

ANNEX A

[Option 2 – to be used when the Contractor is not the owner of the software, but has a right to grant a license to the software]

LICENSE AGREEMENT

1. PREAMBLE

- 1.1. This License Agreement is part of the Contract entered between the Commission and the Contractor (hereinafter collectively referred to as the “Parties”).
- 1.2. The Contractor certifies that it has a right to grant a license (hereinafter referred to as the “License”) to the software (hereinafter referred to as the “Software”) and relevant documentation (hereinafter referred to as the “Documentation”) under this License Agreement, while the manufacturer of the Software retains all intellectual property rights to the Software and Documentation.
- 1.3. The Contractor is willing to grant and the Commission desires to acquire a non-exclusive, non-transferable and irrevocable License as provided below.
- 1.4. The Parties hereto have agreed as follows.

2. DEFINITIONS

As used herein, the following terms shall have the following definitions:

- 2.1. “License Agreement” means the present document.
- 2.2. “License” means the license to the Software and Documentation granted under this License Agreement.
- 2.3. “Documentation” means the manufacturer’s copyrighted materials that document functions of the Software.
- 2.4. “Effective Date” means the date of the last signature by the representatives of the Parties of the Contract, on which the Contract shall enter into force.
- 2.5. “Eligible Users” means the Commission’s employees and/or direct contractors.

- 2.6. “Software” means the software listed in the Contract.

Capitalized terms shall have the same meaning as defined in the Contract and the General Conditions of Contract, unless expressly otherwise defined herein.

3. GRANT OF RIGHTS AND LICENSES

- 3.1. The Contractor hereby grants the Commission a non-exclusive, non-transferable, irrevocable License to use the Software and Documentation, under the terms and conditions set forth herein.
- 3.2. The Commission is authorized to use the Software and Documentation only for activities related to the fulfilment of mandate and purposes of the CTBT including the performance of services of the Commission’s own commercial and/or government customers. The Commission is not authorized to sublicense, distribute, sell, or grant access to the Software, or integrate it into products or computer software programs of third parties unless required for the performance of activities related to its mandate.
- 3.3. Access to, and use of, the Software is restricted to Eligible Users.
- 3.4. The Commission agrees to protect the Software and the Documentation from use by, or disclosure or distribution to, persons who are not Eligible Users.
- 3.5. The Commission is authorized to make copies of the Documentation provided by the Contractor only for internal distribution. Copies of the Software may be made by the Commission only for back-up and archival purposes.

3.6. The Commission agrees not to remove or destroy any proprietary markings, restrictive legends, or intellectual property notices on or in the Software and Documentation.

3.7. All title, ownership rights and intellectual property rights in and to the Software and the Documentation shall remain with the manufacturer. The Commission acquires no title, right or interest in the Software or the Documentation, other than the License(s) specifically granted herein by the Contractor and the title to the media upon which the Software is delivered.

4. SUPPLY OF SOFTWARE AND DOCUMENTATION

4.1. The Contractor shall supply to the Commission a properly functioning and fully tested Software system, as well as its new versions, releases and/or upgrades.

4.2. The Contractor shall provide the Commission with the Documentation, as well as catalogues and other descriptive literature with respect to the Software and its new versions, releases and/or upgrades.

5. WARRANTY

5.1. The Contractor warrants that the licensing and use of the Software by the Commission in accordance with the terms of this License Agreement shall not infringe any copyright, patent or registered design rights of any third party.

6. INDEMNITY

6.1. If any claims of copyright infringement are asserted against the Commission by virtue of the infringement by the Contractor of a third party intellectual property rights through the grant of this Software License, the Contractor agrees, upon written notification of such claim by the Commission, to indemnify, hold and save harmless the Commission from and against all such suits, claims, demands and liability, including costs and expenses incurred by the Commission. The Commission shall give the Contractor due notice in writing of any such claim and, without prejudice to the Commission's privileges and immunities under international law, the Commission shall give the Contractor the opportunity to defend the Commission against any such claim at its discretion.

6.2. If, as a result of any claim, suit or proceeding so defended, any of the Software is held to constitute an infringement or its use by the Commission is enjoined, the Contractor shall, at its option and expense, either (i) procure for the Commission the right to continue using said Software; (ii) replace it with substantially equivalent non-infringing Software; or (iii) modify it so that it becomes non-infringing.

6.3. If the violation of Software rights is the result of the use of the Software in combination with other products not delivered by the Contractor, then the Contractor shall not be held liable.

7. INSOLVENCY AND BANKRUPTCY

7.1. Should the Contractor become insolvent or be adjudged bankrupt, the Commission, after having paid the Contract Price, will retain the License to use the Software, whether or not the Commission elects to terminate the Contract under Clause 21 of the General Conditions of Contract.