



## IHS Software Terms And Conditions

Following are the IHS Software Terms and Conditions for licensing the Products and by accessing the Products Client accepts and agrees to be bound by these terms.

### 1. DEFINITIONS.

**1.1 "Affiliate"** means any legal entity which controls, is controlled by, or is under common control of either party (ownership of more than 50% of assets or stock with control over day-to-day operations).

**1.2 "Agreement"** means these Software Terms and Conditions, the incorporated Exhibit, and the applicable Order Forms.

**1.3 "Client Information"** means any confidential or proprietary information or data provided by Client to IHS to enable IHS to perform its obligations under the Agreement.

**1.4 "Confidential Information"** means: (a) IHS Property; (b) Client Information; (c) the terms of the Agreement; and (d) any information that by its nature, Recipient knows or should know is confidential or proprietary, including Discloser business or technical information.

**1.5 "Divisional Affiliate"** means any legal entity which is: (i) directly controlled by Client or Client's parent company (ownership of more than 50% of assets or stock with control over day-to-day operations), and (ii) together with Client operates a distinct and separate business division/unit within the Client enterprise.

**1.6 "Documentation"** means the material, user guides, and manuals provided by IHS to Client for use with a Product.

**1.7 "Exhibit"** means the Exhibit which contains the terms or conditions specific to the Products.

**1.8 "Expenses"** means the reasonable and documented expenses incurred by IHS to provide Products or to Client, including hotel, meal, and travel costs.

**1.9 "Fees"** means the money owed to IHS for Products or provided in the Order Form. Fees are exclusive of Expenses and Taxes, which will be charged separately to the Client.

**1.10 "IHS Property"** means: (a) the business process, management and analytics technologies of IHS, including without limitation; any algorithms, analyses, data, databases, Documentation, formats, forecasts, formulas, inventions, know-how, methodologies, processes, tools, trade secrets, and Products, and (b) any and all derivative works, enhancements, or other modifications to any of the above.

**1.11 "Order Form"** means the document executed by both Parties describing the Product(s) being licensed, the license term, Fees, Expenses, and any special terms or conditions.

**1.12 "Product(s)"** means all information or software provided by IHS and/or its third party providers to Client under an Order Form. IHS reserves the right to replace or make any change to the Product(s) by providing at least 45 days prior written notice to the Client.

**1.13 "Taxes"** means value-added, sales, use, import, or any taxes other than taxes assessed upon the income of IHS. Client must submit applicable documentation to receive tax exempt status.

### 2. FEES, PAYMENT, DELIVERY AND TAXES.

**2.1** IHS will invoice Client for all Fees and Expenses due under any Order Form for the Products and Maintenance. Client will pay IHS the Fees and Expenses in advance, within 30 days from date of invoice issued by IHS and in the currency specified in the Order Form. Fees for Products are nonrefundable. IHS may: (a) accrue interest at the lesser of 1% per month or the highest rate permitted in law, and/or (b) discontinue the provision of Products if payment is not received when due. Client has no right of set-off.

**2.2** Unless otherwise agreed in the Order Form, IHS reserves the right to modify the Fees after the initial 12 month subscription or Maintenance period by providing at least 45 days prior written notice to the Client; provided such change will occur no more than once in any 12 month period

**2.3** Delivery of Products is deemed to occur and risk of loss passes upon delivery or when IHS provides access codes to Client that allow Client to access or to take immediate possession of Product.

### 3. OWNERSHIP OF INTELLECTUAL PROPERTY.

**3.1** IHS or its third party providers owns all IHS Property, and Client owns all Client Information. Client may provide suggestions/feedback which IHS may use without any obligation to Client so long as such suggestions/feedback do not include Client Information.

**3.2** Neither Party will remove any copyright, trademark, or other proprietary notices of the other Party or any third party on any materials received from the other Party and each Party will reproduce all such notices on all copies of such materials.

### 4. CONFIDENTIAL INFORMATION.

Where either party ("Discloser") provides the other ("Recipient") with Confidential Information, it shall be held in strict confidence and shall not be disclosed or used for any purpose other than as specifically authorized/provided in the Agreement without the prior written consent of the other. Confidential Information shall not include information: (i) which is or becomes public knowledge other than by a breach of this clause, (ii) that is required to be disclosed by any applicable law or by any recognized stock exchange, (iii) that is obtained from a third party without breach of an obligation of confidentiality and (iv) which can be shown to have been independently developed by the parties by means other than through its access to the Confidential Information. Upon any expiration or termination of this Agreement or Order Form, Recipient promptly will return to Discloser or destroy all Discloser Confidential Information that it has in its possession or control related to the Agreement or Order Form as applicable.

### 5. INDEMNIFICATION.

#### 5.1 By IHS.

**5.1.1** Except as otherwise specifically set forth in an Order Form, IHS will indemnify, defend, and hold harmless Client for any damages (and related attorney's fees) awarded by a court in favor of any third party alleging that Products infringe or misappropriate any third party intellectual property rights, including any patent, copyright, trademark, or trade secret, in the country(s) of Client's locations as licensed under an Order Form ("Infringement Claim").

**5.1.2** IHS will have no liability under this Section 5.1 for any Infringement Claim arising from: (a) failure to use Products in accordance with the Agreement, (b) the modification of a Product not specifically authorized in writing by IHS; (c) the combination of a Product with any third party software, equipment, or information not specified in the Documentation; (d) the use of a version of a Product other than the then-current version, if the infringement would have been avoided by use of the then-current version; or (e) compliance with designs, plans, or specifications furnished by or on behalf of the Client.

**5.1.3** If Products are held or are believed by IHS to infringe, IHS may choose, at its sole expense, (a) to modify the Products so that they are non-infringing; (b) to replace the Products with non-infringing Products that are functionally equivalent; (c) to obtain a license for Client to continue to use the Products; or if none of (a), (b), or (c) is commercially reasonable, then (d) to terminate the Order Form for the infringing Products and refund Fees paid for such infringing Product(s); in case of provision of software Products, based upon a five year depreciation schedule. This Section 5.1.3 states the entire liability of IHS and Client's sole and exclusive remedy for any infringement of third party proprietary rights of any kind.

**5.2 By Client.** Client will indemnify, defend and hold harmless IHS for any damages (and related attorney's fees) awarded by a court in favor of any third party alleging that Client Information used by IHS in accordance with the terms and conditions of the Agreement infringes or misappropriates any third party intellectual property rights including any patent, copyright, trademark, or trade secret. If Client Information is held or is reasonably believed by IHS to infringe, IHS will cease using such Client Information and

will not be liable to Client for any breach or failure to perform under the Agreement for which the Client Information was provided.

**5.3 Mutual Indemnification:** Each Party will indemnify, defend, and hold the other Party harmless from any claim, demands, liabilities, suits, or expenses of any kind for personal injury or damage to tangible property to the extent arising from its negligence or willful misconduct on either party's premises.

**5.4 Indemnification Procedure.** The indemnification obligations of each Party under this Section 5, are contingent upon the indemnified Party providing to the indemnifying Party: (a) prompt written notice of the alleged claim; (b) sole control of the defense or settlement of the alleged claim; and (c) reasonable cooperation and assistance, at the indemnifying Party's expense. If the indemnified Party chooses to be represented by counsel, it will be at the indemnified Party's sole cost and expense.

## **6. LIMITATION OF LIABILITY.**

**6.1 NEITHER IHS, ITS THIRD PARTY PROVIDERS, NOR THE CLIENT WILL BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE, SPECIAL, OR OTHER INDIRECT DAMAGES SUFFERED BY THE OTHER PARTY, INCLUDING: (a) ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUE, SAVINGS, OR BUSINESS; (b) LOSS OF DATA OR INFORMATION; (c) LOSS OF GOOD WILL, REPUTATION, OR SIMILAR LOSSES; OR (d) BUSINESS INTERRUPTIONS ARISING OUT OF OR RELATED TO THE AGREEMENT OR ANY USE OF OR INABILITY TO USE PRODUCTS, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES.**

**6.2 Except for each party's indemnification obligations under Section(s) 5.1 or 5.2, the maximum liability of IHS, its third party providers, and/or the Client to the other Party for all claims under this Agreement, in warranty, contract, tort, or otherwise, will not exceed: in the case of Products, the Fees paid by Client in the prior 12 months for the defective Products that are the subject of the claim.**

**6.3 The limitations of liability in this Section 6. will not apply to the liability of a Party for: (a) damages related to death or personal injury arising out of the gross negligence or willful misconduct of the Party; (b) any damages or liability incurred as a result of fraud or fraudulent misrepresentation of the Party; or (c) to claims or loss(es) based upon breaches by the Party of its License/Authorized Use or the other Party's intellectual property rights.**

## **7. TERM AND TERMINATION.**

**7.1** The initial term of a Product license will be set forth in the applicable Order Form. Upon expiration of the initial term, the Order Form will automatically renew for additional one-year terms for Products or Maintenance licensed on a term basis unless terminated as provided in Section 7.2 of the Agreement. The term of this Agreement shall continue for the term of the Order Form.

**7.2** Either Party may terminate this Agreement, or licenses granted under an Order Form if: (a) the Party gives written notice to the other Party of its election to terminate at least 30 days before the end of the initial term or renewal term of the Order Form for Products or Maintenance licensed on a term basis; (b) the other Party commits a breach of any material term or condition of this Agreement and does not cure such breach within 30 days of written notice; or (b) the other Party's assets are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the other Party for relief under bankruptcy or similar laws and such proceeding is not dismissed within 60 days, or the other Party is adjudged bankrupt.

**7.3** Any termination does not relieve either Party of any liability incurred prior to such termination, or for Client's payment for unaffected Products. Upon the termination of this Agreement, or any Order Form; all Fees and Expenses owed by Client through the date of termination automatically and immediately become due and payable.

**7.4** Upon any expiration or other termination of an Order Form, all licenses granted under same immediately will terminate. All terms and conditions of the Agreement will continue to apply to any Order Forms that have not been so terminated.

**7.5 Effect of Term or Termination.** Unless otherwise provided in the Agreement, Client may not permanently retain Product, including: (a) in any file or on any hard drive, server or other form of memory; or (b) in any printed form. Except as otherwise specified on an Order Form, Client represents and warrants that - upon any expiration or termination of this Agreement or an Order Form, as applicable, - Client immediately will: (x) discontinue all

use of Product(s) associated with any expired or terminated Order Forms; (y) destroy any items relating to Products (including but not limited to data, software, and Documentation) and purge any Product data from all electronic media; and (z) upon request from IHS provide written certification to IHS that Client has complied with this paragraph.

## **8. ANTI-CORRUPTION AND EXPORT CONTROL.**

Both parties shall (i) comply with all applicable laws of the United States and other jurisdictions relating to anti-corruption and agree not to perform, offer, give and receive bribes or corrupt actions in relation to the procurement or performance of this Agreement and (ii) comply with all applicable export laws and regulations of the United States and other relevant local export laws as they apply to the Products provided by IHS under this Agreement. Failure to comply with all applicable anti-corruption or export laws will be deemed a material breach of the Agreement

## **9. U.S. GOVERNMENT USE.**

The following is a notice to Client as well as to any potential third party recipients of the Products: The Products provided hereunder: (a) were developed at private expense and are IHS proprietary information; (b) were not developed with government funds; (c) are an IHS trade secret for purposes of the Freedom of Information Act; and (d) are commercial items as defined in FAR 2.101. Any Products, used by, for, or on behalf of the U.S. Government are provided with LIMITED RIGHTS. Any software or tools embedded in Products used by or on behalf of the U.S. Government is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure of data or software by the U.S. Government is subject to restrictions as set forth in the Rights in Technical Data and Computer Software clause at FARS 12.211 and 12.212(a) and/or Commercial Computer Software at DFARS 227.7202-1(a) or subparagraphs (c) (1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is IHS.

## **10. MISCELLANEOUS.**

**10.1 General.** These terms and conditions together with the applicable Order Form sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements or communications, written or oral, of the parties with respect to the subject matter of the Agreement. Nothing contained in any Client-issued purchase order, purchase order acknowledgement, or purchase order terms and conditions (including any online terms as part of the required procurement process) will modify or add any additional terms or conditions to this Agreement. Such document(s) is for Client's administrative purposes only, and not binding on either party, even if acknowledged, executed, or processed on request of Client. If Client executes the applicable Order Form on behalf of itself and its Affiliate(s), then Client shall be responsible for ensuring compliance with this Agreement by itself, Client's Affiliate(s), its Authorized Users, and the Authorized Users of Client's Affiliates. Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations hereunder except for payment for any Fees if such delay or failure result from events, circumstances or causes beyond its reasonable control. Except for an assignment to an Affiliate, Client may not assign the rights and obligations under the Agreement to any third party (whether directly or indirectly, by operation of law or otherwise) without the prior written consent of IHS, which consent will not be unreasonably conditioned, withheld, or delayed. IHS may subcontract any or all of its obligations under this Agreement to subcontractors of its choosing. Client agrees that IHS affiliates are not deemed subcontractors for purposes of this section This Agreement is binding on the Parties, their successors, and assigns. The Agreement will be construed under the laws of the State of New York and each Party hereby submits to the exclusive jurisdiction of New York courts. The Parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. If any provision of the Agreement is found invalid or unenforceable, the remaining portions will remain in full force and effect. All notices required under the terms and conditions must be in writing and delivered by commercially established courier service, facsimile with written confirmation delivery; email with written confirmation of delivery, or via certified mail, return receipt requested, to the addresses specified in the Order Form. Any legal notices must also be copied to "Attention: IHS Legal Department, General Counsel." Any cause of action arising under this Agreement shall be asserted within two (2) years of the date upon which such cause of action accrued, or the date upon which the complaining party should have reasonably discovered the existence of such cause of action, whichever is later. No failure or delay by either Party to exercise any right they may have operates as a waiver of their rights at any future time. The Parties are independent contractors and nothing in this Agreement will be construed to create a partnership, joint venture or

employment relationship between the Parties. The terms and conditions of the Agreement (including Section(s) 4, 5, and 6) will survive the expiration or other termination to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate. If a Client requires training Services for Products licensed under this Agreement, then IHS will provide such Services subject to this Agreement. No term of the Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to the Agreement.

**10.2 Publicity.** IHS may use Client's name and logo in compiling a list of

IHS' Clients. Any additional publicity concerning a Party will require the other Party's prior written consent.

**10.3 Execution.** Each person executing the Order Form on behalf of any entity hereby represents and warrants that he or she is duly authorized and has full authority to execute and deliver the Order Form. Each Party consents to the other Party's use of electronic signatures on the Order Form. Neither party may object to the legal effect or enforceability, as a result of such electronic signature, which will be considered to be an original binding signature.

## EXHIBIT FOR SOFTWARE PRODUCTS

### 1. DEFINITIONS.

**1.1 "Error"** means a failure of the Product to operate or to function as set forth in the Documentation or in an Order Form.

**1.2 "Maintenance"** means the services described in Section 4, below.

**1.3 "Support Hours"** means the times listed in the Documentation, exclusive of weekends and IHS holidays.

**1.4 "Update"** means an error correction, patch, bug fix, minor modification, or new release of the Products that is generally made available to purchasers of Maintenance at no additional charge. Updates do not include any major modifications, options, or future products for which IHS, in its sole discretion, determines to license separately and charge a separate Fee.

### 2. LICENSE/AUTHORIZED USE.

#### 2.1 LICENSE TYPES AND DEFINITIONS

**2.1.1 "Authorized User(s)"** means employees of Client and/or Client's Affiliates or Divisional Affiliates, as applicable, who must access a Product solely to help Client use the Product for its licensed purpose. Client assumes full liability and responsibility for the acts and omissions of its Authorized Users and will take all reasonable steps to ensure that no unauthorized persons shall have access to the Product.

**2.1.2 "Client License"** means a type of license that allows the Authorized Users (number specified on the Order Form, if applicable) of Client (as of the effective date of the license) to access the Product. A Client License does not include the right to allow use by Authorized Users of Client's Affiliates.

**2.1.3 "Enterprise-Wide License"** means a type of license that allows the Authorized Users (number specified on the Order Form, if applicable) of Client and Client Affiliates (as of the effective date of the license) to access the Product.

**2.1.4 "Divisional License"** means a type of license that allows the Authorized Users (number specified on the Order Form, if applicable) of Client and Divisional Affiliates (as of the effective date of the license) to access the Product.

**2.1.5 "Site License"** means a type of license that only allows Client to access the Product from the locations listed in the Order Form. Proxy or community access from locations not listed in the Order Form is strictly prohibited. Site License may include Client Affiliates' locations as sites, if the Order Form specifically lists the Client Affiliates' locations.

**2.1.6 "Standalone License"** means a type of license that allows Client the right to download or access the Products on a single computer. Authorized Users shall only be authorized to access the Products on such computer.

**2.1.7 "User License"** means a type of license that allows the number of Authorized Users specified in the Order Form to access the Product through user name and passwords either: (i) on a concurrent basis (i.e. allowing up to the specified number of Authorized Users the rights to access the Products simultaneously) or (ii) on a generic/named user basis.

**2.1.8 "Internal Use"** means that Authorized Users may use the Product only for Client's internal business purposes. Except as otherwise specified on an Order Form, Products are not licensed for external use.

#### 2.2 Authorized Use

**2.2.1 License Grant.** Subject to the terms and conditions of the Agreement, IHS grants to Client, and Client hereby accepts, a license that is limited, nonexclusive, nontransferable, nonsublicensable, and

revocable. Client may use the Product in the specified media and accompanying Documentation (if any), for its Internal Use only. The Order Form will specify information relevant to the license being purchased, including: (a) the license type (e.g. Enterprise-Wide, Site, or User), (b) the license term (e.g. perpetual or term), and (c) the Product(s) being licensed.

**2.2.2 Product Restrictions.** Client must not reverse engineer, disassemble, decompile, create derivative works, or otherwise alter or modify Products provided hereunder. Client may not transfer, sublicense, relicense or commercially exploit Products; or use Products for third party transactions, commercial time-sharing, rental, or service bureau use; or publicly perform or publicly display Products; or otherwise reproduce, directly or indirectly, Products in whole or in part, or any related materials.

**2.2.3 Protection of IHS Intellectual Property.** Client must take all reasonable steps to ensure that no unauthorized persons have access to a Product and that all authorized persons having access to the Product will refrain from any disclosure, duplication or reproduction.

**2.2.4 De-Installation of Products.** Should Client replace any of its computers containing an installed Product, Client will remove the Product, along with any hardware or data furnished to Client by IHS in connection with the installation of the Product, from such computer, so that no subsequent user may possess or have access to the Product.

**2.2.5 Effect on Assignment or Change of Control.** Client acknowledges additional Fees may be payable upon grant of assignment for License(s) granted under an Order Form to this Exhibit upon: (a) an assignment of this Agreement and/or such License(s); or (b) a change of control, proposed merger, consolidation, combination, or reorganization involving Client or Client's licensed Affiliates.

### 3. WARRANTIES.

**3.1 IHS Software Products.** IHS warrants that any Products provided by IHS under this Exhibit will comply with all material specifications set forth in the Order Form or the Documentation accompanying the Product for a period of 90 days from date of delivery, if Client is to install, or 90 days from date of installation, if IHS is to install. IHS warrants that such Product does not contain known viruses, bugs, or lock-out capabilities, unless expressly set forth in the Order Form. Upon receiving specific written notice from Client of a warranty issue, IHS may ask Client to help reproduce operating conditions similar to those present when Client detected the warranty issue. Client's sole and exclusive remedy for any breach of this warranty is for IHS, in the following order of priority, to: (a) use commercially reasonable efforts to correct such failure within 30 days of receipt of written notice from Client; or (b) terminate the Order Form for the defective portion of the Product(s) and refund the Fees paid by Client for the defective portion.

**3.2 Disclaimer.** Other than the express warranties described in Section 4.1 of this Exhibit, IHS AND ITS THIRD PARTY PROVIDERS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, AND OTHER TERMS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. CLIENT ASSUMES ALL RISK IN USING THE RESULTS OF PRODUCT(S).

### 4. MAINTENANCE AND SUPPORT.

**4.1 Maintenance.** IHS will provide Client with Maintenance as described in this Section 4 for those Products that receive Maintenance services. Not all IHS Software Products receive Maintenance services. The Order Form will include any exceptions. Maintenance will be performed in a timely and professional manner by qualified maintenance technicians familiar with the Product and its operation.

**4.2 Help-Desk for Software Products under Maintenance.** IHS will provide reasonable quantities of telephone or on-line Maintenance during Support Hours and in accordance with Documentation in force from time to time.

**4.3 Error Reporting.**

**4.3.1 By Client.** If Client desires Maintenance, Client must contact IHS' help desk by phone or e-mail, the number or address specified in the Order Form or Documentation in force, as applicable.

**4.3.2 Error Reproduction.** After Client reports a suspected Error, IHS will consult with Client to determine the severity of the Error. IHS may ask Client to help reproduce operating conditions similar to those present when Client detected such Error. Assistance may include copies of input, output, and database dumps.

**4.4.** As part of Maintenance, IHS will provide additions, modifications, and/or corrections on a commercially reasonable basis or as mutually agreed.

**4.5 Updates.** IHS will provide Updates to Client as part of Maintenance when IHS makes such Updates generally available to its customers.

**4.6 Continuing Support.** IHS will provide Maintenance for the current version and one prior version of the Product only.

**4.7 Limitations of Support.** IHS will have no obligation to maintain: (a) a Product modified or damaged by a party other than IHS or any portion of a Product incorporated with or into other software; (b) problems caused by Client's negligence, abuse or misapplication, its use of the Product other than as specified in the Documentation, or other causes beyond the control of IHS; or (c) problems caused by hardware or software not supported by IHS. IHS will not be responsible for the cost of changes to Client's hardware or software that may be necessary to use the Product due to an Update or Error correction.

**4.8 Termination of Product Maintenance.** IHS will have the right to terminate the Maintenance portion of this Exhibit for a particular Product if IHS no longer generally provides maintenance support for such Product or no longer provides the specific services previously offered, by providing written notice to Client of such election at least 90 days before the Maintenance term's end.

**4.9 Maintenance Reinstatement.** Client may choose to not renew Maintenance. If, after any lapse, Client desires to resume Maintenance; then, after examination, IHS may choose to reinstate Maintenance under its then current terms, conditions and pricing, provided that Client pays the Fees for such reinstatement. Reinstatement Fees will be calculated for the entire period of lapse in Maintenance and Support based on the current pricing, plus a reactivation fee

**4.10 Client Responsibilities.**

**4.10.1** If Client discovers any suspected Error(s) in the Product; then, before calling the IHS help desk, Client must analyze the suspected Error(s) to determine if the Error is the result of Client's software, hardware, misuse, or misunderstanding of the Product.

**4.10.2** If the problem reported by Client is directly related to unauthorized alterations of the Product by Client, then IHS may charge for the professional service time expended by IHS, at IHS' then current time and material rates, in addition to reasonable out-of-pocket expenses; or at Client's option; IHS will be released from Maintenance obligations for the modified portion of the Product.

**5. AUDIT.**

Upon reasonable notice by IHS to Client, and not more than once annually (unless prior violations have been discovered), during the term of this Agreement and 1 year thereafter, IHS may audit relevant records at Client's location during normal business hours to enable IHS to ensure Client's compliance with this Exhibit.

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End of Agreement