

Crown
Commercial
Service
Supplier



GEOSPHERE
INFRASTRUCTURE OPERATIONS SUITE



GEOWORKS
ASSET MANAGEMENT & MAINTENANCE

G-Cloud 15

GeoWorks

Terms and Conditions

Framework Reference: RM1557.15.

Presented by: GeoSphere

25 Cecil Pashley Way,
Shoreham-by-Sea, BN43 5FF, UK

thegeosphere.com

sales@thegeosphere.com

THIS MASTER SUBSCRIPTION AGREEMENT is made on the date of last signature.

BETWEEN:

1. **GEOSPHERE ENTERPRISE SOFTWARE LIMITED** incorporated and registered in England and Wales with company number 04599049 whose registered office is at 25 Cecil Pashley Way, Shoreham-by-Sea, West Sussex, BN43 5FF ("**Supplier**"); and
2. [] **Limited**, whose registered office is at [] ("**Customer**").

WHEREAS:

- A. The Supplier makes available certain software on a software as a service basis relating to the management and use of asset management.
- B. The Customer has indicated that it would like to access the software and has agreed to enter into these terms.

OPERATIVE PROVISIONS

1. LICENCE AND RESTRICTIONS

1.1 Right to Use Hosted Software: The Supplier grants to the Customer and any Customer Affiliates a non-exclusive, non-transferable right for Customer and its Authorised Users to access and use the Hosted Software in accordance with this Agreement and the Documentation during the applicable Subscription Term.

1.2 Evaluation licence: This clause (and clause 1.3) shall apply if the Customer and any Customer Affiliate is granted access to a version of the Hosted Software for the purposes of evaluating and/or trialling the Hosted Software to determine whether the Hosted Software is appropriate for its business ("**Evaluation Purposes**"). For Evaluation Purposes only, the Customer and the relevant Customer Affiliates may access and use the Hosted Software in a non-production environment, subject to the terms and conditions of this Agreement (as modified in the next sub-clause) for the duration stated in the Contract Order Form.

Additional terms and conditions may appear in the Contract Order Form relating to such use.

1.3 Liability for Evaluation Use: Any Hosted Software made available for Evaluation Purposes is provided “as is” and the Supplier gives no service levels nor any warranties, indemnities, undertakings or representations (of any kind) in respect of such use and disclaims all and any liability. The Customer acknowledges and accepts (on its own behalf and on behalf of any Customer Affiliates) that any configuration of the Hosted Software during the evaluation period will not be stored or available after the evaluation period unless otherwise agreed.

1.4 Service Levels: The Service Levels are specified in the applicable Service Definition Document. The following events shall excuse the Supplier from performance in accordance with the Service Levels :

1.4.1 outages or other breaches caused by circumstances beyond the Supplier’s reasonable control, such as, acts of God (including pandemic and the consequences of Covid-19), acts of government, floods, fires, earthquakes, acts of terror or war, virus attacks, internet service providers’ failures or delays or denial of service attacks (“**Force Majeure Event**”);

1.4.2 outages due to Scheduled Downtime;

1.4.3 outages resulting from the Customer’s failure to use the Hosted Software in accordance with the Documentation or this Agreement or resulting from issues relating to Customer’s networks or domain name server issues;

1.4.4 where Supplier provides Hardware pursuant to an Addendum, interference or failure to properly maintain such Hardware; and/or

1.4.5 outages to remedy or avoid a security vulnerability or as required by law or any regulator.

1.5 Restrictions: Customer must not:

1.5.1 permit any unauthorised third party to access the Hosted Software or related software or, where Supplier provides Hardware pursuant to an Addendum, access to such Hardware;

- 1.5.2 send or store code that can harm or result in damage to Hosted Software (such as malicious code and malware);
- 1.5.3 interfere with or disrupt the integrity of Hosted Software or the data contained therein or, where Supplier provides Hardware pursuant to an Addendum, disrupt the integrity of such Hardware;
- 1.5.4 attempt to gain unauthorised access to the Hosted Software, any Deliverable or its related system or networks;
- 1.5.5 except to the limited extent permitted by law, modify, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or structure of the software making up the Hosted Software, a Deliverable or related software;
- 1.5.6 copy, frame or mirror any part of the Hosted Software or any Deliverable unless expressly provided in a Contract Order Form or in the Service Definition Document and then only on Customer's own intranet for its internal business purposes;
- 1.5.7 use Hosted Software or any Deliverable in order to cause harm to any person, including using to overload third party systems of the Supplier's systems or create multiple agents for the purpose of disrupting operations of a third party;
- 1.5.8 remove or modify any program markings or any notice of the Supplier's or its licensors' proprietary rights;
- 1.5.9 perform without the Supplier's written consent or disclose any benchmark or performance tests carried out in respect of the Hosted Software or disclose any security information relating to the Hosted Software;
- 1.5.10 perform any test or procedure or disclose any of the following in respect of the Hosted Software, its hosting environments or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing or any other test or procedure not authorised in this Agreement;
- 1.5.11 make available or communicate the Hosted Software or any Deliverable or related software to any third party except as expressly authorised hereunder; or

1.5.12 access, use or observe the Hosted Software or any Deliverable in order to copy any features, functions or graphics.

1.6 Suspension: The Supplier may from time to time temporarily suspend the Customer's account, and/or a Customer's access to or use of the Hosted Software or any Deliverable if any of the Authorised Users breach clause 1.5 or else if the Customer is in (or the Supplier anticipates the Customer shall be in) material breach of this Agreement or in breach of any legal requirement. The Supplier will provide Customer as much advance notice in writing as is reasonably practicable of any such suspension based on the nature of the circumstances giving rise to the suspension; it will also provide a brief written explanation as a matter of priority following such suspension. The Supplier will seek to re-establish the affected Hosted Software services as soon as reasonably practicable after the Supplier determines, in its reasonable opinion, that the situation giving rise to the suspension has been resolved; however, after any suspension period, the Supplier will make available to Customer the Hosted Software as existing in the production environment on the date of suspension. The Supplier may terminate the Hosted Software services under a Contract Order Form if any of the foregoing causes of suspension are not resolved within 30 days after the Supplier's initial notice to the Customer. A suspension or termination by the Supplier pursuant to this clause shall relieve Customer from its obligation to make payment(s) under this Agreement in respect of Customer's future use, but not Customer's obligation to pay any fees which have accrued prior to the date of termination.

1.7 Use by Customer Affiliates: The Customer must ensure that any Customer Affiliates licensed to use the Hosted Software do so in accordance with and subject to the terms of this Agreement as if they were the Customer. Accordingly references to obligations of the Customer in this Agreement shall include obligations of the Customer Affiliates. The Customer acknowledges and accepts that it shall be liable for all acts and omissions of Customer Affiliates such that they shall be treated as if they were acts or omissions of the Customer. Only the Customer may bring a claim pursuant to this Agreement and only the Customer shall exercise any rights which would otherwise be available to a Customer Affiliate, whether under this Agreement or at law. The Customer shall fully and effectively indemnify the Supplier against any claim brought by a Customer Affiliate directly against the Supplier.

2. FEES, DURATION AND PAYMENT

2.1 Fees: The fees payable by Customer to the Supplier are stated in the Contract Order Form.

2.2 Use limitations: The Supplier may monitor Customer's Hosted Software usage. In the event Customer exceeds the Authorised Use Limitation, the Supplier reserves the right to invoice Customer for the excess at the rates stated in the applicable Contract Order Form.

2.3 No contingency: Customer agrees that the purchase of any Hosted Software and the provision of any Hardware or Services pursuant to an Addendum is not contingent on the Supplier providing any future features or functionality nor is it dependent upon the Supplier providing any service or development resource.

2.4 Payment. Payment is due within thirty (30) days from receipt of the Supplier's invoice. Receipt is deemed at 9:00am on the first Working Day after the email is sent, provided no delivery failure notification is received. Any late payments will accrue interest at the rate of 8% per annum above the base rate of Barclays Bank Plc in respect of the outstanding balance, or the amount prescribed by law, whichever is higher.

2.5 No set off etc.: In the event of a bona fide dispute regarding any amounts which are due to the Supplier, Customer must (at all times acting in good faith) pay the amount not in dispute. Save as set out in this clause, the Customer must pay all amounts due under this Agreement without set off, deduction, withholding or counterclaim within the period set out in clause 2.4.

2.6 Taxes. All fees listed in the Contract Order Form(s) are exclusive of value added tax. Customer agrees to pay any applicable VAT in addition to the fees when such payments are due subject to receipt by Customer of a valid invoice in respect of VAT.

2.7 Increases: The Supplier may increase the fees set out in any Contract Order Form annually on 1st January in accordance with the percentage increase over the previous twelve months in the Consumer Prices Index as published by the Office for National Statistics ("**CPI**"). Alternatively, the Supplier may annually, on 1st January, increase the fees set out in any Contract Order Form by more than the increase over the previous twelve months in CPI, but in such circumstances if Customer objects to such

increase, it may terminate this Agreement and all Contract Order Forms by thirty (30) days' notice in writing to the Supplier.

2.8 Customer's Expenses: Any and all expenses, costs and charges incurred by the Customer in the performance of its obligations under this Agreement shall be paid by Customer unless the Supplier has expressly agreed beforehand in writing to pay such expenses, costs and charges.

2.9 Supplier's Expenses: Customer undertakes to pay the Supplier in respect of all expenses reasonably incurred in connection with its performance of this Agreement including travel, subsistence and overnight accommodation when required to attend the Customer's premises.

3. OWNERSHIP AND CONFIDENTIALITY

3.1 Ownership: The Supplier or its licensors own all rights, title and interest including all Intellectual Property Rights, in the Hosted Software, Services, Documentation, Service Documentation and Deliverables and any materials relating thereto, including any modifications, enhancements, updates or revisions thereof from time to time.

3.2 New Coding: Supplier shall own all Intellectual Property rights in any new coding or functionality produced by the Supplier as a result of any suggestions, enhancement requests, or other feedback provided by Customer or its Authorised Users, relating to the Hosted Software, Documentation, Service Documentation or any Deliverable without any restriction or limitation on such use.

3.3 Reservation: No transfer or assignment of the Supplier's Intellectual Property Rights will occur pursuant to this Agreement. All rights not expressly granted to the Customer are reserved by the Supplier.

3.4 Confidential Information. Each party agrees that it will not use or disclose any Confidential Information received from the other party other than:

3.4.1 to perform its obligations under this Agreement or receive the benefit of the Hosted Software; or

3.4.2 as expressly authorised in writing by the other party.

3.5 Standards: Each party will use the same degree of care to protect the other party's Confidential Information as it uses to protect its own

confidential information of like nature, but in no circumstances less than all reasonable care.

3.6 No disclosure: Neither party will disclose the other party's Confidential Information to any person or entity other than its officers, employees and subcontractors who need access to such Confidential Information in order to perform their obligations under this Agreement and who are bound by confidentiality terms no less restrictive than those set out in this Agreement. The foregoing obligations are not limited by time and shall survive termination for so long as the relevant information is not publicly known.

3.7 Exceptions to Confidentiality. The restrictions set out in clauses 3.4 to 3.6 will not apply to any information that the Receiving Party can demonstrate:

3.7.1 was known to it prior to its disclosure by the Disclosing Party;

3.7.2 is or becomes publicly known through no wrongful act of the Receiving Party;

3.7.3 has been rightfully received from a third party authorised to make such disclosure without restriction;

3.7.4 is independently developed or acquired by the Receiving Party; or

3.7.5 has been approved for release in writing by the Disclosing Party.

Confidential Information may, without breach of this clause, be disclosed pursuant to a court order or as otherwise required by law, provided that the Receiving Party provides prompt advance notice thereof, to the extent reasonably practicable, to enable the Disclosing Party to seek injunctive relief or otherwise prevent such disclosure.

3.8 Injunctive Relief. The parties agree that in addition to any other remedies available at law or pursuant to this Agreement, the Disclosing Party will be entitled to seek injunctive relief for any threatened or actual disclosure of Confidential Information by the Receiving Party in breach of this Agreement.

4. SUPPORT & CHANGE

4.1 Support Services: Supplier will provide support services for the Hosted Software as set out in the Service Definition Document. Access to Hosted Software support is limited to supported versions of the Hosted Software. The Supplier does not provide support to those versions of Hosted Software which it may categorise from time to time as unsupported. It is the responsibility of the Customer to keep supported versions of the Hosted Software.

4.2 Improvements etc.: Supplier may from time to time update, improve, modify or add new functionality to Hosted Software during the Subscription Term as it considers (in its absolute discretion) necessary or desirable in order to maintain performance and/or resolve or mitigate any issues arising during the Subscription Term. The Customer accepts that such changes may be effected without notice to the Customer.

4.3 Adverse effects: If the Supplier anticipates that any update will materially adversely affect either the administrator's or any user's experience, the Supplier may provide the Customer with reasonable prior notice (normally being not less than 30 days) and may provide access to a test environment where Customer can observe such changes where applicable, provided however, that the Supplier may make a change with shorter or no notice if the change is required by law or to fix a security vulnerability.

4.4 Infrastructure changes: The Supplier may make changes or updates to the technology infrastructure used to host and support the Hosted Software (such as compute infrastructure, storage technology, security, technical configurations, hosting facilities or hosting service provider) during the Subscription Term, including to reflect changes in technology, industry practices, patterns of system use or because it determines for commercial reasons to change its supplier(s). Such changes or updates may be made without notice to Customer.

4.5 Old/former instances of the software: Nothing in this Agreement shall require the Supplier to maintain or provide support in respect of any instance other than the current generally available version of the Hosted Software unless explicitly set out in the applicable Service Definition Document. The Supplier may upgrade any non-compliant instance or suspend the service provided to Customer until Customer has completed

any actions required to move to the supported version without rebate or credit for any such period of suspension.

5. SERVICES & PROVISION OF HARDWARE

5.1 Any Services will be provided in accordance with these Terms and the applicable Contract Order Form.

5.2 If the Customer requires the provision and/or installation of Hardware, the parties shall provide details of the Hardware in the Contract Order Form and enter into a Sale of Hardware and Installation of Hardware Addendum which shall form part of and be subject to this Agreement.

6. SECURITY

6.1 **Access:** The Supplier shall not access Customer's user accounts, except:

6.1.1 in the course of data centre business operations, if required;

6.1.2 in the course of provision of support services in respect of Hosted Software or in the course of resolution of technical issues; or

6.1.3 at Customer's specific request as reasonably required in the provision and support of Hosted Software.

6.2 **Meta Data:** Customer acknowledges and accepts that the Supplier may collect, modify and analyse meta data and/or operations data which does not contain any personal data.

6.3 **Access to Reports etc.:** Customer may access reports, information, and other output through Hosted Software in a readable form (e.g. CSV, XML, JSON) until the end of the Subscription Term. Any specific reports or data requested by Customer during or at the end of the Subscription Term that is not available through Hosted Software or produced in customised formats will be charged based on the scope of the request. Such fees will be agreed in writing between Customer and the Supplier but will be based on the time and materials that the Supplier anticipates expending pursuant to such request.

6.4 **Restoration of Data.** The Supplier is not responsible for any unauthorised access to or alteration to the Customer's iteration of the Hosted Software, its configuration and any data residing on such software

unless such access or alteration is a direct result of the Supplier's negligence or intentional act or omission in which case the Supplier's only obligation and Customer's exclusive remedy is for the Supplier to use reasonable efforts to restore the relevant configuration and data from the most recent back-up.

6.5 Security. The Supplier will maintain and administer a security policy with physical and technical safeguards designed to protect the security, integrity and confidentiality of the Hosted Software.

6.6 Subcontractors: The Supplier may from time to time subcontract its obligations under this Agreement and will, upon request, provide details of its subcontractors (and the tasks undertaken by such subcontractors) to the Customer. The parties understand and agree that the Supplier remains liable for any breach of this Agreement caused by a subcontractor of the Supplier.

6.7 Security Breach: In the event that the Supplier has determined that a Security Breach will or is likely to cause harm to the Customer:

6.7.1 the Supplier will provide the Customer with notice of the Security Breach within five (5) Working Days of the Security Breach having occurred; and

6.7.2 after initial notification, the Supplier will keep the Customer updated as necessary and provide a reasonably detailed incident report which may include the steps taken by the Supplier to investigate the Security Breach and measures to be taken by the Customer to minimise potential damage.

The parties understand and agree that the Supplier may be prevented by law, regulation or its contracts with third parties from providing such notice(s) and/or updates within the above time frames or at all.

7. PROTECTION AND PROCESSING OF PERSONAL DATA

7.1 In this clause "controller", "data subject", "personal data", "personal data breach", "processing", "processor" and "supervisory authority" shall have the meaning given in the GDPR.

7.2 The Supplier may, in the course of providing services pursuant to this Agreement process personal data of members of the public who access

the Hosted Software in line with functionality described in the Service Definition Document.

7.3 With respect to the parties' rights and obligations under this agreement and without prejudice to the GDPR, the parties agree that the Customer is the controller and that the Supplier is the processor. Accordingly, the Supplier undertakes that prior to processing any personal data on behalf of the Customer it will have implemented appropriate technical and organisational measures in such a manner that the processing it carries out on behalf of the Customer will meet the requirements of the GDPR and will ensure the protection of the rights of the data subjects whose personal data is being processed.

7.4 The Supplier undertakes to the Customer that, to the extent it processes personal data referred to in clause 7.1, it will:

- (a) process the personal data only on documented instructions from the Customer including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by applicable law to which the Supplier is subject; in such a case, the Supplier shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The Supplier shall inform the Customer if, in its opinion, an instruction infringes the GDPR or other provisions of applicable law;
- (b) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) take all measures required pursuant to Article 32 of the GDPR (Security of processing). The Supplier shall be entitled to recover its costs, calculated using its day rates from time to time in respect of compliance with this subclause;
- (d) not appoint or engage another processor ("sub-processor") without the prior written consent of the Customer and where consent is given it will ensure that it has a written contract with the sub-processor that imposes on the sub processor in a legally binding manner the obligations set out in this clause that apply to the Supplier;

- (e) taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR (Rights of the data subject). The Supplier shall be entitled to recover its costs, calculated using its day rates from time to time in respect of compliance with this sub-clause;
- (f) assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to the Supplier. The Supplier shall be entitled to recover its costs, calculated using its day rates from time to time in respect of compliance with this sub-clause;
- (g) at the choice of the Customer, delete or return all the personal data to the controller after the end of the provision of services relating to processing, and delete existing copies unless applicable law requires storage of the personal data;
- (h) make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR (Processor) and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer. The Supplier shall be entitled to recover its costs, calculated using its day rates from time to time in respect of compliance with this sub-clause;
- (i) maintain a record of its processing activities on behalf of the Customer in accordance with Article 30 of the GDPR (Records of processing activities);
- (j) co-operate on request with any relevant supervisory authority in the performance of its tasks. The Supplier shall be entitled to recover its costs, calculated using its day rates from time to time in respect of compliance with this sub-clause; and
- (k) comply with its other obligations under the GDPR including without limitation in relation to the notification of personal data breaches to the Customer.

7.5 Indemnity: The Customer must fully and effectively indemnify the Supplier in respect of any claim brought by any third party to the effect that the processing by the Supplier of personal data on behalf of (or at the direction of) the Customer is in breach of applicable law.

8. CUSTOMER RESPONSIBILITIES

8.1 Duties: In order to access and use the Hosted Software, the Customer is required to and undertakes that it shall:

8.1.1 maintain minimum requirements (such as operating system versions) that can be found in the Service Definition Document and as may be updated from time to time;

8.1.2 ensure Authorised Users' compliance with this Agreement;

8.1.3 ensure the security of all passwords relating to its user accounts and ensure that all passwords are regularly refreshed (being at least every three months) in accordance with good practice;

8.1.4 promptly cancel all access rights in respect of any Authorised User who leaves the employment or service of the Customer;

8.1.5 in respect of provision of any Services or Hardware pursuant to an Addendum, comply with any obligations or responsibilities set out in that Addendum or the Contract Order Form; and

8.1.6 be responsible for all activities relating to the administration and use of the Hosted Software, including ensuring the accuracy, legality, rights of use, and quality of the data stored or transmitted when accessing or using the Hosted Software.

If Customer discovers any unauthorised use or access of the Hosted Software, the Customer must promptly notify the Supplier in writing.

8.2 No liability for 3rd party links: Customer agrees that the Supplier shall have no responsibility nor any liability with respect to any third party links included in the Hosted Software, Documentation, Service Documentation or any Deliverable, or for any act or omission of any such third party provider accessed through a link.

9. TERM & TERMINATION

9.1 **Term.** These Terms shall apply to each Contract Order Form. Each Subscription Term will commence on the date stated in the Contract Order Form and will expire on the date indicated in the Contract Order Form.

9.2 **Termination for Cause.** Either party may terminate this Agreement:

9.2.1 for material breach by the other party, provided that in each instance: (i) the non-breaching party notifies the breaching party in writing of such breach within fifteen (15) days of its occurrence; and (ii) the breach is not remedied within thirty (30) days of receipt of such notice; or

9.2.2 upon an Insolvency Event affecting the other Party (if termination is permitted by law).

9.3 **Effect of Termination.** The termination of Hosted Software, Hardware or Services under one Contract Order Form shall not impact the validity of other Contract Order Forms. If this Agreement is terminated by the Supplier in accordance with the clause 9.2, the due dates of all invoices to be issued will be accelerated so that such invoices become due and payable on the effective date of termination. All rights granted under this Agreement will immediately terminate and each party will return or destroy all Confidential Information of the other party in its possession.

9.4 Customer acknowledges that the hosted software may contain features which automatically restrict, terminate or limit access to the hosted software (and associated data) on expiry of the subscription term. The customer must not seek to circumvent in any way any such features and acknowledges that it is its responsibility to keep track of the expiry date of the subscription term. The supplier disclaims any liability for loss or damage arising as a result of the customer's failure to observe this clause.

9.5 **Surviving Provisions.** The following clauses will survive and remain in effect after termination of this Agreement: 1.3, 2.5, 3, 4.2, 6.3, 6.4, 7.5, 9, 11, 12 together with any other clauses or Schedules that are necessary to fulfil the intent of the parties.

10. WARRANTIES

10.1 **Reciprocal warranties:** Each party warrants and undertakes that:

10.1.1 it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and to grant the rights and licences referred to in this Agreement and that this Agreement is executed by its duly authorised representative and represents a binding commitment on it; and

10.1.2 without affecting its other obligations under this Agreement, it shall comply with all applicable laws in the performance of its obligations under this Agreement.

10.2 Supplier warranties: The Supplier warrants that:

10.2.1 Hosted Software (as updated or varied from time to time) will materially conform to the Service Definition Document (as updated or varied from time to time) for ninety (90) days following execution of the relevant Contract Order Form;

10.2.2 any Deliverable will conform to the Services Documentation for a period of thirty (30) days from the date of delivery; and

10.2.3 both the Hosted Software and Services will be provided with reasonable skill and care.

10.3 Supplier's options: If it is established that the Supplier has breached the above warranty, the Supplier may, in its absolute discretion and sole option:

10.3.1 use reasonable efforts to correct the defect;

10.3.2 replace the Hosted Software with Hosted Software that materially conforms to the Service Definition Document; and/or

10.3.3 in the event the Supplier cannot, after reasonable attempts to do so, achieve the remedies in 10.3.1 or 10.3.2, where the breach relates to Hosted Software, the Supplier may terminate the subscription to the Hosted Software and provide a refund of pre-paid, unused fees calculated against the remainder of the Subscription Term as of the effective date of such termination, or where the breach relates to Services, the Customer will return the Deliverables and the Supplier shall refund the fees paid for the Deliverable.

10.4 Customer responsibilities: Customer must report the alleged breach of warranty together with reasonable details of the breach in writing within thirty (30) days of its occurrence to benefit from this

warranty and the remedies stated herein. The above remedies are the Supplier's sole obligation and Customer's sole and exclusive remedy for breach of the above warranty.

10.5 IP warranty: The Supplier warrants that the Hosted Software shall not infringe the Intellectual Property Rights of any third party. In the unlikely event that access or use of any part of the Hosted Software is enjoined or subject to a third party claim, the Supplier reserves the right, in its absolute discretion, to:

10.5.1 adapt or replace all or part of the Hosted Software so that it is non-infringing;

10.5.2 procure a right to continued use of the relevant software or alternative software, broadly in accordance with the terms of this Agreement; and/or

10.5.3 terminate this Agreement on thirty (30) days' notice and refund any unused prepaid fees in respect of the Hosted Software.

The Supplier shall have no liability pursuant to this clause to the extent that alleged infringement is a result of the use of the Hosted Software in combination with any third party product not supplied by the Supplier or to the extent that the alleged infringement is a result of any unlicensed use by the Customer or any change or adaption made by or on behalf of the Customer.

10.6 Limitations: The Supplier does not warrant that the Hosted Software, the Documentation or any Deliverable will meet the Customer's requirements (even if the same have been made known to the Supplier). Any warranties in respect of Hardware are exclusively set out in the relevant Addendum.

11. LIMITATION OF LIABILITY

11.1 No limitation: Nothing in this Agreement excludes the liability of either party :

11.1.1 for death or personal injury caused by either party's negligence; or

11.1.2 for fraud or fraudulent misrepresentation.

11.2 Excluded Losses: Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

11.2.1 loss of profits; or

11.2.2 loss of business or opportunity; or

11.2.3 depletion of goodwill or similar losses; or

11.2.4 loss of anticipated savings; or

11.2.5 loss of goods; or

11.2.6 loss of use; or

11.2.7 loss or corruption of data or information; or

11.2.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

11.3 Liability Cap: Except for Customer's liability pursuant to clauses 1.7 and 7.5 and subject to clause 11.2, 11.4, 11.5 and 11.6, each party's total liability to the other pursuant to this Agreement for damages, losses, or liability (whether arising in contract, tort (including negligence), breach of statutory duty, in equity or any other cause whatsoever) shall, in each Contract Year, be limited to the greater of:

11.3.1 110% of the fees paid and payable for Hosted Software and Services provided to Customer during the preceding Contract Year. The above limitations will not limit Customer's obligation to pay in any way; or

11.3.2 £10,000.

11.4 Property Cap: Each party's liability for damage to tangible personal or real property due to the negligence of that party shall be limited in aggregate to £500,000.

11.5 No Warranty: Supplier does not warrant that operation of the hosted software will be uninterrupted or error free. Save as set out in this agreement in all other respects, the hosted software and any services are provided "as is" without any warranty, condition, undertaking or representation of any kind (whether statutory or implied by common law including by course of dealings).

11.6 **Complex Software:** customer acknowledges that complex software is never wholly free from defects, errors, and/or bugs; subject to the other provisions of this agreement, the supplier gives no warranty or representation that the hosted software will be wholly free from defects, errors and/or bugs.

11.7 **Risk Allocation:** The Customer acknowledges and agrees that the allocation of risk contained in this clause and in each Addendum is reflected in the fees and is also a recognition of the fact that, inter alia, the Hosted Software, Hardware, Deliverables and the Services provided pursuant to this Agreement cannot be tested in every possible combination and it is not within the Supplier's control how and for what purpose the Hosted Software, Hardware, Documentation, support services and Services are used by any Customer.

12. DISPUTE RESOLUTION

12.1 **Escalation:** In the event of any dispute or claim arising out of or in relation to this Agreement, the parties shall, acting reasonably, attempt to resolve any such dispute or claim promptly through escalation to nominated senior individuals within each party.

12.2 **Mediation:** If the parties are unable to resolve the dispute in accordance with clause 12.2.1 the parties may agree to refer the dispute to mediation pursuant to this clause

12.2.1, which shall take place with the assistance of a mediator (**Mediator**):

- (a) The Mediator shall either be agreed on by the parties or, in the absence of agreement, appointed by the Centre for Dispute Resolution (**CEDR**).
- (b) Either party may initiate a mediation by serving on the other party a notice to mediate (**Notice to Mediate**):
 - (i) referring expressly to this clause;
 - (ii) identifying the issue(s) in the dispute and providing sufficient information to enable the other party to appreciate the nature of the dispute;
 - (iii) requiring the other party to agree in the appointment of a Mediator; and

- (iv) nominating at least one and not more than three persons as a possible Mediator.
- (c) Mediation shall be facilitative and shall be conducted using a sole mediator in or substantially in accordance with an agreement to be entered into between the parties and the Mediator in the form of the Model Mediation Agreement of the CEDR, incorporating CEDR's Model Mediation Procedure current at the time of issue of the Notice to Mediate, (**Model Agreement**). To the extent that the terms of this clause conflict with the Model Agreement, the terms of this clause shall prevail.
- (d) Unless agreed otherwise by the parties, in any mediation each party shall bear its own costs and the charges and expenses of CEDR and the Mediator shall be borne equally by the parties.

12.4 Reservation of rights: Notwithstanding the option for the parties to mediate, either party may refer the matter to the Courts of England and Wales at any time and nothing shall prevent a party from commencing court proceedings relating to any dispute, including if either party requires either an order (whether interim or final) restraining the other party from doing any act or compelling the other party to do any act.

13. GENERAL PROVISIONS

13.1 Notices: All notices under this Agreement must be addressed to the named individuals set out in the Contract Order Form using one of the methods of delivery set out below.

MANNER OF DELIVERY	DEEMED TIME OF SERVICE	PROOF OF SERVICE
EMAIL	9 am on the first Working Day after sending	Dispatched as a pdf attachment to an email to the correct email address without any error message.
PERSONAL DELIVERY	On delivery, provided delivery is between 9am and 5 pm on a Working Day. Otherwise, delivery	Properly addressed and delivered as evidenced by signature of a delivery receipt.

	will occur at 9am on the next Working Day.	
PREPAID, ROYAL MAIL SIGNED FOR 1ST CLASS OR OTHER PREPAID, NEXT WORKING DAY SERVICE PROVIDING PROOF OF DELIVERY.	At the time recorded by the delivery service provided that delivery is between 9am and 5pm on a Working Day. Otherwise, delivery will occur at 9am on the same day (if delivery is before 9am) or on the next Working Day (if delivery is after 5pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

13.2 Independent Contractors: The relationship between the Supplier and the Customer is that of independent contractors.

13.3 Assignment. If the Supplier sells or otherwise transfers its rights to its business or sells or transfers substantially all of its assets and provided the transferee agrees to perform the obligations of the Supplier under this Agreement, then the Supplier may assign its rights and obligations under this Agreement to the same transferee upon written notice to the Customer and the Customer undertakes to enter into any documentation reasonably required to give effect to this clause. Except as permitted in this clause, neither Party may assign this Agreement without prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any attempt to transfer or assign in breach of this clause shall be ineffective. This Agreement shall be binding on the Parties hereto and their respective successors and assigns.

13.4 Miscellaneous. The clause headings used in this Agreement shall not affect the interpretation of any provision of this Agreement. This Master Subscription Agreement and any Contract Order Form as applicable may be signed in any number of counterparts and each part shall be considered part of the whole and valid, legally binding document.

13.5 Breach of law: If any provision of this Agreement is held to be contrary to law, then the parties shall not be bound by such provision but

the remaining provisions of this Agreement will remain in full force and effect.

13.6 Waiver: No delay or omission by either party to exercise any right available to it under this Agreement will be construed as a waiver of such right. All waivers must be in writing and signed by the party waiving its rights.

13.7 Third Party Software: Any third party software contained in the Hosted Software shall be subject to the terms, conditions and notices governing its use that are found in the Hosted Software and/or presented to, and accepted by, the Customer during the loading or initiation of the Hosted Software or otherwise provided or available to the Customer.

13.8 Entire Agreement: This Agreement constitutes the entire agreement between the Supplier and Customer with respect to the subject matter hereof. This Agreement supersedes all prior discussions, negotiations, agreements, and undertakings between the parties with respect to such subject matter and the parties confirm that there are no other assurances, agreements or undertakings upon which they have relied.

13.9 Modifications: No modification of this Agreement nor of any Contract Order Form will be effective unless set out in writing and signed by an authorised representative of each party.

13.10 Customer Terms: No term or condition contained in any of Customer's purchase order or similar document will apply unless agreed upon in an express written amendment to this Agreement, even if the Supplier has accepted the order set out in such purchase order, and all such terms or conditions are expressly rejected by the Supplier.

13.11 Conflict: In the event of a conflict between these Terms, an Addendum, the Service Definition Document and the Contract Order Form, the order of precedence from highest to lowest shall be: (i) Contract Order Form, (ii) Service Definition Document, (iii) these Terms and each Addendum.

13.12 Force Majeure: Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance

continues for three or more months, the party not affected may terminate this Agreement by giving thirty (30) days' written notice to the affected party. This clause shall not apply in respect of any payment obligation of the Customer to the Supplier.

13.13 Third Party Rights: nothing in this Agreement shall confer on any third party a right to enforce any part of this Agreement, whether pursuant to the Contracts (Rights of Third Parties) Act or otherwise.

13.14 FOIA: the Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations and shall assist and cooperate with the Customer (at Customer's expense) to enable the Customer to comply with these Information disclosure requirements. The Customer may disclose such information as it considers appropriate, but shall use all reasonable endeavours to meaningfully consult with the Supplier regarding disclosure of information relating to the Supplier and shall not (unless it is compelled by applicable law to do so) disclose details of its pricing, customers, and/or business strategy.

13.15 Definitions: The defined terms set out in Schedule 1 shall apply in this Agreement.

13.16 Governing Law & Jurisdiction. The validity, construction and interpretation of this Agreement will be governed by the laws of England and Wales. The parties agree to the exclusive jurisdiction of the English and Welsh Courts for any action arising hereunder.

Customer Signature

.....

Name :.....

Title :.....

Date :.....

Supplier Signature

.....

Name :.....

Title :.....

Date :.....

SCHEDULE 1

DEFINITIONS

In this Agreement, the following terms will have the meanings set out below unless the context requires otherwise.

Addendum: means additional terms and conditions forming part of this Agreement which apply to provision of certain services.

Affiliate: means in respect of either party, a company which is a Subsidiary of that party or which is a Holding Company of that party, or a Subsidiary of such Holding Company, in each case for the time being.

Agreement: means collectively, the Terms, the Schedules, any Addendum and each Contract Order Form (and any document incorporated into any of the foregoing by reference).

Authorised Use Limitation: means the limitation on usage of Hosted Software whether by number of users, number of downloads or other metric (if any) specified in the Contract Order Form and/or Service Definition Document.

Authorised Users: means Customer, its employees and independent contractors and/or its Affiliates (and their employees and independent contractors) that access and use Hosted Software provided that they agree to be bound by terms and conditions no less restrictive than those contained in this Agreement and solely to the extent that they are acting on behalf of Customer or its Affiliates.

Service Levels or SLA(s): means the levels of service to be targeted by the Supplier in respect of the Hosted Software as specified in the Service Definition Document.

Contract Order Form: means the document which sets out the detail of the Hosted Software and/or Services to be made available or provided pursuant to this Agreement. A template Contract Order Form is set out in Schedule 2.

Customer Affiliate: means an Affiliate of the Customer named in the Contract Order Form.

Confidential Information: means any and all information disclosed by either party or an Affiliate (the “**Disclosing Party**”) to the other or its Affiliate (the “**Receiving Party**”), which is marked “confidential” or which should reasonably be understood by the Receiving Party to be confidential, including, by way of example only, this Agreement, pricing and Hosted Software and its Documentation.

Deliverables: means all documentation and results of Services provided to the Customer pursuant to a Contract Order Form.

Documentation: means any written guidance relating to the use of the Hosted Software made available by the Supplier from time to time.

Evaluation Purposes: has the meaning set out in clause 1.2.

Force Majeure Event: has the meaning set out in clause 1.4.

GDPR: means the General Data Protection Regulation (Regulation (EU) 2016/679) as implemented in the United Kingdom.

Hardware: has the meaning set out in a Sale of Hardware and Installation of Hardware Addendum.

Holding Company: shall have the meaning given in section 1159 Companies Act 2006 and shall include parent and subsidiary undertakings as defined in section 1162 Companies Act 2006

Hosted Software: means the online service comprising GeoWorks Asset Pro and/or any other products within the GeoWorks product set, as detailed in the

Contract Order Form, and made available to Authorised Users via the internet, including all updates, new versions and modifications of the same.

Service Definition Document: means the operating parameters, description and availability standards for the Hosted Software as set out in the attached Service Definition Document (G Cloud 15).

Insolvency Event: means:

- (a) any moratorium, arrangement or composition with its creditors (including any voluntary arrangement as contemplated in the Council Regulation (EC) No 1346 / 2000 on insolvency proceedings) being obtained or entered into by or in relation to a party or any steps being taken to obtain or enter the same or any proceedings being commenced in relation to a party under any law, regulation or procedure relating to the reconstruction or adjustment of debts or a party commencing negotiations with one (1) or more of its creditors with a view to the general readjustment or rescheduling of all or part of its debts;
- (b) a petition being presented at court (and not being discharged within twenty (20) days), or a resolution being passed or an order being made for the winding-up, bankruptcy or dissolution of a party;
- (c) a receiver, manager, sequestrator, administrative receiver, or other similar officer, or other encumbrancer taking possession of or being appointed over, or any distress, execution, attachment or other process being levied or enforced (and not being discharged within five (5) days) upon, against or in respect of the whole or any material part of the assets, rights or revenues of a party;
- (d) a party ceases or threatens to cease to carry on the whole or a substantial part of its business or if a party is dissolved;
- (e) a petition or other form of application is presented or made at court for the making of an administration order or the appointment of an administrator of a party or an administrator of a party is appointed or notice of intention to appoint such an administrator is given or filed at court;

- (f) a party is subject to any winding up (whether provisional or final), judicial management, dissolution or business rescue arrangements (or in respect of all of the foregoing any analogues arrangements under any law to which a party is subject) or a party stops or suspends payments of its debts or is (or is deemed to be) unable to or has no real prospect of being able to or admits inability to pay its debts as they fall due or fails to satisfy any judgment debt in whole or in part within fourteen (14) days;
- (g) if a party shall suffer any event analogous to the events set out in clauses 0 to (f) in any jurisdiction;

Intellectual Property Rights: means trademarks, rights in designs (whether any of the foregoing are registered or not), patents, rights in goodwill, moral rights, copyright, database right and any other intellectual or industrial property rights.

Scheduled Downtime: means planned downtime of Hosted Software availability for events including, but not limited to, upgrades and updates to the Hosted Software and data centre infrastructure where Supplier provides notice to Customer, at least 72 hours in advance.

Security Breach: means access to the Customer's iteration of the Hosted Software by an unauthorised person or entity.

Services: means the professional services provided by Supplier or its designated subcontractors to the Customer as set out in the relevant Contract Order Form.

Services Documentation: means the documentation provided to the Customer pursuant to the provision of Services, which may include without limitation, documentation describing the project specifications, design, configuration, architecture and testing procedures, or installation and user guides, as applicable.

Subscription Term: means the duration identified in a Contract Order Form during which the Hosted Software will be made available and any subsequent renewals.

Subsidiary: shall have the meaning given in section 1159 Companies Act 2006 and include parent and subsidiary undertakings as defined in section 1162 Companies Act 2006.

Terms: means the terms of this Master Subscription Agreement.

Working Day: means a day other than a Saturday, Sunday or bank holiday in England and Wales on which banks are open in the City of London.

SCHEDULE 2

TEMPLATE CONTRACT ORDER FORM

This Contract Order Form is made pursuant to the Master Subscription Agreement entered into between **GEOSPHERE ENTERPRISE SOFTWARE LIMITED** incorporated and registered in England and Wales with company number 04599049 whose registered office is at 25 Cecil Pashley Way, Shoreham-by-Sea, West Sussex, BN43 5FF and [].

All terms used in the Master Subscription Agreement shall have the same meaning when used herein and this Contract Order Form is subject to the terms of the Master Subscription Agreement.

This Contract Order Form is entered into on:	[insert date]
Is access being provided for Evaluation Purposes?	Yes/No
The following Affiliates of the Customer may use the Hosted Software:	[insert names of Affiliates]
The Hosted Software to be provided by the Supplier shall comprise:	The software referred to in the Service Definition Document.
The Subscription Term for the Hosted Software is set out below: Date when the Subscription Term shall commence: [insert date] Date when the Subscription Term shall expire: [insert date] Upon expiry, this Contract Order Form shall continue in force for further periods of one (1) year unless and until terminated by three (3) months' notice in writing served on the [insert name of Supplier]. []	

The Supplier shall provide the following Services	[insert description of services including timescales. Cross refer to more detailed document if appropriate].
The Supplier shall provide the following Hardware in accordance with a Sale of Hardware and Installation of Hardware Addendum.	[insert list of Hardware if applicable]
Fees: 1. Installation Fee of £ [] per [] payable in [arrears/advance]. 2. Monthly licence fee of £[] payable in advance on []	
4 Charges in respect of Services Save where a specific fee has been agreed for Services, any ad hoc Services will be charged in accordance with the Company's day rates in force from time to time. The current day rates are set out below: [£ insert day rates] 5. Charges in respect of Hardware [insert prices in respect of Hardware – needs to link with Hardware list.]	
Authorised User Limitations	[Are there any user limitations e.g. no. of concurrent users or number of downloads over a period?]

Named contact on behalf of Supplier [insert name] [insert email address and telephone no.]	Named contact on behalf of Customer [insert name] [insert email address and telephone no.]
---	---

Customer Signature

.....

Name:

Title:

Date:

Supplier Signature

.....

Name:

Title:

Date: