

1 DEFINITIONS

- 1.1 In this Agreement the following words shall have the following meanings:
- a) "Licence": the licence granted in Clause 2 of this Agreement by the Authority to the Licensee to use the Software;
 - b) "Licensee": an organisation, company, public body or individual to whom a non-exclusive licence to use the Software is given;
 - c) "Software": machine executable TEMPPro Software (version 7.2 or later) excluding source code;
 - d) "Authority": The Secretary of State for Transport or his elected representative;
 - e) "Contractor": a contractor appointed to carry out maintenance of the Software on behalf of the Authority.
 - f) "Written": communication by letter (sent by mail or courier) or email. Written excludes communication by telephone, text message, or face-to-face meeting unless the content of the conversation is recorded by mail or email and agreed by both sides.
 - g) "Dedicated website": the website from which new versions of the software can be downloaded along with user manuals and latest news.

2 GRANT

- 2.1 The Authority as the owner of the Intellectual Property Rights (IPR) in the Software hereby grants to the Licensee, subject to the conditions elsewhere in this contract (including Clause 8 and 13):
- a) The full and non-exclusive right and licence to use the Software with no time limit, subject to conditions 4.1 and 4.3 below.
- 2.2 Earlier versions of the software may be covered by a different licence agreement; any such agreement does not apply to this version of the software.

3 USE OF LICENSED SOFTWARE

- 3.1 The Licensee may install the Software onto the (hard) disks of a machine(s) or the file server of a multi-user or network system and the Licensee may make additional copies for back-up purposes. The Software, or any authorised copy may not be used, copied, modified or transferred, in whole or in part, except as expressly authorised by these Conditions.

4 INFORMATION AND ASSISTANCE

- 4.1 The Authority provides the Software "as is", and does not warrant that the use of the Software will meet the Licensee's data processing requirements or that the operation of the Software will be uninterrupted or error free, and unless stated otherwise, all conditions, warranties, terms and undertakings, express or implied (including but not limited to those of satisfactory quality and fitness for purpose), statutory or otherwise, in respect of the Software are, to the fullest extent possible at law, excluded.
- 4.2 The Authority or the Contractor may provide to the Licensee such assistance as may reasonably be requested by the Licensee to understand the mathematical specification of the software or the results obtained, on condition this can be covered within a certain time threshold (no more than 2 person-hours effort for each query raised).

- 4.3 The assistance as described in clause 4.2 may be provided at Authority's sole discretion. The Authority reserves the right to withdraw, suspend, delay or not provide user support as described in clause 4.2 at any time, without prior notification. The Authority accepts no liability for the disruption, loss or damage caused by such action.

5 ERRORS

- 5.1 The Licensee shall notify the Authority of any errors that are discovered in the Software.
- 5.2 The Authority is not obliged to fix any errors in the Software, and does not accept liability for the consequences of any errors in the Software.

6 UPDATES AND MODIFICATIONS TO SOFTWARE

- 6.1 The Authority may release new versions of the software from time to time. The Licensee shall be able to obtain new versions of the software that is officially released by the Authority (at the time of writing this agreement, the definition of "officially released" is "available on the Authority's website"), subject to accepting licence terms for the new versions.
- 6.2 The Licensee shall not modify, reverse engineer, decompile or disassemble the Software without the written permission of the Authority.

7 PAYMENT

- 7.1 The Authority waives any fee for the licence.

8 DURATION, TERMINATION AND AMENDMENT

- 8.1 This Agreement shall come into force on the date the Software is despatched by the Authority to the Licensee and unless terminated by the virtue of any other provision hereof shall remain in full force perpetually.
- 8.2 The Authority shall be entitled to propose an amendment to, or terminate, this Agreement and the Licence by giving to the Licensee not less than 3 months written notice to that effect. Should the Authority propose such an amendment, a Notice of Amendment will be given. Any such amendment would not be unreasonable, and the Licensee should not unreasonably withhold consent to such an amendment. Should the Licensee not accept the Authority's proposed amendment to this agreement, the Authority may terminate this agreement not less than 3 months after the amendment was originally proposed.
- 8.3 Save as expressly provided herein, no amendment or variation of this Agreement shall be effective unless made in writing and signed by a duly authorised representative of each of the parties hereto.
- 8.4 Termination of this Agreement shall not affect any right of action or remedy which may have accrued or may accrue to the parties.
- 8.5 On termination of the Agreement the Licensee shall (subject to Clause 8.6), within one month of the date of termination, return the Software in its possession and control, together with all supporting documentation, to the Authority, and shall certify in writing that all other documentation, records and information, in all forms which relate to the Software and which are in its possession or control, has been destroyed.
- 8.6 If, when this Agreement is terminated the Licensee has any undischarged contractual obligation pursuant to use of the Software the Licensee shall, notwithstanding clause

8.5, have the right to use the Software for the sole purpose of fulfilling such obligation and may retain such copies of the Software and supporting documentation as are necessary for that purpose.

9 INTELLECTUAL PROPERTY RIGHTS

The Authority warrants and undertakes to the Licensee that the Authority is the absolute and unencumbered owner of the copyright and other IPR in the Software that the Authority has the right to grant the rights and licence the same to the Licensee.

10 COPYRIGHT

10.1 All copyright, know-how and other property rights in the Software remain the property of the Authority. The Licensee shall ensure that wherever possible all computer media are marked accordingly.

11 INDEMNITY

11.1 The Licensee shall indemnify and save harmless the Authority or the Crown from and against any and all costs, claims, liabilities, damages, expenses, losses and demands (including, but not limited to legal expenses) of whatever kind, threatened or brought against or incurred by the Licensee or the Authority in respect of the exercise by the Licensee of the rights granted to it pursuant to this Agreement.

12 LIABILITY

12.1 The Authority accepts no liability for any error, failure or defect in the Software and will not be liable for any loss or damage, including loss of profits, revenues or data, whether caused by the Authority's negligence or otherwise, arising from the use thereof.

13 INFRINGEMENT

13.1 Each party shall promptly give notice in writing to the other in the event that it becomes aware of:-

- a) Any infringement or suspected infringement of any Intellectual Property Rights in or relating to the Software and
- b) Any claim that the Software or the use, licence or disposal thereof infringes the right of any third party.

13.2 In the case of any matter falling within Clause 13.1a above:

- a) The Authority may in its sole and absolute discretion determine what action (if any) shall be taken in respect of such matter and shall conduct any such action as it shall deem necessary;
- b) The Authority shall pay all costs in connection with such action and shall be entitled to all damages and other sums which may be paid or awarded as a result thereof; and
- c) In the event that the Authority fails to take any decision pursuant to Clause 13.2a above within a reasonable period after written notice from the Licensee requesting it to do so, the Licensee shall have the right and is hereby authorised by the Authority to take such steps at the Licensee's expense as may be deemed necessary or appropriate by the Licensee to eliminate or prevent such infringement and shall be

entitled and subject to all damages and other sums which may be recovered or awarded against it as a result thereof.

- 13.3 In the case of any matter falling within Clause 13.1b above:
- a) the Authority and the Licensee shall consult to decide what steps (if any) shall be taken either to contest any claim by a third party or to prevent or eliminate any claimed infringement and the proportions in which they shall share the cost of taking such steps and any damages and other sums which may be awarded in their favour or against them; and
 - b) failing agreement between the parties, either party shall be entitled to take such action as it shall consider necessary at its own expense to defend such claim and shall be entitled to or subject to all damages and other sums which may be recovered or awarded against it as a result thereof.
- 13.4 Each party shall provide all reasonable assistance to the other including but not limited to the use of its name in or being joined as a party to proceedings at the request and expense of the other and subject to being given such indemnity as it may reasonably require against any damage to its name in connection with any action to be taken by the other party pursuant to the foregoing provisions of this Clause.

14 ASSIGNMENT AND SUBLICENSING

- 14.1 Subject to the provisions of this Clause, the Licensee shall not assign, mortgage, or deal in any other manner with this Agreement or any part thereof without the prior express written consent of the Authority (which consent shall not be unreasonably withheld).
- 14.2 The Licensee shall not grant or purport to grant any Sub-Licence of its rights and/or obligations hereunder without the prior express written consent of the Authority.

15 SEVERABILITY

- 15.1 In the event that any part of this Agreement becomes invalid, illegal or unenforceable the parties shall negotiate in good faith and endeavour to agree such amendment or amendments as will as far as possible validly give effect to the intentions expressed herein.

16 ENTIRE AGREEMENT

- 16.1 This Agreement applies to the current version of the Software until further notice. Licensees may continue to hold a separate Agreement that applies to earlier versions of the Software; however, Licensees holding such licences are not entitled to use them to obtain advantages not provided for within this Agreement with respect to this version of the Software.
- 16.2 This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and, except as stated in Clause 16.1, supersedes all prior agreements, negotiations and discussions between the parties relating thereto.

17 ARBITRATION

- 17.1 All disputes, differences or questions between the parties to this Agreement with respect to any matter arising out of or relating to the Agreement other than any matter as to which the decision of the Authority is expressed by the Agreement to be final and conclusive may, after written notice by either party to the other, be referred to a single Arbitrator agreed by the parties for that purpose or in default of such

agreement to be appointed at the request of either party by the President of the British Computer Society. Such reference shall be deemed to be a submission to arbitration under the Arbitration Acts 1950 to 1979.

18 INSPECTION OF PREMISES

- 18.1 The Licensee shall permit reasonable access to any duly authorised representative of the Authority upon reasonable written notice to enter any of the Licensee's premises where the Software is used, for the purpose of ascertaining whether the Licensee is complying with the terms of this Agreement.

19 GOVERNING LAW

- 19.1 This Agreement shall be governed by and construed in accordance with the Laws of England.