

Nabídka

Připravený na Ústav výzkumu globální změny AV ČR, v. v. i. (CzechGlobe)

3212379

7/10/2020



Software License Agreement

This software license agreement is concluded between

DHI A/S
Reg. No.: 36466871
Agern Allé 5
DK-2970 Hørsholm
Denmark
(the "DHI")

and

Ústav výzkumu globální změny AV ČR, v. v. i. (CzechGlobe), IČ 6652079, DIČ CZ86652079
Bělidla 986/4a
603 00 BRNO
Czech Republic
Attn. Miroslav Trnka
(the "Licensee")

THE AGREEMENT

- 1.1 This document sets forth the general and commercial terms and conditions for the agreement between DHI and the Licensee regarding the grant of rights for the Licensee's use of certain software products developed by DHI with reference to the quotation with the order number 3212379

This agreement incorporates the following schedules, providing for the standard license terms of DHI as well as the terms for maintenance and support if the Licensee has chosen to order support and maintenance (in aggregate the "Agreement"):

Schedule number	Schedule name
Schedule 1:	General Terms and Conditions for Licensing of Software
Schedule 3:	End User License Notice for users installing the software

- 1.2 If the Licensee has ordered service and maintenance, the following schedule is also incorporated in and forms part of the Agreement:

Schedule number	Schedule name
Schedule 2:	Service and Maintenance Agreement

- 1.3 If the Licensee has ordered Cloud services, the following schedule is replacing Schedule 1 with regards to such Cloud services:

Schedule number	Schedule name
Schedule 4:	Mike Cloud Terms and Condition

- 1.4 The Agreement provides the sole regulation of the Parties cooperation and excludes any other terms that the Licensee may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, unless such supplementary terms are non-derogatory.
- 1.5 In the event of conflict or inconsistency between the terms of the Agreement the following order of precedence shall apply: (1) this main body of the Agreement, (2) schedule 1 (General Terms and Conditions for Licensing of Software), and (3) remaining schedules.

LICENSED PRODUCTS

- 2.1 Subject to the terms of the Agreement, including but not limited to Licensee's payment of all fees set out in the quotation and Licensee compliance with the terms set out in schedule 1 (General Terms and Conditions for Licensing of Software), Licensee is granted the following license(s) to the following software (the "Software") as specified in the quotation document.
- 2.2 Subject to the terms of the Agreement, including but not limited to payment of all fees set out in the quotation, Licensee is granted a license to the following system documentation as specified for each product on <https://www.mikepoweredbydhi.com/download>.

FEES

- 3.1 Licensee will pay the following fees to DHI (or appointed agent) under the Agreement as specified in the quotation document.
- 3.1.1 All prices are stated in the currency as specified in the quotation document.
- 3.1.2 All invoices shall be issued in advance. Payment terms shall be as specified in the quotation document. Unless otherwise agreed by DHI, all payments shall be made by electronic transfer in the currency used in the Agreement. Any sum not paid by Licensee when due shall bear interest from the due date until paid at a rate of two per cent (2%) per month.

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DELIVERY METHOD AND TIME

4.1 DHI will, upon receiving payment of the fees specified in the quotation document, deliver the license for the products by email, internet and/or airmail within 30 working days.

TERM AND TERMINATION FOR CONVENIENCE

- 5.1 The Agreement commences on the payment date (the "Effective Date") and shall be renewed according to the quotation until terminated ("Renewal").
- 5.2 The licensee may terminate the Renewal for convenience with one (1) months' written notice. In case of such termination, the Agreement shall continue for the remainder of the service maintenance or subscription period.
- 5.3 DHI may terminate the Agreement for convenience with twelve (12) months' written notice.

CONTACT INFORMATION

6.1 The following mandated representatives of the parties under this Agreement:

- * DHI:
František Němec, frne@dhigroup.com,
- * Licensee
Miroslav Trnka, mirek_trnka@yahoo.com

6.2 By accepting this agreement, I confirm that I have read and agreed to the terms and conditions in the Agreement, including schedules.

For DHI:

For Licensee:

Date:

Date:

Signature:

Signature:

Name in capital letters:

Name in capital letters:

SCHEDULE 1 - GENERAL TERMS AND CONDITIONS FOR LICENSING OF SOFTWARE

1 INTRODUCTION

- 1.1 This schedule 1 is part of the Agreement between Licensee and DHI and sets out the general terms and conditions for DHI's provision of services to Licensee.
- 1.2 The Agreement is a licence agreement and not an agreement for sale. The Agreement gives Licensee certain limited rights to use parts of the proprietary MIKE Powered by DHI software in object code form (hereinafter referred to as 'Software'), hard-copy and/or digital documentation and hardware authorisation device (*dongle*). All rights not specifically granted in the Agreement are reserved by DHI and no license is granted by implication.

2 GRANT OF LICENCE AND IP

- 2.1 Licensee's license type is set out in section 2 of the main body of the Agreement. The following terms apply to the different license types:

Perpetual licences

All perpetual licences are issued as a floating type, allowing users to access the purchased licences from a license server (Network delivery with dongle), or via the internet (see Internet delivery). A floating type license can be configured as a "localhost", where the license/dongle are associated with one machine only.

Professional

Professional products or modules utilising single computer parallelisation techniques are delivered with a 16-core licence (full utilisation of the parallelisation options requires a 64 bit platform). For each seat of the product or module purchased, it is possible to submit four (4) simultaneous simulations (engines only), except for FEFLOW.

Essential

Essential products or modules utilising single computer parallelisation techniques are delivered with an 8-core licence. For each seat of the product or module purchased, it is possible to submit four (4) simultaneous simulation (engines only), except for FEFLOW. Some products and modules are not available for sale on an Essential license.

University

University licences are strictly limited to educational and research purposes only.

Subscription licences:

Subscription licences are only delivered via Internet delivery. Concurrent use of Subscription and Perpetual licences (if also present on the Internet license server) is not permitted.

Seat management

Concurrent users are controlled by the standard editor associated with each product.

Educational licences

DHI supports teaching use of MIKE Powered by DHI software, through provision of different Labkits:

- Classroom Labkit (25 seat floating type)
- Teacher's Labkit (1 seat local type)
- Student Labkit (1 seat local type)

No support is provided by DHI to users of Educational licenses.

Evaluation licences

Evaluation licences (time limited to 1 month) are available free of charge for all MIKE Powered by DHI products, for the purposes of evaluation only (commercial use is not permitted). No support is provided by DHI to users of an Evaluation license.

Training licences

Training licences (time limited to a maximum of 14 days) are available free of charge for training purposes.

Dongle delivery

Perpetual licenses utilising Network delivery are sold with a USB hardware lock (dongle). Fees apply for supply of the dongle, replacement of lost or damaged dongles (with or without SMA), and additional shipping and handling (courier) fees if applicable.

A Statutory Declaration is required to support the transfer of any perpetual license from a lost or damaged dongle onto a new dongle.

Internet delivery

All time-limited licenses (including Subscription packages) are only delivered via DHI's Internet license server, which provides the opportunity to access licensed products directly from DHI via the Internet. Under special circumstances, DHI can deliver time-limited licenses on a dongle, with corresponding dongle fee.

Internet delivery is also offered as an option for perpetual licenses (Professional, University and Labkit type only) at time of sale, and for existing licenses of these type where the dongle is surrendered to DHI or the lost dongle fee is paid to DHI. Internet delivery is offered for eligible licenses (including Corporate), where SMA is no longer valid.

DHI also reserves the right to return the perpetual licenses to the registered owner in the event that the Internet delivery option is discontinued for any reason.

- 2.2 Licensee must ensure and is responsible that any end users that (i) uses the Software on behalf of Licensee or (ii) for whom Licensee enables the use of the Software
- a. uses the Software in accordance with the terms of the Agreement, and

- b. reads and accepts the end user notice license set out in schedule 3 (End User License Notice) before using the Software.
- 2.4 Licensee may not by-pass the licence control system or take any other action which might enable Licensee to use more copies of the Software simultaneously, than Licensee has acquired a license for. In case of such breach, DHI is entitled to claim a contractual penalty/agreed penalty from the Licensee in the amount of € 100,000 per breach incident regardless if DHI is able to demonstrate any loss, and an additional € 100,000 for each 2 weeks the breach continues regardless if DHI is able to demonstrate any loss. Payment of such contractual penalty/agreed penalty does not limit DHI's right to seek injunctive relief or claim damages. Payment of the contractual penalty/agreed penalty will not release the Licensee from its obligations and consequently the payment of such penalty will not entitle the Licensee to act in breach of this section.
- 2.5 Licensee agrees to create, retain, and provide to DHI and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Software is in compliance with the Agreement and all of DHI's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with the Agreement.
- 2.6 Upon reasonable notice, DHI may verify Licensee's compliance with the Agreement at all sites and for all environments in which Licensee uses (for any purpose) Software subject to the Agreement. Such verification will be conducted in a manner that minimizes disruption to Licensee's business and may be conducted on Licensee's premises, during normal business hours. DHI may use an independent auditor to assist with such verification, provided DHI has a written confidentiality agreement in place with such auditor.
- 2.7 Licensee agrees to promptly pay directly to DHI the charges that DHI specifies in an invoice for 1) any such excess use, 2) support for/related to such excess and 3) any additional charges and other liabilities or claims determined as a result of such verification, including but not limited to the above mentioned contractual penalty/agreed penalty and the costs related to the audit if a breach of the Agreement is discovered.
- 2.8 If the duration of the excess use cannot be clearly determined by DHI, the parties agree that the duration - for the purpose of calculating the fee owed to DHI for such excess use and support - will be fixed at 2 years.
- 2.9 All rights, title and interest, including without limitation all patent rights, proprietary rights, trade secrets, trademarks, copyrights (whether national and international) in and to the Software and the related documentation, are owned by DHI and/or its licensors, and, as applicable, their structure, organisation and code are the valuable trade secrets of DHI and/or its licensors.
- 2.10 No title to the intellectual property in the Software is transferred to Licensee. Title and full ownership rights to the Software and related documentation will remain the exclusive property of DHI or its licensors, and Licensee will not acquire any rights to the Software or the documentation except as expressly set out in the Agreement.
- 2.11 Licensee will not dispute or contest, directly or indirectly, DHI's right, title and interest in and to the Software and related documentation. Licensee will ensure that any permitted backup copies of the Software and/or related documentation include all confidential, proprietary, patent, copyright and/or trademark notices contained on the original.
- 2.12 Except as expressly permitted by mandatory applicable law, and in such case only after providing written notice to DHI, as expressly authorised by the Agreement or by DHI in writing, Licensee may not in any form or by any means (i) copy, make error corrections to, or otherwise modify, decompile, decrypt, reverse engineer, disassemble, adapt or otherwise reduce all or any portion of the Software to human-readable form; (ii) transfer, assign, store, reproduce, sublicense, publish, rent, lease, lend, time-share, distribute, sell, print, display, perform, or create derivative works from any part of the Software or documentation; or (iii) commercialise any software, information or products obtained from any part of the Software or documentation. For the avoidance of doubt, and subject to the rest of this section 2.11, Licensee is entitled to use the Software to process and make calculations on data provided by Licensee itself and to commercialize output based solely on processing of and calculations on such data.
- 2.13 Licensee may not in any way without the explicit written authorization from DHI act as a service bureau or commercial application service provider (ASP) that allows third-parties access to the Software, any services based on the Software or the documentation. Licensee will not use the Software, other services provided by DHI, or documentation for a site or service allowing access for anyone other than the Licensee and/or its end users for which a valid license has been obtained.
- 3 REQUIREMENTS TO LICENSEE'S IT ENVIRONMENT**
- 3.1 Licensee must ensure that Licensee's IT environment complies with the specifications set out in the documentation provided by DHI.
- 4 CHANGES TO THE GENERAL TERMS AND CONDITIONS**
- 4.1 DHI may upon 1 month's written notice make changes to the general terms and conditions set out in this schedule 1, the Service and Maintenance Agreement set out in schedule 2 and/or the End User Notice set out in schedule 3.
- 4.2 The notice required under section 4.1 may be given by DHI by DHI posting a revised version of the changed document on DHI's website.
- 5 PRICE CHANGES**
- 5.1 DHI may increase any fee under the Agreement upon 3 months' written notice.
- 5.1.1 If DHI provides notice of an increase of fees under the Agreement which will result in a cumulative increase of all fees under the Agreement exceeding 10% during a 12 months' period, Licensee may reject such increase by terminating the Agreement upon 3 months' written notice.
- 6 SUB-SUPPLIERS AND THIRD-PARTY LICENCE CONDITIONS**
- 6.1 DHI may from time to time make use of such sub-suppliers which DHI deems adequate for providing DHI's services. Use of such sub-suppliers is reflected in Annex A as changed from time to time which constitutes an integral part of the Agreement.
- 6.2 The Software may include components developed by a third party or by third parties and included in the Software in accordance with a special agreement between DHI and the relevant third party or third parties.
- 6.2.1 Specific conditions apply for each third-party component. These conditions are provided in Annex A.

7 LIMITED WARRANTY

- 7.1 Solely to the extent that Licensee has ordered and only for as long as Licensee has an active (i.e. non-terminated and non-suspended) subscription to a Service and Maintenance Agreement for the Software (as indicated in section 1 of the main body of the Agreement), and only to the extent the Software is properly used in the operating environment specified in the accompanying documentation, DHI warrants that the Software will perform substantially in accordance with the accompanying written documentation and that DHI is the owner of the Software or has the right to licence the Software in accordance with the Agreement.
- 7.2 Except as expressly stated herein, DHI makes no warranty of any kind, express or implied, including without limitation any representation or warranty as to the Software, the documentation or any other services provided by DHI (including any support or consultancy services) in relation to merchantability, fitness for any intended use or particular purpose. For the avoidance of doubt, DHI does not represent, even if Licensee has an active subscription to a Service and Maintenance Agreement for the Software, that (a) operation of the Software shall be uninterrupted or error free, (b) that the functionalities of the Software shall operate in specific combinations or meet Licensee's requirements. DHI does not warrant the accuracy, adequacy, or completeness of any information provided by DHI. Accordingly, DHI does not accept responsibility or liability for any loss suffered as a result of Licensee's use of or reliance on the information provided by DHI, whether provided by, contained in, or accessed through the Software, as it remains Licensee's responsibility to evaluate the accuracy, completeness, and usefulness of any such information.
- 7.3 No person, dealer, or company may expand or alter this warranty.
- 7.4 Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to Licensee. In such case to the extent permissible, any implied warranties are limited to ninety (90) days.
- 7.5 The Software shall to the best of DHI's knowledge not contain any codes, commands or instructions, including viruses, time bombs, worms, and Trojan horses, that may damage the Software, other installed software products, Licensee's personal information, data or other property.
- 7.6 In the event of a breach of the above limited warranty set out in section 7.1 (the "Limited Warranty") by DHI, the entire liability of DHI and Licensee's sole and exclusive remedy shall be, at DHI's discretion, either (a) repair in accordance with the terms of schedule 2 (Service and Maintenance Agreement) or replacement of the Software that does not meet the Limited Warranty of DHI or (b) termination of the Agreement and the licence in which case Licensee shall be entitled to a return of any fees paid by the Licensee for the Software that does not meet the Limited Warranty of DHI during the preceding 12 months' period, provided Licensee has returned the Software to DHI with a copy of Licensee's receipt. This Limited Warranty is void if failure of the Software has resulted from abuse, misuse or misapplication of the Software or from an accident that is beyond the control of DHI, as DHI may determine in its sole discretion.

8 LIMITATION ON LIABILITY

- 8.1 In no event shall DHI or its representatives (agents and suppliers) be liable for any damages whatsoever including, without limitation, special, indirect, incidental or consequential damages or damages for loss of business profits or savings, business interruption, loss of business information or other pecuniary loss arising in connection with the Agreement, e.g. out of Licensee's use of or the inability to use the Software, even if DHI has been advised of the possibility of such damages.
- 8.2 This limitation shall apply to claims of personal injury to the extent permitted by law. Some jurisdictions do not allow the exclusion or limitation of liability for consequential, special, indirect, incidental damages and, accordingly, some portions of these limitations may not apply.
- 8.3 Notwithstanding the above, DHI's total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with the Agreement shall in aggregate during the term not exceed the lesser of EUR 10.000 or the fees paid by Licensee under the Agreement during the 12 months' period previous to the event giving rise to a claim.
- 8.4 Licensee acknowledge that the liability limitations and exclusions set out in the Agreement reflect the allocation of risk negotiated and agreed by the parties and that DHI would not enter into the Agreement without these limitations and exclusions on its liability. These limitations and exclusions will apply notwithstanding any failure of essential purpose of any limited remedy.

9 INDEMNITY

- 9.1 Licensee will indemnify, defend and hold harmless DHI and its licensors against any loss, including without limitation payment of any fees for use outside the scope or term of the license granted hereunder, as well as any claims, damages, obligations, liabilities, expenses and costs (including attorneys' fees and costs) arising out of or related to Licensee's use (including use of the output of the use) of the Software and related documentation in violation of the license granted and the terms set out in the Agreement.

10 CONFIDENTIALITY

- 10.1 Subject only to the exceptions in this section 10, confidential information includes the terms of the Agreement, all information relating to mediation, arbitration or court proceedings between the parties related to the Agreement, all information disclosed by DHI and/or its representatives to Licensee and/or its representatives, including economic, technical, scientific, operational, administrative, financial and commercial information as well as any other information, data related to DHI and/or its affiliates and its and their activities and data which Licensee knows or ought to know is confidential irrespective of whether such information is disclosed orally, visually, in writing or by electronic transfer, and irrespective of the media used.
- 10.2 Licensee will use confidential information only to the extent required to accomplish its obligations under the Agreement or as otherwise contemplated herein. Licensee will treat and store confidential information with the utmost care. Confidential information must not be disclosed or made available to any third party, except to the representatives of Licensee who, in each individual case need knowledge of the confidential information to accomplish Licensee's obligations under the Agreement, or as otherwise contemplated herein.
- 10.3 If the disclosure of Confidential Information is required (i) by a competent court or public authority; or (ii) under mandatory statutory provisions applicable to Licensee, this section 10 will not apply to such disclosure. Licensee must give notice to the Licensor before such disclosure to the extent that such notice is lawful and possible. The parties must agree on the date of disclosure and the extent of the confidential information to be disclosed to the extent that such agreement is lawful and possible.

11 TERM OF AGREEMENT AND TERMINATION

- 11.1 The term of any licence granted shall be in accordance with the term set out in the main body of the Agreement unless terminated earlier by either party.
- 11.2 In the event of Licensee's material breach of the Agreement, DHI shall be entitled to immediately terminate the Agreement. For the avoidance of doubt, Licensee's failure to pay any due sum within fourteen (14) days after written notice being given by DHI to the Licensee to the effect that such payment has not been received by DHI, and/or Licensee's breach of section 2 Grant of License and IP) and/or section 10 (Confidentiality) shall constitute a material breach of the Agreement by Licensee.
- 11.3 In the event of DHI's material breach of the Agreement, Licensee shall be entitled to give notice of termination to DHI. If DHI has not cured such breach within thirty (30) days following such notice, Licensee shall be entitled to immediately terminate the Agreement by written notice to DHI.
- 11.4 Upon termination for any reason, Licensee shall cease using and delete all copies of the Software and return immediately to DHI, at Licensee's sole expense, all Software including documentation and any copies thereof. In the event that this Agreement expires or is terminated, no portion of any payments of any kind whatsoever previously paid to DHI hereunder shall be owed or be repayable or refunded to the Licensee save to the extent for cases of wilful misconduct or gross negligent acts or omissions by DHI.
- 11.5 If DHI chooses to discontinue the offering of any Software, DHI may partially terminate the Agreement in regards to any license, service and maintenance agreement or other agreement related to such Software upon 12 months' written notice.
- 11.6 Provisions in the Agreement relating to obligations which have accrued or explicitly or by implication have application beyond the term of the Agreement, including but not limited to section 2 Grant of License and IP) and section 10 (Confidentiality) and any provision required to interpret and enforce the Parties' rights and obligations under the Agreement to the extent required for the full observation and performance of the Agreement shall survive any termination or expiration of the Agreement.

12 MISCELLANEOUS

12.1 Data processing

- 12.1.1 DHI may for optimization purposes and subject to applicable law collect and use data related to Licensee's use of the Software.
- 12.1.2 DHI may as part of providing any services under the Agreement process personal data regarding the end users as a data controller which is necessary to provide the services, e.g. login and/or contact information. Licensee will (a) collect required consents from end users if necessary for such processing, and (b) inform its end users of such processing on behalf of DHI if and as required by law.
- 12.1.3 DHI may at DHI's sole discretion make information which may include personal data available to Licensee, e.g. information regarding end users' use of the Software. If Licensee accesses such information, Licensee warrants that i) Licensee has the right to receive such data from DHI, ii) DHI has the right to provide such data to Licensee, and iii) Licensee will process such information in accordance with applicable law.
- 12.1.4 Upon written request from DHI, Licensee must provide reasonable assistance to DHI relating to DHI's obligations under applicable law arising out of or relating to this section 12.1.
- 12.1.5 Licensee will indemnify DHI for any losses suffered by DHI due to Licensee's non-compliance with this section 12.1.
- 12.1.6 For the avoidance of doubt, Licensee is not entitled to any remuneration for fulfilling its obligations under this section 12.1.

12.2 Taxes

- 12.2.1 All sums payable under the Agreement are exclusive of VAT and any and all indirect or direct taxes and other duties, including but not limited to any relevant or required state or local sales taxes and any all withholding taxes on international purchases.

12.3 Complete agreement

- 12.3.1 The Agreement embraces the full and complete understanding of the parties as to the subject matter hereof and may not be altered or modified, except by written amendment which expressly refers to the Agreement and which is duly executed by both parties.

12.4 Whole or partial

- 12.4.1 If one or more of the provisions of the Agreement are finally adjudicated to be partially or entirely unenforceable by a court of competent jurisdiction, then the Agreement shall be construed as if such unlawful provision had not been contained herein, but the remainder of the Agreement shall remain in full force and effect. If one or more of the provisions of the Agreement are unenforceable there shall be added automatically as a part of the Agreement a provision as similar in terms as necessary to render such provision legal, valid and enforceable.

12.5 No Partnership

- 12.5.1 Nothing in the Agreement shall be deemed or construed to constitute or create a partnership, association, joint venture, employment relationship or agency between the Parties.

12.6 Waiver

- 12.6.1 A waiver of any breach or default under the Agreement shall not be a waiver of any other or subsequent breach or default. Failure or delay by any party to enforce compliance with any term or condition of the Agreement shall not constitute a waiver of such term or condition.

12.7 Force Majeure

- 12.7.1 Neither party will be responsible for any failure to comply with the terms of the Agreement or any loss or damage to the other where such failure, loss or damage is unforeseen and due to causes beyond its reasonable control. These causes include but are not limited to defects or breakdowns of telecommunications networks or lines, server or computer breakdowns (e.g. due to virus or hacker attacks), disruptions of electricity supply, public authority prohibition or enforcement notices, strikes and lockouts, industrial disputes, acts of

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terrorism, wars, civil wars, riots, insurrections, natural disasters, nuclear accidents, epidemics, pandemic diseases, fires, floods, storms, sabotage, explosions, accidents, criminal damage, acts of God and similar events

12.8 Governing law and venue

- 12.8.1 The Agreement is governed by and will be interpreted in accordance with Danish law, excluding its conflicts of law rules.
- 12.8.2 Any dispute arising out of the Agreement, including any dispute concerning the existence or validity hereof, will be decided by mediation by the Danish Institute of Arbitration (Danish Arbitration) unless a party objects thereto. The Danish Institute of Arbitration will apply its own rules of procedure being in force when the application for mediation is submitted.
- 12.8.3 If a party objects to mediation, or if mediation does not result in a settlement, the dispute will be decided with final effect (i) by simplified arbitration by the Danish Institute of Arbitration (for claims of less than EUR 100,000) or (ii) by arbitration by the Danish Institute of Arbitration (for claims of EUR 100,000 or more). The Danish Institute of Arbitration will apply its own rules of procedure being in force when proceedings are commenced. The arbitration tribunal will sit in Copenhagen, and the language of proceedings will be English unless otherwise agreed between the parties.
- 12.8.4 The parties are not entitled to disclose confidential information relating to the mediation or the arbitration proceedings to any third party, including information on any decision or arbitration award, unless the other party has consented in writing to each individual disclosure. However, either party is entitled to disclose information relating to the mediation or the arbitration proceedings to a third party if such disclosure is made to protect its interests in relation to the other party or to comply with current legislation or public authority decisions, or if such disclosure is required under any listing agreements.
- 12.8.5 The arbitration clause above shall not restrict or prevent DHI from seeking any interlocutory remedies, including without limitation injunctive relief, available under the Danish Administration of Justice Act or similar remedies available under foreign legislation.

ANNEX A

Third party software licence conditions

DHI may change the content of this Annex A from time to time by providing an updated version on DHI's website.

Google Maps

The Software may make use of functionality provided by Google LLC in Google Maps (<https://www.google.com/maps/>). Use of parts of the Software incorporating functionality from Google Maps may be subject to terms of use for Google Maps.

Open Street Map

The Software may make use of functionality provided by OpenStreetMap (<https://www.openstreetmap.org/>). Use of parts of the Software incorporating functionality from OpenStreetMap may be subject to terms of use for OpenStreetMap. See also <https://www.openstreetmap.org/copyright>.

RUN-TIME SOFTWARE SUBLICENCE AGREEMENT

For ArcEditor® GIS – an ESRI product

Certain DHI Software products are licensed together with a Run-Time Sublicence for ArcGIS ArcEditor® amended to access a personal Geodatabase.

ArcGIS ArcEditor® is copyrighted by Environmental Systems Research Institute Inc. All Rights Reserved – except to the extent that they are specifically granted to the end-user through this Licence Agreement.

Run-time licence conditions

All restrictions and requirements described in the main MIKE Powered by DHI Software Licence Agreement also apply to this Run-Time Sublicence.

SPECIFICALLY, THE LIMITATIONS ON LIABILITY AND LIMITED WARRANTY CLAUSES (SECTIONS II AND III) ALSO APPLY FOR THE SOFTWARE LICENSED UNDER THIS RUN-TIME SUBLICENCE.

In addition, the following restrictions and requirements apply to the use of ArcGIS:

- A. The use of ArcGIS shall be limited to use of the executable code.
- B. The ArcGIS software shall not be subject to time-sharing, loan, lease, rental, use for commercial network services or interactive cable or remote processing services.
- C. The ArcGIS software shall not be used in an Internet or Intranet environment, except with the express written permission of ESRI and the payment to ESRI of the appropriate fees.
- D. The ArcGIS software shall not be duplicated except for a single archival copy (reasonable sublicensee back-up copies are permitted).
- E. Upon termination of the sublicense, sublicensee shall submit in writing to DHI that it has destroyed or will return to DHI all copies of the ArcGIS software in its possession or control.
- F. The ArcGIS software shall not be exported from the country of original installation.
- G. Sublicensee shall refrain from removing or obscuring any copyright, trademark notice or restrictive legend.
- H. The use of ArcGIS is restricted to editing the Geodatabase generated by the DHI product to which it is licensed.
- I. The ArcGIS cannot be used to access an SDE database unless specifically licensed to do so (multiuser option).

CONDITIONS FOR USE OF GLOBAL CHART DATABASE

C-MAP CM-93/3 Professional - a Jeppesen Marine product

The MIKE Powered by DHI product MIKE C-Map for easy generation of model bathymetries is approved by Jeppesen Norway to comply with their CM-93/3 digital chart technology.

The use of MIKE C-Map requires not only a MIKE Powered by DHI software licence, but also a licence to C-Map chart coverage. Part of this licence fee is used to pay royalties to hydrographic offices worldwide, which supply the source data used as the basis for the digital charts.

The digital charts are protected with a C-Map dongle and licence file. The information on water depths or land contours extracted using MIKE C-Map is encrypted and can only be viewed and further processed using the tools available in the MIKE preprocessing and post-processing tools for generating bathymetries. The MIKE C-Map and associated C-Map chart licence is used to generate bathymetries for use in DHI's MIKE models.

When reporting the project it may be relevant to include illustrations showing the selected C-Map area and the location of extracted information. This is not regarded as a violation of the MIKE Powered by DHI software and C-Map license agreements.

Any attempt to reproduce and further distribute original software and data is regarded as a violation of copyright.

Users of the licensed product MIKE C-Map (including C-Map chart data), who want to use the generated bathymetries in other numerical models than the MIKE models, are allowed to convert the processed gridded bathymetries (.dfs2 or .mesh files only) into the ASCII files for subsequent use as the basis in non-MIKE models.

To protect original manufacturers' products and copyrights, the use of such ASCII files requires that:

- 1) the numerical models be executed on the same PC or workstation, on which the bathymetries have been created, using MIKE C-Map and C-Map chart data.
- 2) bathymetries originating from the licensed products, MIKE C-Map and C-Map, may only be transferred to a third party provided that this third party obtains a licensed copy of both MIKE C-Map and the relevant C-Map chart data.

SCHEDULE 2 – SERVICE MAINTENANCE AGREEMENT

1 INTRODUCTION

- 1.1 This schedule forms part of the Agreement only if the Licensee has ordered a service and maintenance subscription as indicated in section 1 of the main body of the Agreement. This schedule sets out the terms and conditions for service and maintenance delivered by DHI to Licensee. For the avoidance of doubt, the general terms and conditions set out in schedule 1 of the Agreement also apply to the services described in this schedule 2.

2 RIGHT TO REMEDY OF ERRORS

- 2.1 If the Licensee has ordered a service and maintenance subscription as indicated in section 1 of the main body of the Agreement, Licensee has the right to report any defect in the Software to DHI and DHI will remedy such defects in accordance with the terms of this schedule 2.

3 INCIDENT REPORTING

- 3.1 Defects shall be reported to DHI's hotline support through one of the following channels:

Global email support: mike@dhigroup.com

Local hotline support: <https://www.mikepoweredbydhi.com/contact-us>

4 SERVICE DESCRIPTION

- 4.1 The services to be provided by DHI under this schedule 2 include:

- Receiving reports of defects through the DHI's hotline function detailed in section 2 above.
- Problem management by managing incidents in the software that through the incident handling become categorised as defects. The software covered are listed in section 2 of the main body of the Agreement.
- Release management by solving defects through hot fixes.
- Release of hot fixes which will either be made available for download or electronically send to Licensee as deemed necessary by DHI. DHI does not have access to implement hot fixes directly in Licensee's IT environment.
- Service is provided on the components as set out in the as-built documentation within the context of the solution. This implies that DHI will not provide service on the components that are used outside the context of the system provided by DHI e.g. provided 3rd party components used independently.

DHI may at its discretion offer to provide on-site support in addition to the above.

5 RESPONSE TIMES

- 5.1 Incidents will be responded to according to the following classification, and DHI will strive to meet the following response problem solving initiation times:

Incident type	Response time	Start of problem solving
Operational incidents ¹	8 hours within applicable service hours	Within 1 day within applicable service hours
Slight incidents ²	1 day within applicable service hours	Within 5 days within applicable service hours
Other types of queries	2 days within applicable service hours	N/A

¹ Incidents that after initial analysis can be categorised as inhibiting for the Licensee's use of material parts of the system and for which a work-around either a) does not exist or b) will cause major inconvenience.

² Incidents that after initial analysis can be worked around without major inconvenience or only hinder use of immaterial parts of the system.

After initial analysis the applicable classification will be agreed between DHI and Licensee.

6 INCIDENT HANDLING PROCESS

- 6.1 The incident handling process is as follows:

1. Licensee reports an incident via the contact information provided under section 2 above.
2. DHI's hotline service registers the incident, replies to the Licensee with an incident id and forwards the incident to an appropriate incident handler.
3. The incident handler analyses the incident, potentially verifies it and categorises it. This may lead to communication with the Licensee.
4. The incident handler initiates the problem solving. This may lead to communication with the Licensee.
5. Incident resolution is communicated to the Licensee through DHI's hotline service.
6. The hotline service closes the incident.

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**7 SERVICE HOURS**

7.1 Services under this Schedule 2 are provided and take place during the following service hours excluding bank holidays in the local DHI office:

Days		Time	
Monday	to Friday	from 9:00	to 16:00

8 LICENSEE REQUIREMENTS

8.1 DHI may require the collaboration of and information from Licensee in order to solve any technical issues and errors in the Software. Licensee must provide such necessary collaboration and information as reasonably requested by DHI in order for DHI to be able to provide its services under this schedule 2.

9 VERSIONING AND LEGACY SUPPORT

9.1 DHI may in its discretion release updated version of the Software licensed by Licensee under the Agreement. Licensee's license to use the Software includes a right to use such updated versions subject to the terms of the Agreement.

9.2 DHI may in its discretion make its provision of services under this schedule 2 subject to Licensee using the current version of the Software to which the services relate or a version no older than decided by DHI, i.e. if Licensee does not use an updated version as required by DHI, DHI may suspend Licensee's subscription to this Service and Maintenance Agreement and DHI's provision of services hereunder.

SCHEDULE 3 – END USER LICENSE NOTICE

1 LEGAL NOTICE

- 1.1 You are about to install and/or use software developed by DHI A/S ("DHI") and its licensors (the "Software"). Please read this legal notice carefully as it includes important information about how you may and may not use the Software.
- 1.2 You are only allowed to install and/or use the Software if You or a legal entity on behalf of You have obtained a valid license for you to do so. If you or a legal entity on behalf of you have not obtained a valid license to install and/or use the Software, you are not allowed to do so and doing so will be illegal.
- 1.3 Any license to use and any use of the Software is subject to the regulation set out on Schedule 1 and on <https://www.mikepoweredbydhi.com/software-terms-and-conditions>
- 1.4 All rights, title and interest, including without limitation all patent rights, proprietary rights, trade secrets, trademarks, copyrights (whether national and international) in and to the Software and the related documentation, are owned by DHI and/or its licensors, and, as applicable, their structure, organisation and code are the valuable trade secrets of DHI and/or its licensors.
- 1.5 No title to the intellectual property in the Software is transferred to You. Title and full ownership rights to the Software and related documentation will remain the exclusive property of DHI or its licensors, and You will not acquire any rights to the Software or the documentation except as expressly set out in Your license.
- 1.6 You may not dispute or contest, directly or indirectly, DHI's right, title and interest in and to the Software and related documentation. You must ensure that any permitted backup copies of the Software and/or related documentation include all confidential, proprietary, patent, copyright and/or trademark notices contained on the original.
- 1.7 Except as expressly permitted by mandatory applicable law, and in such case only after providing written notice to DHI, or by DHI in writing, You may not in any form or by any means (i) copy, make error corrections to, or otherwise modify, decompile, decrypt, reverse engineer, disassemble, adapt or otherwise reduce all or any portion of the Software to human-readable form; (ii) transfer, assign, store, reproduce, sublicense, publish, rent, lease, lend, time-share, distribute, sell, print, display, perform, or create derivative works from any part of the Software or documentation; or (iii) commercialise any software, information or products obtained from any part of the Software or documentation.
- 1.8 You may not in any way without the explicit written authorization from DHI enable anyone (including You) to act as a service bureau or commercial application service provider (ASP) that allows third-parties access to the Software, any services based on the Software or the documentation. You may not use the Software, other services provided by DHI, or documentation for a site or service allowing access for anyone other than the You and/or other users for which a valid license has been obtained.
- 1.9 The Software may include components developed by a third party or by third parties and included in the Software in accordance with a special agreement between DHI and the relevant third party or third parties.
 - 1.9.1 Specific conditions apply for each third-party component. These conditions are provided in Annex A under Schedule 1.

SCHEDULE 4 – MIKE CLOUD TERMS AND CONDITIONS**1 DEFINITIONS**

- 1.1 **Affiliate** - shall mean a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with by one of the Parties, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For purposes of this definition "control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.
- 1.2 **Agreement** – The Agreement is the sum of these Terms and Conditions and the associated Policies.
- 1.3 **DHI** – In this Agreement, DHI refers to DHI A/S and all of its Affiliates.
- 1.4 **Licensee** – In this Agreement, the Licensee is the physical or legal person entering into the Agreement with DHI.
- 1.5 **Platform** – In this Agreement, Platform refers to the MIKE Cloud Platform infrastructure, as well as the Services and Service Applications that the Licensee subscribes to.
- 1.6 **Policies** – In this Agreement, Policies refers to the Policies set out in Schedule A, plus any additional policies that may be added from time to time by DHI at its discretion. DHI will strive to provide advance notice on the Platform of any new Policies.
- 1.7 **Services and Service Applications** – In this Agreement, Services and Service Applications are the tools, model engines, data processing utilities etc that the Licensee has subscribed to.

2 INTRODUCTION

- 2.1 This Agreement between Licensee and DHI sets out the general terms and conditions for DHI's provision of services to Licensee.
- 2.2 When accepting the Agreement, Licensee accepts to be bound by the terms and conditions expressed herein. Licensee confirms that they are authorized to sign for and enter into binding agreements with DHI.
- 2.3 All orders made and order forms issued by Licensee are governed by the terms of the Agreement.
- 2.4 The Agreement is a licence agreement and not an agreement for sale. The Agreement gives Licensee certain limited rights to use certain software and digital documentation. All rights not specifically granted in the Agreement are reserved by DHI and no license is granted by DHI by implication.

3 CHANGES TO THE AGREEMENT

- 3.1 DHI may revise and update these Terms and Conditions and the Policies from time to time at DHI's sole discretion. DHI will strive to provide advance notice on the Platform of any material changes. It is the Licensee's responsibility to monitor for such changes and the Licensee's continued use of the Platform constitutes full acceptance of the updated Terms and Conditions and/or Policies.

4 PRICING AND PRICE CHANGES

- 4.1 DHI charges fees for access to and use of the Platform, including for use of certain Services. DHI reserves the right to change these fees at any time at DHI's discretion.
- 4.2 Certain services may accrue Consumption charges (e.g. CPU cycles or data storage) that are additional to fees for access to the Platform and the use of certain Services. (See Price Policy)
- 4.3 DHI may offer for sale licenses to certain data in the Platform. (see Price Policy).
- 4.4 If Licensee purchases a license to data in the Platform, Licensee is granted a limited, non-exclusive, non-sublicense-able, non-transferable, royalty-bearing, license to use such data for calculations in the Platform. Licensee's license to such data explicitly does not include a right to resell the data.
- 4.5 By accepting these Terms and Conditions, you agree that DHI may charge your credit card and/or other provided payment account for the applicable fees. (see Pricing Policy)

5 SUPPORT

- 5.1 DHI will provide support to Licensee while the Licensee's subscription is valid as set out in the Support Policy.

6 TERMINATION

- 6.1 Access to the Platform and the use of certain Services requires an active subscription. The Licensee is granted this access only until the end of Licensee's current subscription period unless the subscription is renewed. Each subscription period is automatically renewed for a new corresponding subscription period, unless Licensee terminates the Agreement in accordance with this clause 6 or the Agreement is otherwise terminated.
- 6.2 In the event of Licensee's material breach of the Agreement, DHI shall be entitled to immediately terminate the Agreement. For the avoidance of doubt, Licensee's failure to pay any due sum within fourteen (14) days after written notice being given by DHI to Licensee to the effect that such payment has not been received by DHI, and/or Licensee's breach of Section 8 (Grant of licence and IP) and/or Section 16 (Confidentiality) shall constitute a material breach of the Agreement by Licensee.
- 6.3 The Licensee can terminate their subscription to the Platform at any time by providing DHI with a Notice of Termination (Notice). Once the Notice has been received, the Licensee will continue to have access until the end of their current subscription period. The Notice must be received by DHI at least fourteen (14) days before the next subscription period (Notice Period). If the Notice is received by DHI less than fourteen (14) days before the next subscription period, Licensee's subscription is automatically renewed for one more subscription period, at the end of which it is terminated.
- 6.4 The Licensee is not entitled to any refunds or credits for partial billing periods.
- 6.5 It is the responsibility of the Licensee to download any data the Licensee would like to keep prior to termination. Upon the effective date of termination, DHI will delete the Licensee's account and all associated data.
- 6.6 DHI may terminate this Agreement without notice if the Licensee is or becomes subject to sanctions or penalties imposed by the United Nations, the European Union, or other international organization or any government or similar public authority, or if access and use of the Platform violates applicable laws.

6.7 In the event DHI decides to terminate the Platform or discontinue certain Services on the Platform, DHI will notify the Licensee by email at least 90 days prior to the date that DHI will stop providing the Services.

6.8 Provisions in the Agreement relating to obligations which have accrued or explicitly or by implication have application beyond the term of the Agreement, including but not limited to Section 8 (Grant of licence and IP) and Section 16 (Confidentiality) and any provision required to interpret and enforce the Parties' rights and obligations under the Agreement shall survive any termination or expiration of the Agreement to the extent required for the full observation and performance of the Agreement.

7 USER ACCOUNTS

7.1 Licensee has the right to create the number of user accounts that they have purchased a subscription for. It is the Licensee's responsibility to manage these user accounts. Each user account created by Licensee may be assigned to one named, physical person only. Only the named, physical person to whom a user account is assigned may use that user account to access and use the Platform. The Licensee can add, delete or transfer user accounts as they wish within their available number of users. The addition of users beyond the available number of users is covered by the Price Policy.

7.2 User accounts may, subject to the terms of the Agreement, including without limitation the limitations set out in Sections 7.1 and 8, be assigned by Licensee to:

7.3 Licensee's employees for Licensee's internal use; or

7.4 Third parties assisting Licensee solely for the purpose of assisting Licensee with its internal use of the Platform, or for the purposes of a specific project performed for the Licensee.

7.5 Licensee is responsible for the conduct of any person to whom Licensee grants access to use the Platform and will be liable if users to whom a user account has been assigned in accordance with Section 7.2 do not use the Platform in accordance with the terms of the Agreement.

8 GRANT OF LICENCE AND IP

8.1 Subject to Licensee's compliance with the Agreement, Licensee is granted a limited, non-exclusive, non-sublicense-able, non-transferable, royalty-bearing, license to let its users access and use, at any time, the current and available version of the Platform and the associated Services that have been subscribed to.

8.2 All rights, title and interest, including without limitation all patent rights, proprietary rights, trade secrets, trademarks, copyrights (whether national and international) in and to the Platform and the related documentation, are owned by DHI and/or its licensors, and, as applicable, their structure, organisation and code are the valuable trade secrets and proprietary information of DHI and/or its licensors.

8.3 No title to the intellectual property in the Platform is transferred to Licensee. Title and full ownership rights to the Platform and related documentation will remain the exclusive property of DHI or its licensors, and Licensee will not acquire any rights to the Platform or the documentation except as expressly set out in the Agreement.

8.4 Licensee will not dispute or contest, directly or indirectly, DHI's right, title and interest in and to the Platform and related documentation.

8.5 Except as expressly permitted by mandatory applicable law, and in such case only after providing written notice to DHI, as

expressly authorised by the Agreement or by DHI in writing, Licensee may not in any form or by any means (i) copy, make error corrections to, or otherwise modify, decompile, decrypt, reverse engineer, disassemble, adapt or otherwise reduce all or any portion of the Platform to human-readable form or use the Platform in any way to develop, test, enhance, or calibrate, on behalf of itself or for any other party, any models, system, or services that are similar to any component(s) of the Platform; (ii) transfer, assign, store, reproduce, sublicense, publish, rent, lease, lend, time-share, distribute, sell, print, display, perform, or create derivative works from any part of the Platform or documentation; or (iii) commercialise and/or provide any software, information or products obtained from any part of the Platform or documentation.

8.6 Notwithstanding section 8.5.iii above Licensee shall be permitted to use the Platform to process and make calculations on data provided by Licensee itself and to commercialize output based solely on processing of and calculations on such data.

8.7 Licensee may not in any way without the explicit written authorization from DHI act as a service bureau or commercial application service provider (ASP) that allows third-parties access to the Platform, any services based on the Platform or the documentation. Licensee will not use the Platform, other services provided by DHI, or documentation for a site or service allowing access for anyone other than the Licensee and/or its end users for which a valid license has been obtained.

8.8 Notwithstanding Section 8.6 and 8.7, the Licensee may subscribe to API services and use these to build applications and make these applications available to third parties so long as the Licensee maintains a valid subscription to the Platform and the associated API services. (See Pricing Policy).

8.9 If Licensee provides DHI with any feedback on DHI's products and services, Licensee grants DHI the right to use and let others use it to develop their services and products and to create and own derivative works based on such feedback.

9 DATA AND DATA PROCESSING

9.1 DHI may as part of providing any services under the Agreement process personal data regarding the end users as a data controller which is necessary to provide the services, e.g. login and/or contact information. Licensee will (a) collect required consents from end users if necessary for such processing, and (b) inform its end users of such processing on behalf of DHI if and as required by law.

9.2 DHI may at DHI's sole discretion make information which may include personal data available to Licensee, e.g. information regarding end users' use of the Software. If Licensee accesses such information, Licensee warrants that i) Licensee has the right to receive such data from DHI, ii) DHI has the right to provide such data to Licensee, and iii) Licensee will process such information in accordance with applicable law.

9.3 Upon written request from DHI, Licensee must provide reasonable assistance to DHI relating to DHI's obligations under applicable law arising out of or relating to this section 9.

9.4 Licensee will indemnify DHI for any losses suffered by DHI due to Licensee's non-compliance with this section 9.

9.5 For the avoidance of doubt, Licensee is not entitled to any remuneration for fulfilling its obligations under this section 9.

9.6 Any data including personal data entered into the Platform by the Licensee is the Licensee's property. The Licensee grants DHI and its sub suppliers the right to collect data related to the usage of the Platform and related Services for optimization purposes

- and for the purpose of preparing usage statistics and metrics subject to applicable law.
- 9.7 DHI will not access user data stored in the platform directly, unless specifically authorized by the Licensee, for example to facilitate technical support.
- 10 CHANGES TO THE PLATFORM AND MAINTENANCE**
- 10.1 DHI may make changes to the Platform without notice. Changes may include, without limitation, bug corrections, improvement, introduction of or disablement of specific features. DHI will strive to not introduce changes which entail a net deterioration of Licensee's user experience (e.g. by offering an alternative if a widely used function is disabled).
- 10.2 DHI discretionarily decides the frequency and scope of changes to the Platform (if any).
- 10.3 In connection with changes and/or maintenance, DHI may have to, and is entitled to, disable access to the Platform. DHI will strive to provide advance notice of any major changes and/or of any disablement of access.
- 11 SUB-SUPPLIERS AND THIRD-PARTY LICENCE CONDITIONS**
- 11.1 DHI may from time to time make use of such sub-suppliers which DHI deems adequate for providing DHI's services.
- 11.2 The Platform may include components developed by a third party or by third parties and included in the Platform in accordance with a special agreement between DHI and the relevant third party or third parties. Specific license conditions may apply for each third-party component. See Third-party License Policy.
- 11.3 Third-party providers may have the right to require that DHI restrict, suspend or terminate Licensee's access to that third-party provider's information, materials, or services. If DHI takes any such action, it will (a) use reasonable efforts to provide Licensee with prior notice and (b) not be liable for any resulting damages Licensee may suffer.
- 12 MICROSOFT CLOUD SERVICES**
- 12.1 DHI relies on the Azure™ Cloud Platform provided by Microsoft™. Access to, and the use of, the Azure Platform is governed by Microsoft's Terms and Conditions. By accepting the Agreement, the Licensee agrees to be bound by Microsoft's Terms and Conditions.
- 12.2 The Licensee acknowledges that DHI provides no warranty for, or additional obligations with respect to, the Azure Platform beyond those provided to DHI by Microsoft.
- 12.3 Microsoft's Terms and Conditions are available at:
<http://www.microsoftvolumeicensing.com/>

(Microsoft Azure service)
- 13 DISCLAIMER**
- 13.1 THE PLATFORM IS PROVIDED "AS IS". DHI MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY AS TO THE PLATFORM, THE DOCUMENTATION OR ANY OTHER SERVICES PROVIDED BY DHI (INCLUDING ANY SUPPORT SERVICES) IN RELATION TO MERCHANTABILITY, FITNESS FOR ANY INTENDED USE OR PARTICULAR PURPOSE. FOR THE AVOIDANCE OF DOUBT, DHI DOES NOT REPRESENT, THAT (A) OPERATION OF THE PLATFORM SHALL BE UNINTERRUPTED OR ERROR FREE, (B) THAT THE FUNCTIONALITIES OF THE PLATFORM SHALL OPERATE IN SPECIFIC COMBINATIONS OR MEET LICENSEE'S REQUIREMENTS.
- 13.2 TO THE EXTENT PERMITTED BY LAW, ANY CONDITION, WARRANTY OR REPRESENTATION WHICH WOULD OTHERWISE BE IMPLIED INTO THE AGREEMENT INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR USE IS HEREBY EXCLUDED.
- 13.3 LICENSEE ACCEPTS THAT ANY INFORMATION PROVIDED BY DHI IS GENERAL INFORMATION ONLY AND IS NOT TO BE DEEMED AS ADVICE. DHI DOES NOT WARRANT THE ACCURACY, ADEQUACY, OR COMPLETENESS OF ANY INFORMATION PROVIDED BY DHI. ACCORDINGLY, DHI DOES NOT ACCEPT RESPONSIBILITY OR LIABILITY FOR ANY LOSS SUFFERED AS A RESULT OF LICENSEE'S USE OF OR RELIANCE ON THE INFORMATION PROVIDED BY DHI, WHETHER PROVIDED BY, CONTAINED IN, OR ACCESSED THROUGH THE PLATFORM, AS IT REMAINS LICENSEE'S RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ANY SUCH INFORMATION.
- 13.4 NO PERSON, DEALER, OR COMPANY MAY EXPAND OR ALTER THIS DISCLAIMER.
- 13.5 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. IN SUCH CASE TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED TO NINETY (90) DAYS OR THE SHORTEST PERIOD ALLOWED (WHICHEVER IS SHORTER).
- 13.6 THE PLATFORM SHALL TO THE BEST OF DHI'S KNOWLEDGE NOT CONTAIN ANY CODES, COMMANDS OR INSTRUCTIONS, INCLUDING VIRUSES, TIME BOMBS, WORMS, AND TROJAN HORSES, THAT MAY DAMAGE THE PLATFORM, OTHER INSTALLED PLATFORM PRODUCTS, LICENSEE'S PERSONAL INFORMATION, DATA OR OTHER PROPERTY.
- 13.7 IN THE EVENT OF ANY BREACH BY DHI, THE ENTIRE LIABILITY OF DHI AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY SHALL BE TERMINATION OF THE AGREEMENT AND THE LICENCE IN WHICH CASE LICENSEE SHALL BE ENTITLED TO A RETURN OF ANY FEES PAID BY THE LICENSEE FOR THE PLATFORM OR SERVICE THAT DOES NOT MEET THE REQUIREMENTS OF THE AGREEMENT DURING THE PRECEDING 12 MONTHS' PERIOD. THIS SECTION IS VOID IF FAILURE OF THE PLATFORM OR SERVICE HAS RESULTED FROM ABUSE, MISUSE OR MISAPPLICATION OF THE PLATFORM OR FROM AN ACCIDENT THAT IS BEYOND THE CONTROL OF DHI, AS DHI MAY DETERMINE IN ITS SOLE DISCRETION.
- 14 LIMITATION ON LIABILITY**
- 14.1 IN NO EVENT SHALL DHI OR ITS REPRESENTATIVES (INCLUDING DHI'S OFFICERS, AFFILIATES, DIRECTORS, EMPLOYEES AGENTS AND SUPPLIERS) BE LIABLE FOR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF BUSINESS PROFITS OR SAVINGS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS ARISING IN CONNECTION WITH THE AGREEMENT, E.G.

	OUT OF LICENSEE'S USE OF OR THE INABILITY TO USE THE PLATFORM, OR ANY PROPORTIONATE REDUCTIONS OR ANY OTHER COMPENSATORY PRINCIPLES UNDER APPLICABLE LAW EVEN IF DHI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.		accomplish Licensee's obligations under the Agreement, or as otherwise contemplated herein.
14.2	THIS LIMITATION SHALL APPLY TO CLAIMS OF PERSONAL INJURY TO THE EXTENT PERMITTED BY LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL DAMAGES AND, ACCORDINGLY, SOME PORTIONS OF THESE LIMITATIONS MAY NOT APPLY.	16.3	If and to the extent the disclosure of Confidential Information is required (i) by a competent court or public authority; or (ii) under mandatory statutory provisions applicable to Licensee, this section 16 will not apply to such disclosure, provided that Licensee must give notice to the Licensor before such disclosure to the extent that such notice is lawful and possible. The parties must agree on the date of disclosure and the extent of the confidential information to be disclosed to the extent that such agreement is lawful and possible.
14.3	NOTWITHSTANDING THE ABOVE, DHI'S TOTAL LIABILITY (WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, OR OTHERWISE) UNDER OR IN CONNECTION WITH THE AGREEMENT SHALL IN AGGREGATE DURING THE TERM NOT EXCEED THE LESSER OF EUR 10.000 OR THE FEES PAID BY LICENSEE UNDER THE AGREEMENT DURING THE 12 MONTHS' PERIOD PREVIOUS TO THE EVENT GIVING RISE TO A CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E. THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).	17	MISCELLANEOUS
14.4	LICENSEE ACKNOWLEDGE THAT THE LIABILITY LIMITATIONS AND EXCLUSIONS SET OUT IN THE AGREEMENT REFLECT THE ALLOCATION OF RISK NEGOTIATED AND AGREED BY THE PARTIES AND THAT DHI WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THESE LIMITATIONS AND EXCLUSIONS ON ITS LIABILITY. THESE LIMITATIONS AND EXCLUSIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.	17.1	Taxes
		17.1.1	All sums payable under the Agreement are exclusive of VAT and any and all indirect or direct taxes and other duties, including but not limited to any relevant or required state or local sales taxes and any all withholding taxes on international purchases. If Licensee is obliged to withhold or deduct any portion of any fees, then DHI will be entitled to receive from Licensee such amounts as will ensure that the net receipt, after tax and duties, to DHI in respect of the fees is the same as it would have been were the payment not subject to the tax or duties.
		17.2	Complete agreement
		17.2.1	The Agreement embraces the full and complete understanding of the parties as to the subject matter hereof.
		17.3	Export Compliance:
		17.3.1	Licensee acknowledges that the Platform is subject to all applicable export control laws and regulations, including, without limitation, those of the United States of America and the European Union and its member states. Licensee shall strictly comply with all applicable export control laws and all licenses and authorizations issued under such laws and regulations.
15	INDEMNITY	17.4	Licensee agrees that it shall not, and shall cause its representatives and employees, agents, contractors and customers to agree not to, export, re-export, release, transfer, or disclose the Platform to any prohibited or restricted destination, except in accordance with all relevant export control laws and regulations.
15.1	Licensee will indemnify, defend and hold harmless DHI and its licensors against any loss, including without limitation payment of any fees for use outside the scope or term of the license granted hereunder, as well as any claims, damages, obligations, liabilities, expenses and costs (including attorneys' fees and costs) arising out of or related to Licensee's use (including use of the output of the use) of the Platform and related documentation in violation of the license granted and/or the terms set out in the Agreement.	17.5	Assignment
		17.5.1	Neither Party may assign or transfer (by operation of law or otherwise) any right or obligation under the Agreement without the other Party's prior written consent, which may not be unreasonably withheld or delayed. Any assignment in violation of this section shall be null and void. However, DHI may, without Licensee's consent, assign the Agreement or any rights granted in the Agreement, in whole or part, either (a) to an affiliate; (b) in connection with DHI's or an affiliate's sale of a division, product or service; or (c) in connection with a reorganization, merger, acquisition or divestiture of DHI or any similar business transaction.
16	CONFIDENTIALITY	17.6	Whole or partial
16.1	Subject only to the exceptions in this Section 16, all information relating to mediation, arbitration or court proceedings between the parties related to the Agreement, all information disclosed by DHI and/or its representatives to Licensee and/or its representatives, including economic, technical, scientific, operational, administrative, financial and commercial information as well as any other information, data related to DHI and/or its affiliates and its and their activities and data which Licensee knows or ought to know is confidential irrespective of whether such information is disclosed orally, visually, in writing or by electronic transfer, and irrespective of the media used, is confidential.	17.6.1	If one or more of the provisions of the Agreement are finally adjudicated to be partially or entirely unenforceable by a court of competent jurisdiction, then the Agreement shall be construed as if such unlawful provision had not been contained herein, but the remainder of the Agreement shall remain in full force and effect. If one or more of the provisions of the Agreement are unenforceable there shall be added automatically as a part of the Agreement a provision as similar in terms as necessary to render such provision legal, valid and enforceable.
16.2	Licensee will use confidential information only to the extent required to accomplish its obligations under the Agreement or as otherwise contemplated herein. Licensee will treat and store confidential information with the utmost care. Confidential information must not be disclosed or made available to any third party, except to the representatives of Licensee who, in each individual case need knowledge of the confidential information to	17.7	No Partnership

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- 17.7.1 Nothing in the Agreement shall be deemed or construed to constitute or create a partnership, association, joint venture, employment relationship or agency between the Parties.
- 17.8 Waiver
- 17.8.1 A waiver of any breach or default under the Agreement shall not be a waiver of any other or subsequent breach or default. Failure or delay by any party to enforce compliance with any term or condition of the Agreement shall not constitute a waiver of such term or condition.
- 17.9 Force Majeure
- 17.9.1 Neither party will be responsible for any failure to comply with the terms of the Agreement or any loss or damage to the other where such failure, loss or damage is unforeseen and due to causes beyond its reasonable control. These causes include but are not limited to defects or breakdowns of telecommunications networks or lines, server or computer breakdowns (e.g. due to virus or hacker attacks), disruptions of electricity supply, public authority prohibition or enforcement notices, strikes and lockouts, industrial disputes, acts of terrorism, wars, civil wars, riots, insurrections, natural disasters, nuclear accidents, epidemics, pandemic diseases, fires, floods, storms, sabotage, explosions, accidents, criminal damage, acts of God and similar events
- 17.10 Governing law and venue
- 17.10.1 The Agreement is governed by and will be interpreted in accordance with Danish law, excluding its conflicts of law rules.
- 17.10.2 Any dispute arising out of the Agreement, including any dispute concerning the existence or validity hereof, will be decided by mediation by the Danish Institute of Arbitration (Danish Arbitration) unless a party objects thereto. The Danish Institute of Arbitration will apply its own rules of procedure being in force when the application for mediation is submitted.
- 17.10.3 If a party objects to mediation, or if mediation does not result in a settlement, the dispute will be decided with final effect (i) by simplified arbitration by the Danish Institute of Arbitration (for claims of less than EUR 100,000) or (ii) by arbitration by the Danish Institute of Arbitration (for claims of EUR 100,000 or more). The Danish Institute of Arbitration will apply its own rules of procedure being in force when proceedings are commenced. The arbitration tribunal will sit in Copenhagen, and the language of proceedings will be English unless otherwise agreed between the parties.
- 17.10.4 The parties are not entitled to disclose confidential information relating to the mediation or the arbitration proceedings to any third party, including information on any decision or arbitration award, unless the other party has consented in writing to each individual disclosure. However, either party is entitled to disclose information relating to the mediation or the arbitration proceedings to a third party if such disclosure is made to protect its interests in relation to the other party or to comply with current legislation or public authority decisions, or if such disclosure is required under any listing agreements.
- 17.10.5 The arbitration clause above shall not restrict or prevent DHI from seeking any interlocutory remedies, including without limitation injunctive relief, available under the Danish Administration of Justice Act or similar remedies available under foreign legislation.

SCHEDULE A – POLICIES

MIKE Cloud Price policy

<https://www.mike-cloud.com/price-policy>

MIKE Cloud Support policy

<https://www.mike-cloud.com/support-policy>

MIKE Cloud privacy policy

(<https://www.dhigroup.com/privacy>)

MIKE Cloud Third-party license policy

DHI may change the content of this Policy from time to time by providing an updated version on DHI's website.

Google Maps - The Platform may use functionality provided by Google LLC in Google Maps (<https://www.google.com/maps/>). Use of parts of the Platform incorporating functionality from Google Maps may be subject to terms of use for Google Maps.

Open Street Map - The Platform may use functionality provided by OpenStreetMap (<https://www.openstreetmap.org/>). Use of parts of the Platform incorporating functionality from OpenStreetMap may be subject to terms of use for OpenStreetMap. See also <https://www.openstreetmap.org/copy-right>.