punitive or any loss of profits, revenue, data, or data use. AHLC Solutions maximum liability for any damages whatsoever arising out of or related to this Agreement shall be limited to the current annual licence fee the Company paid AHLC Solutions for the Materials under this Agreement. Nothing in this Agreement shall exclude or limit AHLC Solutions liability for a) death or personal injury caused by the negligence of its directors, officers, employees, contractors or agents; b) fraud or of any statement made fraudulently by AHLC Solutions.

20. Notices

All notices under this Agreement shall be in writing, shall refer to this Agreement, and shall be deemed given: when delivered personally; when sent by confirmed facsimile transmission; five days after having been sent by registered or certified mail, return receipt requested; or one day after deposit with a commercial overnight carrier, with written verification of receipt. All communications may be sent to the addresses set forth above or such other address as a party may designate by notice given pursuant to this clause. Any notice from AHLC Solutions to the Company shall also be sent by email to andy.williams@ahlc-solutions.com

21. Waiver/Severability

Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Similarly, the provision of any accommodation exceeding the requirements of this Agreement shall not constitute a waiver of any provision hereof, nor shall it be construed to establish a course of dealing contrary to the express terms hereof. If any provision of this Agreement shall be determined by any competent authority to be unlawful, invalid or unenforceable, that provision shall be limited or severed to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

22. Conflicting Terms

In the event of conflicts arising between the terms of this Agreement and any other terms and conditions mentioned in the Ordering Documents submitted by the Company, the following will take priority and shall prevail: firstly, those within the Ordering Documents submitted by the Company, then those within this Agreement.

23. Confidentiality

Subject to clauses a) and b) of this Clause 23 at all times during the life of this Agreement and thereafter, for a period of five years, each party shall keep secret and confidential all business and trade secrets, methods of doing business, client lists and other confidential information and material disclosed by or obtained from the other in connection with this Agreement and each party undertakes not to disclose any such material or information to any third party.

a) The obligations of confidentiality above shall not apply to any information or material which the recipient party can prove:

- i. was already known to it prior to its receipt thereof from the disclosing party or any of the disclosing party's Affiliates; or
- ii. was subsequently disclosed to it lawfully by a third party who lawfully obtained the same and who was not bound by any obligation of confidence in respect thereof to the disclosing party or to any of its Affiliates;
- iii. is generally available to the public at the time of receipt by the recipient or has subsequently become generally available to the public other than by reason of the breach of the provisions of this clause or breach of any obligation of confidence owed by the recipient or by any of its Affiliates; or
- iv. is developed independently by the recipient or its Affiliates.

b) Notwithstanding anything to the contrary contained in this Agreement, it is understood that each party may disclose confidential information:

- i. if and to the extent required by any securities exchange or regulatory, supervisory or governmental authority, institution or department to which the disclosing party is subject wherever situated;
- ii. if and to the extent required by law or in relation to court proceedings;
- iii. to its professional advisors, auditors or bankers;
- iv. to its employees and any sub-contractors, agents or other third parties involved in the provision of the services, in

each case where such disclosure is bona fide necessary for the proper performance of their duties under this

Agreement and subject to an appropriate obligation of confidentiality being imposed; or

- v. with the written consent of the other party.

The restrictions contained in this clause will continue for a period of five years after the expiry or termination of this Agreement.

24. Equitable Remedies

The Company agrees that a material breach of this Agreement adversely affecting AHLC Solutions proprietary rights in the Software or other Confidential materials provided hereunder would cause irreparable injury to AHLC Solutions for which monetary damages would not be an adequate remedy and, therefore, that AHLC Solutions shall be entitled to equitable relief (e.g. injunction) in addition to any remedies it may have hereunder or at law.

25. Resolution of Disputes

In the event of any dispute (other than any matters relating to Intellectual Property Rights and Confidentiality) arising out of or relating to this Agreement, we shall attempt in good faith to resolve such dispute through informal means, including timely escalation of the dispute to senior management having full settlement authority. Either of us may commence resolution of a dispute by filing a written notice requesting to do so to the other party. Each of us agrees that we will participate in resolving disputes in good faith within a 30 day period from receipt of the written notice.

26. Force Majeure

Neither party to this Agreement shall be liable for non-performance to the extent that such non-performance is caused by events or conditions beyond that party's control, provided such party promptly notifies the other thereof and makes reasonable efforts to perform.

27. Complete Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and it shall supersede any and all conflicting provisions of any Ordering Document(s) between the parties. This Agreement may be modified, amended or waived only by a written instrument signed by duly authorised representatives of both parties.

28. Governing Law and Jurisdiction

This Agreement is governed by and shall be construed in accordance with Scottish Law. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Scotland.

29. Counterparts

This Agreement may be executed in any number of identical counterparts, each of which shall be deemed a duplicate original thereof.

Contact Details

For more information about the contents of this document, please contact:

Andy Williams

Director

AHLC Solutions Ltd

Tel: 07957967270

Email: andy.williams@ahlcsolutions.com

Web: www.ahlcsolutions.com

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