

WITA v2 Licence Agreement

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 WITA Software (version 2.1 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, and provide user support for, 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;
 - h) “Legacy Software”: machine executable WITA Software (version 2.0 Beta) excluding source code.

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 2.1b) and 2.1c) and 4.2 below;
 - b) the right to request support as described in condition 4.1 from the Authority or the Contractor if the user requires this to operate the software, within twelve (12 months of the commencement of this Agreement);
 - c) the right to download new versions of the software from the dedicated website, within 12 months of the commencement of this Agreement;
 - d) the full and non-exclusive right and licence to use the Legacy Software until 30 November 2021.
- 2.2 Subject to Clauses 8 and 13, the Licensee may continue to use the software beyond 12 months from the date the licence is issued; however, the provision for Information and User Support (Clause 4) and access to new versions of the software (Clause 6) will not be available after this time.
- 2.3 The Licensee will be issued with a username or licence number that should be presented to the Authority or Contractor whenever they request information, user support or whenever they obtain updated versions of the software.
- 2.4 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 may only be used at one site or office for each licence held; organisations requiring copies of the software for more than one site or office will require one licence for each site.
- 3.2 Some organisations may have the facility to install the software on a computer on one site that can be accessed remotely by users from more than one site. Such organisations require one licence for each site from where a user is accessing the software, except where the user is accessing the software from the private home where they live and their official place of work has a site licence.
- 3.3 The Software may not be transferred via any media other than those on which it is supplied or on which its use is licensed. It may not therefore be transmitted over telecommunication lines.
- 3.4 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.
- 3.5 Licensees with an Educational Licence must only be used for teaching and training purposes within a recognised academic institution. Licensees with an Educational licence may carry out personal research as part of the process of obtaining a qualification only. For all other purposes, a standard Licence must be purchased. The eligibility for an Educational Licence is solely at the discretion of the Authority.

4 INFORMATION AND USER SUPPORT

- 4.1 Within the first 12 months of this agreement, the Authority or the Contractor shall, on presentation of a valid username or licence number and provided this can be done without the Authority or Contractor being required to travel to the Licensee's premises, provide to the Licensee such assistance as may reasonably be requested by the Licensee to:
 - a) enable the Licensee to obtain the Software and run the Software to completion without error messages;
 - b) understand the mathematical specification of the software or the results obtained, on condition this can be covered within a certain time threshold (currently 2 person-hours effort for each query raised).
- 4.2 After the first 12 months of this agreement has expired, the Licensee will only be permitted to obtain support as described in Clause 4.1 upon the purchase of a new licence under the conditions of any licence agreement issued by the Authority at that time, and conditional upon such a licence being available for purchase. Should the user not purchase a new licence, this Agreement will remain in force and the user can continue to use the software in accordance with Clause 2.1 above.
- 4.3 If a new licence is purchased in accordance with Clause 4.2 above, it shall have the effect of replacing this licence.

5 ERRORS

- 5.1 The Licensee shall notify the Authority of any errors that are discovered in the Software.

6 UPDATES AND MODIFICATIONS TO SOFTWARE

- 6.1 The Authority may release new versions of the software from time to time. Within the first 12 months of this agreement, the Licensee shall, subject to presentation of a valid username or licence number, 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”). After the first twelve months of this agreement has expired, the Licensee will only be permitted to access the dedicated website to download new versions of the Software upon the purchase of a new licence under the conditions of any licence agreement issued by the Authority at that time, and conditional upon such a licence being available for purchase.
- 6.2 The Licensee shall not modify, reverse engineer, decompile or disassemble the Software without the written permission of the Authority.
- 6.3 Should the Licensee identify additional functionality that they require from the software, they may submit a request to the Authority or the Contractor to modify the software for their use. The Authority, or the Contractor with the written permission of the Authority, may carry out such modifications on condition that:
- a) all such work, including the drafting of a functional specification and full cost estimate, is paid for by the Licensee;
 - b) all ownership and IPR remains with the Authority
 - c) any other conditions that the Authority may require are satisfied, which may include (but is not limited to) incorporating the improvement in the next official release of the software;
 - d) the Licensee is responsible for ensuring that the modification is carried out according to their requirements and shall indemnify the Authority as set out in Clause 11 of this Agreement should the modification fail to perform in accordance with the expectations of the Licensee.
- 6.4 The Licensee may also request the Authority that improvements carried out under Clause 6.3 above be made available in the next official release of the software should the Authority not require this under Clause 6.3c above; the Authority will not unreasonably decline any such request but will not be bound by this agreement to carry out the next official release within any given timescale, nor will the Authority accept any liability for any loss of profits or revenues as a result thereof.

7 PAYMENT

- 7.1 At the sole discretion of the Authority, the cost of a licence may be discounted (according to terms determined by sole discretion of the Authority) to Licensees who purchase more than one licence.
- 7.2 The Authority may, at its sole discretion, waive the licence fee if the Licensee can demonstrate a suitable business case for providing some other benefit to the Authority (including provision of Research results that would benefit the Authority).
- 7.3 Except for the exceptions listed in Clauses 7.1 and 7.2 above, the Licensee is required to pay the full cost of the licence as shown on the Authority’s website. The payment due under this Agreement shall be made within 30 days of receipt of the software or the commencement of the Agreement, whichever comes latest, and invoice paid in pounds sterling.
- 7.4 The Authority will not undertake to return the licence fee to the Licensee in full or part if this Agreement is terminated under Clause 8 below.

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

- 9.1 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.
- 18.2 The Authority undertakes to treat in confidence information obtained under Clause 2.1 or 4.1 above otherwise by virtue of this Agreement.

19 GOVERNING LAW

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

Dated: 29/07/21