



**Eduserv Licence**  
**Licence for the Use of**  
**Eduserv Athens Agent Software**

by  
[DSP name]

**Version 2.0**



**Date:**

**Parties:**

(1) **Eduserv Technologies Limited** (company number 4256630), whose registered office is at Queen Anne House, 11 Charlotte Street, Bath, BA1, United Kingdom (“ETL”); and

(2) **[DSP name]** (the “Data Service Provider”) (company number ) whose registered office is at:

.....  
.....  
.....

IT IS AGREED as follows:-

**1. Particulars**

Authorised Representative: ETL:  
Address: Queen Anne House, 11 Charlotte Street, Bath BA1,  
United Kingdom

Data Service Provider:  
Address:  
.....  
.....  
.....  
.....

Initial Term: the period of three (3) years commencing on [date] subject to earlier termination in accordance with clause 15.

**2. Definitions and Interpretation**

2.1 The following terms shall have the following meanings in this Agreement unless the context otherwise requires:

“Agreement Year” means any twelve month period commencing on the first day of

the Initial Term or any anniversary of that date as falls wholly within the term of this Agreement and, in the event of termination of this Agreement prior to the expiry of any such twelve month period such portion of such twelve month period then current as falls within the terms of this Agreement;

“Athens” means the access management software developed and owned by Eduserv (and licensed to ETL) used for the purposes of controlling access to web based subscription services as further described in the user documentation published by ETL from time to time but excluding for the avoidance of doubt the Athens Agent Software;

“Athens Agents Software” means Eduserv’s Athens Agent software (licensed to ETL) which is used in connection with Athens to provide authentication and authorisation services to protect access to Resources as more fully described in the “Athens Agent Implementation Standards” documentation and other user documentation published from time to time by ETL;

“Athens Account” means the user account allocated to Athens Account Holders by or on behalf of ETL, or by the Data Service Provider in accordance with clause 5, for the purposes of enabling them to use Athens to access a Resource (and other on-line subscription services);

“Athens Account Holder” means an individual in respect of whom personal information and data is maintained in the Database and who has been allocated an Athens Account and “Athens Account Holders” shall be construed accordingly;

“Athens Registered Organisation” means an organisation which is registered with ETL or Eduserv and to whom ETL has agreed (whether with the organisation concerned or a third party) to provide access to the Athens service;

“the Authorised Purpose”	means determining whether an individual attempting to access a Resource is entitled to do so;
“the Charges”	means the charges payable by the Data Service Provider to ETL in accordance with clause 8 and as further described in Schedule 1;
“Confidential Information”	means trade secrets or confidential information belonging to either party including, without limitation, the contents of this Agreement, the details of any Protocol which ETL specifies is confidential, information or secrets relating to business or manufacturing methods and processes, inventions, research and development, activities, designs, drawings, sources and supplies of materials used, the identity of customers and potential customers, personal contacts with or within customers and potential customers, prices, margins, special arrangements with customers of and suppliers to that party, pricing strategy, marketing strategy and development strategy, product and future product details, computer systems and computer software;
“Database”	the electronic “Athens Accounts Server Database” maintained by ETL which contains personal data and information relating to Athens Account Holders;
“Eduserv”	means Eduserv a company limited by guarantee under number 4256630, whose registered office is at Queen Anne House, 11 Charlotte Street, Bath, BA1;
“the Equipment”	means the hardware and software of the Data Service Provider meeting the minimum configuration requirements specified by ETL in writing from time to time;
“Insolvency Event”	means in respect of either party, that party entering into liquidation (except for the purposes of a bona fide amalgamation or reconstruction), passing a resolution for a creditors winding up, entering into a composition in satisfaction

of its debts or a scheme of arrangement with creditors of its affairs, an application is made for an administration order in respect of it or it suffers the appointment of a receiver, administrative receiver or an administrator, documents are filed with the court for the appointment of an administrator in respect of it or notice of an intention to appoint an administrator is given by it, its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or any analogous event occurring in respect of either party in any jurisdiction;

“Intellectual Property Rights”	means copyright, moral rights, database rights, patents (registered and unregistered), design rights (registered and unregistered), trademarks (registered and unregistered), rights in relation to trade dress and get up, semi-conductor topography rights, rights in undisclosed or confidential information (including, without limit, know-how, trade secrets and inventions whether patentable or not) and all other industrial, commercial or intellectual property rights (whether or not registered or registrable) now or hereafter existing in any jurisdiction and all rights to apply for the same;
“Licensed Materials”	means the Software and user documentation licensed to the Data Service Provider pursuant to clause 3;
“Protocol”	means any application program interface which ETL has agreed with the Data Service Provider (in accordance with clause 7.2) may be used to access Athens;
“Quarter”	means each three month period within an Agreement Year, the first such period commencing on the commencement of the Initial Term with subsequent periods commencing immediately upon the expiry of the previous period and, in the event of termination of this Agreement prior to the expiry of any such three month period such portion of such period then current as falls within the terms of this Agreement;

“the Resources”	means the on-line service or services provided by the Data Service Provider registered with ETL using the registration document set out in Schedule 2 (or such other document as ETL may specify from time to time) and approved by ETL in accordance with clause 6.1.4 and “Resource” shall be construed accordingly;
“the Services”	means the licensing of the Licensed Materials pursuant to clause 3 and the provision of the support services specified in clause 4 and the account management facilities specified in clause 5;
“the Software”	means Athens and in the event that the Athens Agent Software must be used to access Athens in accordance with clause 7.1, the Athens Agents Software;
“Web-Site”	means <a href="http://www.athensams.net/">http://www.athensams.net/</a> or such other web-site as ETL may notify to the Data Service Provider from time to time;
“Working Day”	means 9.00 a.m. to 5.00 p.m. on each weekday excluding Saturdays and Sundays and public holidays (excluding the period from Christmas Day to New Years Day (both days inclusive)) and “Working Days” shall be construed accordingly.

2.2 The phrases set out in clause 1 (Particulars) shall in this Agreement have the meaning as are ascribed to them therein.

2.3 The headings in this Agreement are inserted for convenience only and shall not affect their construction.

2.4 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, reference to any gender shall include all other genders and references to persons shall include bodies corporate, unincorporated associations, organisations and partnerships, in each case whether or not having a separate legal personality. References to the word “include” or “including” are to be construed without limitation.

2.5 References to clauses and sub-clauses are to the clauses and sub-clauses of this Agreement

unless otherwise specified.

- 2.6 References to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 2.7 Any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns.
- 2.8 A person shall be considered to be subscribing to a Resource for the purposes of this Agreement if the Data Service Provider provides access to or otherwise makes available the Resource to that person, whether or not that person pays for such access or availability and references to a “subscriber” shall be continued accordingly.

### 3. **Licence**

- 3.1 ETL grants to the Data Service Provider a non-exclusive, non transferable licence to:
- 3.1.1 access and use Athens at the Web Site for the purposes of interrogating the Database, using the Athens Agents Software or (if agreed pursuant to clause 7.2) a Protocol;
  - 3.1.2 (if the Athens Agent Software must be used to access Athens pursuant to clause 7.1) load the Athens Agent Software onto, and run it on, the Equipment; and
  - 3.1.3 read and possess any Athens user documentation issued to the Data Service Provider from time to time solely in conjunction with the use of the Software.
- 3.2 For the avoidance of doubt, nothing herein shall grant the Data Service Provider any right to access the Database or view or obtain any information contained in the Database, and unless otherwise expressly agreed in writing by ETL, the Data Service Provider shall not when using Athens obtain any information from the Database other than confirmation as to whether the Database indicates that an individual seeking to access a Resource is entitled to do so.
- 3.3 If the Athens Agent Software is to be used to access Athens then the Data Service Provider shall be entitled to make one copy of the Athens Agent Software and user documentation provided by ETL from time to time for back up purposes and such other number of additional copies of the Athens Agent Software only as are necessary to enable the Data Service Provider to carry out the Authorised Purpose.



- 3.4 ETL may change any part or all of the Software, any Protocol or the Services from time to time and shall endeavour to provide the Data Service Provider with reasonable notice of its intention to do so.
- 3.5 The Data Service Provider will not nor permit or suffer any third party to, and will procure that its officers, employees and agents do not (nor permit or suffer any third party to):
- 3.5.1 alter, adapt, copy, reverse engineer, disassemble, decompile, modify, translate or make any derivative works of any part of the Licensed Materials or any other application used to deliver the Services;
  - 3.5.2 sell, rent, lease, sub-license, assign, give, transfer, lend or host, in whole or in part, the Licensed Materials or Services to any third party, or offer or provide the Licensed Materials or Services or any part of them to any other person in any way, except as specifically permitted under the terms of this Agreement;
  - 3.5.3 attempt to bypass any security mechanism in place on any systems used by ETL to make the Software available to you;
  - 3.5.4 otherwise gain or attempt to gain unauthorised access to the Services, the Software, ETL's computer systems or its web-sites, or any of ETL's customers' systems, information, web sites or data;
  - 3.5.5 engage in any illegal or offensive behaviour using the Software, the Services or ETL's web-sites; or
  - 3.5.6 use the Software other than for the Authorised Purpose or the Services or ETL's web sites other than for their intended purpose and otherwise than in accordance with any guidelines that ETL notifies to the Data Service Provider concerning their use.
- 3.6 The Data Service Provider shall during the continuance of this Agreement:
- 3.6.1 effect and maintain adequate security measures to safeguard the Licensed Materials from access or use by any unauthorised person;
  - 3.6.2 retain the Licensed Materials (insofar as the same come into its possession, power or control) and all copies thereof under the Data Service Provider's effective control; and
  - 3.6.3 maintain full and accurate records of the Data Service Provider's copying and disclosure of the Licensed Materials and shall produce such records to ETL on request from time to time.

#### 4. **Support Services**

4.1 ETL shall provide to the Data Service Provider the following services:

4.1.1 at the written request of the Data Service Provider support services to the Data Service Provider as a part of the set-up process prior to official release of each of the Resources on the terms set out in paragraph 5 of Schedule 1;

4.1.2 throughout the continuance of this Agreement provide updates and new versions of the Software as soon as reasonably practicable after they become available; and

4.1.3 throughout the continuance of this Agreement provide email and telephone support to the Data Service Provider on Working Days for problems encountered with the Software which prevent or hinder access to any Resource, other than where such problem results from a default by the Data Service Provider (including without limit a failure by the Data Service Provider to comply with the terms and conditions of this Agreement or the terms of the supporting documentation provided by the ETL).

4.2 For the avoidance of doubt, ETL may agree to provide further support services to the Data Service Provider, on such terms as the parties may from time to time agree in writing.

#### 5. **Account Management Facilities**

5.1 If the Data Service Provider requests (whether before or after the date of this Agreement) and subject always to the provisions of clause 8, ETL shall permit the Data Service Provider to use Athens on the Web-Site (on a non-exclusive basis) to create Athens Accounts for the sole purpose of permitting the Athens Account Holders thereby created to access a Resource, subject always to the following conditions:

5.1.1 the Data Service Provider agrees to comply with ETL's terms and conditions applicable to persons creating Athens Accounts as notified to it from time to time;

5.1.2 the Data Service Provider will procure that ETL's terms and conditions for Athens Account Holders are brought to the attention of and accepted by the holders of Athens Accounts created by the Data Service Provider pursuant to this clause 5.1 prior to the Athens Account Holder accessing a Resource using his Athens Account for the first time;

5.1.3 the Data Service Provider will procure that ETL's terms and conditions for organisations are brought to the attention of and accepted by the organisations subscribing to a Resource and who have allocated user licences to the holders of

Athens Accounts created by the Data Service Provider pursuant to this clause 5.1, prior to any of the relevant Athens Accounts being created;

- 5.1.4 the Data Service Provider must when creating such Athens Accounts provide ETL with details of the identity and contact address of the organisation which has subscribed to the relevant Resource and which has allocated a user licence to the Athens Account Holder, or in the event that the Athens Account Holder is the subscriber, their full name and postal address;
  - 5.1.5 the Data Service Provider shall not be entitled to create more than a maximum of 50 Athens Accounts for any one organisation or other legal person subscribing to a Resource;
  - 5.1.6 Athens Accounts must be created for use by one user only. The Data Service Provider shall not be entitled to create multiple user Athens Accounts and shall take reasonable steps to procure that the Athens Accounts are used by the holders of those Athens Accounts only; and
  - 5.1.7 the Data Service Provider shall procure that the Athens Accounts created by it automatically expire on the date that the Athens Account Holder's entitlement to access and use the Resources expires.
- 5.2 In addition to the facilities to be provided pursuant to clause 5.1, ETL shall provide the Data Service Provider with an Athens administration account for the duration of this Agreement to be used by the Data Service Provider solely for the purposes of carrying out tests in relation to the Software and providing Athens Accounts for trial purposes which shall expire after a period not exceeding a month (unless otherwise agreed in writing by ETL). The Data Service Provider shall comply with the terms of clause 5.1 in connection with any Athens Accounts created for testing or trial purposes pursuant to this clause 5.2.

## **6. Obligations of Data Service Provider**

- 6.1 The Data Service Provider agrees as follows:
  - 6.1.1 to record all successful logins to a Resource by Athens Account Holders and provide such records to ETL in such manner as ETL shall from time to time specify;
  - 6.1.2 to procure that all product and user documentation relating to Resources which is published by the Data Service Provider from time to time acknowledges the use of Athens in such form as ETL may reasonably require;
  - 6.1.3 to procure that the web page on the Data Service Provider's web-site presented to the Athens Account Holder for the purposes of logging in to the Resource using its

Athens Account, or the link to the Web-Site from the Data Service Provider's web-site for such purposes, contains the Athens name and logo in such place and in such size and form as ETL may from time to time reasonably require;

- 6.1.4 to register with ETL each on-line service which the Data Service Provider proposes to use in connection with Athens by completing and returning to ETL the form set out in Schedule 2 (or such other form as ETL may from time to time specify) and not to use the Software in connection with any Resource until ETL has agreed to such use in writing;
  - 6.1.5 not to make any alteration to any Resource approved by ETL in accordance with clause 6.1.4, without the prior written consent of ETL, if such alteration may affect the ability of Athens to provide the facilities and functions set out in ETL's user documentation from time to time in connection with such Resource;
  - 6.1.6 report all faults affecting Athens or service unavailability as soon as the Data Service Provider becomes aware of the same in accordance with the fault report procedures notified to the Data Service Provider by or on behalf of ETL from time to time;
  - 6.1.7 provide ETL with such access to the Resources as ETL may request for the purposes of enabling ETL to provide user support and carry out testing in relation to the Resources and to comply with its obligations hereunder;
  - 6.1.8 notify ETL in writing immediately upon any Athens Account Holder ceasing to be entitled to access a Resource;
  - 6.1.9 promote and preserve the goodwill and reputation associated with ETL and Athens and not do or omit to do anything which may adversely affect or impact upon such goodwill and reputation;
  - 6.1.10 comply with all statutes, byelaws, regulations and requirements of any government or other competent authority relating to the Resources and obtain all necessary licences and consents required in relation thereto; and
  - 6.1.11 use all Resources and Athens for lawful purposes only and procure that no Resource or the content thereof will violate of any law or regulation or contain any matter which is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any intellectual property right or otherwise unlawful and indemnify ETL against any costs, claims, damages or other expenses suffered by ETL as a result of a breach by the Data Service Provider of this clause 6.1.11.
- 6.2 For the purposes of enabling ETL to carry out its obligations under this Agreement the Data Service Provider shall:
- 6.2.1 supply such documentation and information as is in the Data Service Provider's possession, power or control as ETL requests including without limit details relating to

Resources and subscribers thereto to enable ETL to provide the Services;

6.2.2 make available such of its staff to assist ETL as ETL reasonably requests; and

6.2.3 upon reasonable notice and during normal business hours permit ETL's representatives to access its premises and computer systems to verify compliance with this Agreement.

## 7. **Athens Agent Software**

7.1 Subject to clause 7.2, the Data Service Provider agrees to only access Athens using the Athens Agent Software.

7.2 The Data Service Provider may access Athens using an application program interface approved by ETL in writing PROVIDED THAT such approval may be given, withdrawn or suspended at ETL's discretion. If at any time no such approval has been given (or has been revoked or suspended) then the Data Service Provider shall only be entitled to access Athens using the Athens Agent Software.

7.3 The Data Service Provider agrees to:

7.3.1 comply with the Athens Agent Implementation Standards document published at <http://www.athensams.net> (or such other URL as may be notified to the Data Service Provider from time to time);

7.3.2 remove the Athens Agent Software from any hardware onto which it has been loaded in accordance with clause 3.1.2, prior to decommissioning or disposing of the same;

7.3.3 implement new versions or upgrades of the Athens Agent Software or any Protocol provided or notified to it by ETL within 3 months of delivery, unless such version or upgrade is stated by ETL to be service or security critical, in which case the Data Service Provider shall use its best endeavours to implement that version or upgrade within 7 days of receipt.

7.4 In the event that the Data Service Provider is permitted in accordance with clause 7.2 to access Athens using a Protocol, then the Data Service Provider agrees to comply with ETL's Protocol documentation notified to it from time to time.

7.5 In the event that the Data Service Provider does not implement new versions or upgrades of the Athens Agent Software or any Protocol within the time scales referred to in clause 7.3.3, ETL shall be entitled, without prejudice to its other rights and remedies, to suspend the provision of the Services until such new version or upgrade has been implemented.



## 8. Charges

8.1 The Data Service Provider shall pay to ETL the Charges in such amounts and at such times as is set out in Schedule 1 and otherwise in accordance with the provisions of this clause 8.

8.2 All Charges are expressed in Schedule 1 exclusive of value added tax which shall be payable in addition at the prevailing rate if applicable.

8.3 If any payment due to ETL pursuant to this Agreement is not made on the due date then ETL may at its option and without prejudice to any other rights and remedies available to it:

8.3.1 charge interest on all outstanding amounts (both before and after any judgment) at the rate of 4 per cent per annum over the base rate from time to time of the Royal Bank of Scotland plc from the due date until the date of payment;

8.3.2 suspend the provision of the Services until the overdue sums are paid in full.

8.4 All sums payable under this Agreement to ETL shall be paid in cleared funds and without deduction, set off or counterclaim. ETL shall be entitled to set-off any sums payable by it to the Data Service Provider against any sums payable to ETL by the Data Service Provider, whether under the terms of this Agreement or otherwise.

## 9. Intellectual Property

9.1 All Intellectual Property Rights in the Licensed Materials and the Services shall at all times remain vested in ETL, and the Data Service Provider shall not acquire any title, right or interest in such Intellectual Property Rights, whether under this Agreement or otherwise. ETL reserves the right to grant licences to use the Licensed Materials to third parties.

9.2 The Data Service Provider shall notify ETL immediately if the Data Service Provider becomes aware of any unauthorised use of the whole or any part of the Licensed Materials by any person.

9.3 ETL warrants to the Data Service Provider that the Software when used by the Data Service Provider for the purposes licensed hereunder and in accordance with the terms of this Agreement shall not infringe the Intellectual Property Rights of a third party provided that:

9.3.1 ETL shall be promptly notified by the Data Service Provider upon the Data Service

Provider becoming aware of any such alleged infringement and, at its own expense, ETL shall conduct all negotiations for settlement of such allegations and any litigation that may arise therefrom;

9.3.2 the Data Service Provider shall, at the request and cost of ETL, give all reasonable assistance for the purposes of defending such claims or demand or action;

9.3.3 the Data Service Provider shall not make any admissions which may be prejudicial to the defence of such claim or demand or action or compromise or settle or seek to compromise or settle any such claim, demand or action, unless required to do so by court or judicial order.

9.4 ETL shall have no liability for any claim for infringement of a third party's Intellectual Property Rights which relates wholly or partly to use of the Licensed Materials which has been altered or amended other than by ETL (save where such alteration was made with ETL's consent and the alteration was effected in accordance with ETL's requirements).

9.5 Subject to clause 13.5, the foregoing states the entire liability of ETL to the Data Service Provider with respect to infringement or alleged infringement of any third party Intellectual Property Rights by the Licensed Materials.

9.6 The Data Service Provider warrants that any documents or other materials, and any data or other information provided by the Data Service Provider pursuant to the terms of this Agreement and their use by ETL will not infringe the copyright or other Intellectual Property Rights of any third party, and the Data Service Provider shall indemnify ETL against any loss, damages, costs, expenses or other claims arising from any such infringement.

## 10. Confidentiality

10.1 Both during the term of this Agreement and after its termination, the parties shall treat as confidential (and shall procure that their employees, officers and agents treat as confidential) and shall not (and shall procure that their employees, officers and agents do not) other than in the proper provision or use of the Services, use or disclose to any third party, any Confidential Information belonging or relating to the other party or its suppliers or customers, nor permit its use or disclosure save that this clause shall not prevent the disclosure of Confidential Information:

10.1.1 to the extent required by law;

10.1.2 with the authority of the other party hereto;



10.1.3 to the employees or sub-contractors of a party to the extent necessary for the performance of the disclosing party's obligations herein; or

10.1.4 to the professional advisers of a party

PROVIDED THAT each party shall procure that any officer, employee, sub-contractor or professional adviser to whom any such information is disclosed is aware of and complies with the provisions of this clause.

10.2 The Data Service Provider acknowledges that the Confidential Information of ETL includes, without limit, the Licensed Materials to the extent that they are not already in the public domain (other than as a result of a breach of this Agreement).

10.3 The restrictions in clause 10.1 above do not, for the avoidance of any doubt, apply to any information:

10.3.1 to which any party was lawfully privy prior to the commencement of the negotiations preceding this contract; or

10.3.2 which is already in or subsequently enters the public domain (other than as a result of a breach of this Agreement).

10.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information of the other party (or its suppliers or customers) and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.

10.5 The provisions of this clause 10 shall survive the termination of this Agreement.

10.6 Nothing in this clause 10 shall prevent ETL from exploiting any inventions or software that it develops before, during or after the term of this Agreement.

10.7 Notwithstanding the other provisions of this clause 10:

10.7.1 ETL may refer to the Data Service Provider's use of the Software and Services in its advertising and marketing materials and to its customers and potential customers;

10.7.2 the Data Service Provider will promptly advise ETL of the details of any media enquiries or communications that it receives regarding ETL, the Services or the Software.

10.8 The Data Service Provider shall obtain prior written approval from ETL before distributing any

descriptions of the Licensed Materials including but not limited to product documentation, presentations, advertising material and electronic mail. This restriction does not apply to any information that has been previously published by ETL and is held in the public domain.

## 11. **Data protection**

11.1 The Data Service Provider agrees not to store, or use for any purpose other than the Authorised Purpose, any personal information (including without limit personal data as defined in the Data Protection Act 1998) provided to it by ETL in the performance of the Services whether relating to Athens Account Holders or otherwise, unless otherwise agreed by ETL in writing.

11.2 The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions of and obligations contained in this Agreement.

## 12. **Warranty**

12.1 Subject to clause 12.2, ETL warrants that the Software, used in accordance with ETL's instructions, shall perform substantially in accordance with the technical instructions provided in the documentation or by any future issue of the documentation supplied as part of Licensed Materials. ETL does not warrant that the functions or facilities of the Software will meet the Data Service Provider's requirements or that operation of the Software will be uninterrupted or error free at all times.

12.2 ETL shall not be liable for any failure of the Software to provide any facility or function not described in the Licensed Materials or for any failure or defect in the Software to the extent that such defect or failure arose or was exacerbated as a result of:

12.2.1 alterations to the Software made by any person other than ETL unless such alterations have been made with ETL's prior written consent and in accordance with any directions, restrictions or conditions attaching thereto;

12.2.2 incorrect use, operation or corruption of the Software;

12.2.3 use of the Software with other software or equipment with which it is incompatible;

12.2.4 any breach by the Data Service Provider of its obligations hereunder.;

12.2.5 use of the Athens Agent Software in circumstances where it has been agreed that the Data Service Provider will access Athens using a Protocol pursuant to clause 7.2.

12.3 The Data Service Provider shall notify ETL in writing and provide documented examples of



any defects or errors in the Software. ETL undertakes to use its reasonable endeavours to correct or replace (at ETL's option and expense) the Software or any part thereof which is demonstrated to fail to perform in accordance with the warranty given in clause 12.1, as soon as reasonably practicable after having received notice of the same from the Data Service Provider.

12.4 The Data Service Provider's sole and exclusive remedy under the warranty given in clause 12.1 shall be limited to the correction or replacement of the Software in whole or in part in accordance with the provisions of this clause 12.

12.5 ETL warrants to the Data Service Provider that it shall provide the support services pursuant to clause 4 with reasonable skill and care.

12.6 The Database reflects the information provided to ETL by Athens Registered Organisations and others and accordingly ETL provides no warranty that the information held in the Database is accurate.

### 13. **Liability**

13.1 Notwithstanding any other provision in this Agreement:

13.1.1 ETL will only be liable for claims relating to the Licensed Materials or the Services or otherwise relating to or arising out of this Agreement that are notified to ETL within 12 months of the date of the occurrence of the circumstances giving rise to the claim; and

13.1.2 subject always to clause 13.5, ETL's total liability to the Data Service Provider under or in connection with this Agreement or relating to the provision of the Services, whether in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising from the relationship between the parties, shall be limited to direct losses or damages to tangible property and will not (when aggregated with all other successful claims made by the Data Service Provider against ETL under or relating in any way to this Agreement or the provision of the Services) exceed a sum equal to the aggregate Charges received by ETL under this Agreement in the 12 months prior to the occurrence of the event giving rise to the liability.

13.2 Notwithstanding the generality of clause 13.1 ETL shall not be liable for:

13.2.1 any consequential indirect or special loss suffered by the Data Service Provider including without limit damage or corruption to the Data Service Provider's systems or software or data or loss of profit, business, contract, revenue, goodwill or anticipated

savings;

13.2.2 any loss resulting from liability of the Data Service Provider to any third party;

13.2.3 the transmission or reception of information from or to ETL's systems;

13.2.4 the acts and omissions of telecommunications providers whose services and equipment are used in connection with the use of the Licensed Materials including without limit a failure of their equipment;

13.2.5 any loss or damage suffered as a result of the use of the Software in connection with hardware or software other than the Equipment or use by the Data Service Provider of the Athens Agents Software in circumstances where it has been agreed that the Data Service Provider will access Athens using a Protocol pursuant to clause 7.2.;

whether or not such loss or damage was reasonably foreseeable, actually foreseen or notified to ETL.

13.4 Except as provided in this clause 13, ETL's liability to the Data Service Provider, whether in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising from the relationship between the parties under this Agreement, is excluded to the fullest extent permitted by law.

13.5 Nothing in this clause 13 or any other provision of this Agreement shall operate to exclude or restrict ETL's liability for death or personal injury caused by its own negligence or for fraudulent misrepresentation.

#### 14 **Events beyond ETL's reasonable control**

Notwithstanding any other provision of this Agreement, ETL shall not be liable for any failure to perform or delay in performing its obligations hereunder if such failure or delay is caused by circumstances beyond its reasonable control, including without limitation acts of God, governmental actions, national emergencies, acts of terrorism, acts of protest, riots, civil commotion, fire, explosion, flood, epidemic, lock outs, strikes or other labour disputes (whether or not relating to each parties work force), or restraints or delays effecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, breakdown of systems or network access or any delay or failure to perform caused by any act or omission of the Data Service Provider.



## 15. Termination

15.1 Save as provided in clause 15.2, this Agreement shall continue for the Initial Term and shall thereafter be renewed automatically for a period of 12 months and for further periods of 12 months upon the expiry of each such period, unless either party gives to the other not less than 60 days notice in writing prior to such renewal in which case the Agreement shall terminate at the end of the Initial Term or the then current 12 month period (as the case may be).

15.2 Either party shall be entitled to terminate this Agreement forthwith at any time by written notice to the other party if:

15.2.1 the other party commits a material breach or persistent breaches of any of the terms of this Agreement and (in the case of a material breach capable of remedy) fails to remedy the breach within 30 days after receipt of notice in writing from the other specifying reasonable details of the breach and requiring its remedy; or

15.2.2 the other party becomes subject to an administration order or has an administrator appointed in respect of it, a receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent, or ceases to be able to pay its debts as they fall due.

15.3 Forthwith upon the termination of this Agreement:

15.3.1 the Data Service Provider shall return to ETL, all copies of the Licensed Materials within its possession, power or control or, if requested by ETL, shall destroy the same (in the case of the Athens Agent Software by erasing it from the magnetic media on which it is stored) and certify in writing to ETL that they have been destroyed; and

15.3.2 the Data Service Provider shall immediately pay to ETL all Charges payable in respect of the provision of the Services in the period prior to termination.

15.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.



## 16. **General**

### 16.1 Assignment

The Data Service Provider shall not assign or otherwise transfer or dispose of any interest in this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of ETL.

### 16.2 Notices

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served, if by hand when delivered, and if by first class post or facsimile transmission 48 hours after posting or despatch (as the case may be).

### 16.3 Waiver of remedies

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

### 16.4 Entire agreement

This Agreement together with the documents referred to herein supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof (save that neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied). No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

#### 16.5 Severability

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the remaining provisions of this Agreement and of the provision or provisions in question shall remain in full force and effect.

#### 16.6 Third Parties

Except as otherwise expressly stated herein, nothing in this Agreement confers any rights on any person (other than the parties hereto) pursuant to the Contracts (Rights of Third Parties) Act 1999.

#### 16.7 Authorised Representatives

Each party's Authorised Representative shall be responsible for maintaining relations with the other party. No variation of this Agreement shall be valid unless approved in writing by the Authorised Representatives of both parties.

#### 16.8 Law

This agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts.

This Agreement is hereby executed the day and year first above written.