

OSNI – End user licence agreement

1. DEFINITIONS

1.1 Unless the context otherwise requires, in these terms:

1.1.1 the masculine gender shall include the feminine and neuter and vice versa and the singular shall include the plural and vice versa;

1.1.2 the headings are inserted for convenience only and shall not affect the construction hereof;

1.1.3 any reference to persons shall include firms, companies and individuals;

1.1.4 references to any statute or statutory provision shall include a reference to any statute or statutory provision, which amends or replaces or has amended or replaced it and vice versa and the same shall apply to statutory instruments;

1.1.5 these terms shall be binding upon and shall inure for the benefit of the successors and assigns of OSNI® or the Department of Culture, Arts and Leisure, as the case may be.

2. OWNERSHIP

The Crown owns absolutely, as beneficial owner all rights in the OSNI Intellectual Property. All OSNI Intellectual Property licensed to the Licensee under these terms remains the property of the Crown who, through HMSO, has given delegated authority to the Chief Executive of OSNI.

3. GRANT OF LICENCE

3.1 In consideration of the Licensee paying the licence fee, and performing its obligations under these terms, the VAR grants the Licensee a non-exclusive, non-transferable licence for a period of twelve (12) months from the date (the “**Initial Period**”) to use the OSNI Intellectual Property in the European Union solely for the licensed use.

3.2 The licence shall be renewable on the anniversary of the date of this licence (the “**Renewal Date**”) by the licensee giving written notice to the VAR requesting a renewal of the licence.

3.3 The Licensee shall not permit any third party to use the OSNI Intellectual Property nor use the same on behalf of or for the benefit of any third party without the VAR’s prior written consent.

3.4 The Licensee has no right to use the Intellectual Property other than as expressly set out in these terms.

4. SUPPORT AND MAINTENANCE

OSNI will not be obliged to provide support and maintenance services. Any support and maintenance will be the responsibility of the VAR.

5. THE LICENSEE’S OBLIGATIONS

5.1 The Licensee will take all reasonable technological and security measures to ensure that all OSNI Intellectual Property and value added intellectual property which the Licensee holds or is responsible for is secure from unauthorised use or access.

5.2 The Licensee will notify OSNI as soon as it suspects any infringement or other breach by a third party of OSNI Intellectual Property rights, and will give OSNI all reasonable assistance (at OSNI’s reasonable cost) and comply with all reasonable instructions from OSNI in its pursuit of any infringement. The Licensee shall not be entitled to conduct any proceedings relating to the OSNI Intellectual Property, including any action in respect of any infringement or suspected infringement of the OSNI Intellectual Property except as stated above.

5.3 The Licensee will ensure that it complies with the licensed use.

5.4 The Licensee will not use the OSNI Intellectual Property, or allow it to be used by others, in any manner, which OSNI reasonably feels is inconsistent with the goodwill in its name.

5.5 Permission to publish must be applied for using OSNI form [Publishing 1](#).

6. SUB-LICENCES

The Licensee shall not be licensed under these terms to grant Sub-Licences without the VAR’s prior written agreement, such sub-licence to be in the form held by the VAR. The Licensee shall not make any amendments to the Sub-Licence without first obtaining the written approval of such variation from the VAR.

7. CONFIDENTIALITY

Unless required by law, the VAR and the Licensee agree not to disclose the fact or content of these terms to any third party, other than to OSNI or to make any public or press announcement regarding these terms or the transactions

consent of OSNI and the other party to both the disclosure and the content of the disclosure.

8. LICENCE FEES AND ROYALTIES

8.1 The licence fee shall be payable by the Licensee from the date of the commencement of this licence and on each subsequent Renewal Date.

8.2 When ordering digital data, the Licensee will provide the VAR with an estimate of the number of hard copies that will be made from the digital data requested, and the royalty fees payable for such copies are noted in section B on page 1 of this Agreement.

8.3 The VAR will invoice the Licensee for the Royalties due in accordance with this licence. In addition, the Licensee will pay VAT and any other taxes at the rate prevailing on the date of the invoice.

8.4 [The Licensee will pay all invoices within thirty (30) days of the date of the invoice. Interest will be payable at 2% above the base rate of the Ulster Bank Limited on any outstanding balances. Interest shall run from day to day from the due date and shall accrue before and after any judgement and shall be compounded monthly on the amount overdue until payment is made.]

9. AUDIT RIGHTS

9.1 Throughout the duration of this License the Licensee shall keep and maintain accurate complete and detailed records relating to all the transactions and uses contemplated by or arising out of these terms.

9.2 Upon giving reasonable written notice, OSNI and/or the VAR, their advisors or representatives shall have the right to inspect (and where necessary take copies of) the records referred to in Clause 9.1. If upon inspection it is determined that there is an underpayment of the amount properly payable to the VAR under these terms, the underpayment shall be paid to the VAR forthwith together with interest at the rate of two (2)% above the base rate of Ulster Bank Limited from the date payment was due until full payment whether before or after judgement. If there is an underpayment of five (5)% or more of the amount properly payable at any time to the VAR under these terms then the Licensee shall also be responsible for the reasonable auditing costs incurred by OSNI and/or the VAR (including the fees of any third party used for such purposes).

9.3 The Licensee shall give OSNI and/or the VAR and their advisors and representatives all reasonable access to its premises and use of all its facilities so as to enable OSNI and its advisors and representatives to fulfil their rights under Clause 9.2.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 The Licensee acknowledges the Crown's ownership and proprietary rights in the OSNI Intellectual Property and agrees and acknowledges that:

10.1.1 the Licensee will not obtain any rights in the OSNI Intellectual Property, except as expressly granted to it under these terms; and

10.1.2 the Licensee will not register or attempt to register any of the OSNI Intellectual Property in any jurisdiction without prior written permission.

11. LIABILITY

11.1 The VAR will remedy as soon as reasonably practicable (which may not be until the next release) any error in or omission from the data of which the Licensee notifies the VAR.

11.2 It is the Licensee's responsibility to ensure that data is suitable for the Licensee's intended purposes. Neither OSNI nor the VAR accept any liability as to the fitness of Data supplied in meeting the Licensee's needs and both OSNI and the VAR exclude to the fullest extent permissible by law all warranties, conditions or terms that may be implied by statute, statutory instrument, common law, custom or otherwise.

11.3 OSNI will indemnify the Licensee and hold it harmless against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the Licensee's possession and/or use of the OSNI Intellectual Property infringes the copyright, Trade Mark rights or other intellectual property rights of a third party ('Intellectual Property Infringement') provided that:

11.3.1 the Licensee's possession and/ or use of the data is pursuant to and in accordance with these terms and conditions.

11.3.2 the Licensee gives OSNI notice of any Intellectual Property Infringement immediately on becoming aware of it; and

11.3.3 the Licensee gives OSNI the sole conduct of the defence above (OSNI will pay reasonable costs) to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise the said claim or action except upon OSNI's express instructions.

11.4 OSNI shall have no liability to the Licensee in respect of an Intellectual Property Infringement if:

- 11.4.1 the same results from any use of the OSNI Intellectual Property by the Licensee other than in accordance with these terms; or
- 11.4.2 the same results from the use of the OSNI Intellectual Property for a purpose for which it was not designed; or
- 11.4.3 there is any breach by the Licensee of its obligations under these terms; or
- 11.4.4 there has been any alteration, modification, adjustment or enhancement made by the Licensee to the OSNI Intellectual Property that was not authorised by OSNI; or
- 11.4.5 there has been any combination, connection, operation or use of the OSNI Intellectual Property with any other equipment, software or documentation and such combination, connection, operation or use was not within the contemplation of the parties at the time of delivery of the OSNI Intellectual Property.
- 11.5 In the event of an Intellectual Property Infringement, OSNI shall be entitled at its own expense and option either to:
- 11.5.1 procure the right for the Licensee to continue using the OSNI Intellectual Property;
- 11.5.2 make, where relevant, such alterations, modifications or adjustments to the OSNI Intellectual Property so that it becomes non-infringing without incurring a material diminution in performance or function; or
- 11.5.3 replace, where relevant, the OSNI Intellectual Property with a non-infringing substitute provided that such substitute does not entail a material diminution in performance or function (where relevant).
- 11.6 If OSNI in its reasonable judgment is not able to exercise any of the options set out in Clause 11.5 above within ninety (90) days of the date OSNI receives notice of the Intellectual Property Infringement, OSNI will accept the return of the infringing OSNI Intellectual Property.
- 11.7 This Clause sets out the Licensee's exclusive remedy and OSNI's sole liability in respect of any breach of warranty concerning any Intellectual Property Infringement.
- 11.8 The Licensee shall be liable for, and will indemnify OSNI against any and all liability, loss, damages, costs, legal costs, incurred or suffered by OSNI whether direct or consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of any dispute or contractual, tortious or other claim or proceeding brought against OSNI by reason of the manufacture, use or sale of any goods and services or the use by the Licensee of the OSNI Intellectual Property other than in accordance with these terms except for liability for death or personal injury resulting from the negligence of OSNI, its servants or agents and any other liability which OSNI is expressly prohibited from excluding or limiting by law.
- 11.9 Save as otherwise provided in these terms, OSNI shall be under no liability of any sort (however arising) and without prejudice to the foregoing shall not be liable for any damage, injury, loss (whether direct, consequential or otherwise), loss of profits or costs, charges or expenses, however arising.
- 11.10 The total and aggregate liability of OSNI in connection with these terms will not at any time exceed an amount equal to the total monies paid or due to be paid by the Licensee to the VAR in the twelve (12) months preceding the date on which the claim arose.
- 11.11 The Licensee warrants that in entering into this license it has not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding relating to the OSNI Intellectual Property other than as expressly set out in this Licence.
- 12. PERIOD OF AGREEMENT AND TERMINATION**
- 12.1 These terms shall be effective from the commencement date, subject to the provisions of this Clause 12 and shall continue in force for the period of the licence.
- 12.2 The VAR shall be entitled forthwith to terminate this licence by written notice to the Licensee if:
- 12.2.1 the Licensee commits any continuing or material breach of any of the provisions of these terms and, in the case of such a breach which is capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 12.2.2 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Licensee;
- 12.2.3 the Licensee makes any voluntary arrangement with its creditors or becomes subject to an administration order;

purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under these terms);

12.2.5 the Licensee ceases, or threatens to cease, to carry on business; or

12.2.6 there is a change of control of the Licensee within the meaning of Section 416 of the Income and Corporation Taxes Act 1988.

12.3 For the purpose of Clause 12.2.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

12.4 Termination or expiry of these terms shall not affect the parties' accrued rights and remedies.

12.5 In the event of termination (howsoever caused) or expiry of these terms:

12.5.1 the Licensee shall provide the estimate as referred to in Clause 8.2 above and immediately pay all outstanding sums to the VAR and upon production of further invoices the Licensee shall pay other sums due but not previously invoiced prior to date of termination or expiry;

12.5.2 any licence granted to the Licensee shall immediately cease;

12.5.3 at OSNI's option (but at the Licensee's expense) the Licensee shall either destroy the Goods in its possession, power or control, (including any security copy) or return the Goods to OSNI. The Licensee shall also procure that an officer or duly authorised executive provides a sworn statement or affidavit verifying that this has been done.

13. FORCE MAJEURE

13.1 Neither party shall be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under these terms due to Force Majeure. Such delay or failure shall not constitute a breach of these terms and the time for performance of the affected obligation shall be extended by such period as is reasonable.

13.2 The party claiming Force Majeure shall notify the other party in writing of the reasons for such an event (and the likely

promptly after the occurrence of the same and should use their reasonable endeavours to minimise the effect and duration of the Force Majeure event.

14. ASSIGNMENT

The Licensee shall not be entitled to assign, novate or transfer the whole or any part of the benefit of this Licence or any obligation under it to any party.

15. EXCLUSIVITY

These terms are not exclusive.

16. SEVERABILITY

If any provision of this Licence is held to be unenforceable, invalid or illegal that shall not affect the enforceability, validity or legality of any other provision.

17. WAIVER

No failure or delay by any party in exercising any right, power or privilege under this Licence shall impair such right, power or privilege or be construed as a waiver thereof. The rights and remedies of any party herein provided are cumulative and not exclusive of any rights and remedies provided by law.

18. NOTICES

All notices which are required to be given under this Licence shall be in writing and shall be sent to the address of the recipient set out on page one (1) or such other address as the recipient may designate by notice given in accordance with these terms. Any such notice may be delivered personally, by first class pre-paid letter, or facsimile transmission and shall be deemed to have been received where the notice has been sent by post within two (2) working days, or where the notice is sent by hand or is given by facsimile or other electronic media, simultaneously with the delivery or transmission provided that where notice is given by facsimile the sender receives confirmation of an error free transmission.

19. ENTIRE AGREEMENT

These terms represent the entire agreement and understanding between the parties hereto with respect to the subject matter.

20. LAW

These terms shall be governed by and construed in accordance with the law of Northern Ireland and each party agrees to submit to the exclusive jurisdiction of the Courts of Northern Ireland.

