

# AEROSPACE TECHNOLOGY INSTITUTE

## FOREGROUND IPR END-USER LICENCE AGREEMENT

### PROJECT FLYZERO

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## FOREGROUND IPR END-USER LICENCE TERMS

### INTRODUCTION

This licence agreement (the “**Licence**”) is a legal agreement between you (“**Licensee**”) and the Aerospace Technology Institute, a company limited by guarantee with company number 08707779 whose registered office is located at Martell House, University Way, Cranfield, Bedford, England, MK43 0TR (“**ATI**”). This Licence applies to any use by a Licensee of any Licensed Data (as defined below).

Subject to and in accordance with the terms and conditions of this Licence, ATI agrees to grant to each Licensee a licence to use the Licensed Data for the Permitted Purpose, and through the Licensee’s use of that Licensed Data the Licensee agrees to the terms and conditions of this Licence. ATI does not sell or transfer ownership of the Licensed Data to any Licensee and ATI shall remain the owners of the Licensed Data at all times.

### INTERPRETATION

#### 1 DEFINITIONS AND INTERPRETATION

##### 1.1 In this Licence:

“**Business Day**” means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London;

“**Commencement Date**” means the date of this Licence;

“**Confidential Information**” has the meaning as provided at clause 5;

“**Derivative Works**” means any modifications, corrections, alterations, adaptations or improvements to the Licensed Data made by or on behalf of the Licensee, or data created by the Licensee that is derived from the Licensed Data or which comprises such Licensed Data;

**“Intellectual Property Rights”** means copyright, rights related to copyright such as moral rights and performers rights, patents, rights in inventions, rights to use and protect the confidentiality of confidential information (including, but not limited to know-how and trade secrets), trade marks, geographical indications, service marks, trade names, design rights, rights in get-up and trade dress, database rights, databases, data exclusivity rights, approvals, utility models, domain names, business names, rights in computer software, mask works, topography rights, the right to sue for infringement, unfair competition and passing off, all similar rights of whatever nature wherever in the world arising, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future; and
- (e) wherever existing;

**“Licensed Data”** means the information, data and content being licensed by ATI under this Licence, as further detailed at clause 2.3;

**“Permitted Purpose”** means any use of the Licensed Data subject to and in accordance with the terms of this Licence;

**“VAT”** means United Kingdom value added tax; and

**“Year”** means each successive period of 12 months beginning on the Commencement Date.

1.2 In this Licence:

- 1.2.1 a reference to a **“person”** includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
- 1.2.2 words in the singular include the plural and vice versa; and
- 1.2.3 a reference to any legislation or legislative provision is a reference to it as amended, extended, re-enacted or consolidated from time to time.

## **2 GRANT OF LICENCE**

2.1 Subject to the terms and conditions of this Licence, ATI grants to the Licensee a royalty-free, perpetual, non-transferrable, worldwide, non-sublicensable, non-exclusive licence for the duration of this Licence to use the Licensed Data (including any Intellectual Property Rights in the Licensed Data) for the Permitted Purpose.

2.2 The Licensee is required to acknowledge ATI as the source of the Licensed Data wherever the Licensed Data is used. This obligation together with:

2.2.1 the Licensee's use of the Licensed Data, and

2.2.2 the Licensee's related and other obligations under this Licence,

shall be deemed the Licensee's consideration as regards the legally binding nature of this Licence.

2.3 The Licensed Data shall be made available to the Licensee from ATI's website ([www.ati.org.uk/flyzero-reports](http://www.ati.org.uk/flyzero-reports)). ATI reserves the right to, without prior notice to the Licensee, add to and/or remove any constituent content of any Licensed Data made available via the link provided in this clause 2.3.

2.4 Except as expressly set out in this Licence or otherwise expressly agreed in writing by the parties, no Intellectual Property Rights of ATI in the Licensed Data are assigned or otherwise transferred to the Licensee under this Licence.

### **3 INTELLECTUAL PROPERTY RIGHTS**

3.1 The Licensee acknowledges that all Intellectual Property Rights in the Licensed Data are the property of ATI or of ATI's licensors, respectively, and that the Licensee shall have no rights in or to the Licensed Data other than the right to use the Licensed Data for the Permitted Purpose in accordance with the terms of this Licence.

3.2 The Licensee acknowledges that ATI provides no warranties in relation to the Intellectual Property Rights in the Licensed Data. ATI excludes any and all liability to the Licensee (to the extent permissible by law) that may arise in relation to the Intellectual Property Rights in the Licensed Data.

3.3 ATI agrees that it shall not own Intellectual Property Rights in any Derivative Works created by the Licensee. Ownership in such Derivative Works shall commence from the date that such Derivative Works and/or corresponding Intellectual Property Rights are created. The Licensee however agrees that when requested by the ATI, it shall in good faith acknowledge and/or credit the ATI for its role in the Intellectual Property Rights relating any Derivative Works.

3.4 The Licensee may combine the Licensed Data with the Licensee's own data provided always that:

3.4.1 the Licensee shall ensure that the Licensed Data remains identifiable as the data of ATI and is only used for the Permitted Purpose; and

3.4.2 the Licensee does not present any modified Licensed Data as ATI's own data.

3.5 If the Licensee makes any modifications to the Licensed Data, the Licensee shall (upon request from ATI) notify ATI.

3.6 The Licensee shall indemnify and keep indemnified and hold ATI harmless from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred by ATI as a result of or in connection with the use by the Licensee of the Intellectual Property Rights in the Licensed Data.

## **4 LICENSED DATA**

4.1 ATI does not warrant that:

4.1.1 the Licensed Data is accurate, error-free, complete, reliable or fit for the Permitted Purpose; or

4.1.2 the supply of the Licensed Data to the Licensee will be free from interruption.

4.2 The Licensee warrants and represents that it shall use the Licensed Data only as expressly set out in this Licence.

4.3 The Licensee shall use all reasonable endeavours to keep the Licensed Data secure and shall employ the best available security measures to protect the Licensed Data.

4.4 The Licensee shall (at the Licensee's expense) promptly inform ATI of any utilisation, unauthorised or accidental access or disclosure, loss of, damage to or destruction of the Licensed Data or any breach of clause 4.3 and shall provide to ATI all such information, assistance and co-operation in relation to the same as is required by ATI.

4.5 The Licensed Data shall be and remain the property of ATI and the Licensee shall not delete or remove any proprietary notices or other notices contained within or relating to the Licensed Data.

4.6 The Licensee may make copies of the Licensed Data for back up and disaster recovery purposes, but may not otherwise copy, store or use the Licensed Data for any purpose other than as strictly necessary for the Permitted Purpose.

4.7 The Licensee shall not do anything unlawful with the Licensed Data or anything which may materially damage the reputation of ATI.

4.8 The Licensee shall keep an accurate and up to date record of the Licensed Data that it receives and the location of any and all Licensed Data, including any copies, in its possession or control.

4.9 At any time on notice, ATI shall have the absolute right to require that the Licensee deletes any and all Licensed Data in its possession or control and/or to suspend or withdraw delivery of or access to the Licensed Data.

## **5 CONFIDENTIAL INFORMATION**

5.1 Confidential Information shall mean all information of a confidential nature (in whatever form) disclosed, whether directly or indirectly, by a party (the "**Discloser**") or by the Discloser's employees, officers, advisors, agents or other representatives to the other party (the "**Recipient**") or to the Recipient's employees, officers, advisors, agents or other representatives including:

5.1.1 any know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind;

5.1.2 all information agreed to be, or marked as, confidential;

- 5.1.3 Licensed Data; and
  - 5.1.4 any information the Recipient knows, or could reasonably be expected to know, is confidential.
- 5.2 Confidential Information shall not include any information which:
- 5.2.1 is, or was already known or available to the Recipient, otherwise than pursuant to or through breach of any confidentiality obligation owed to the Discloser;
  - 5.2.2 is, or becomes, in the public domain other than through any breach of this Licence or fault of the Recipient (save that any publicly available information shall be classified as Confidential Information where it is compiled in a form that is not in the public domain);
  - 5.2.3 is disclosed to the Recipient without any obligation of confidence to the Discloser by a third party who is not itself under or in breach of any obligation of confidentiality;
  - 5.2.4 is developed by or on behalf of the Recipient in circumstances where the developing party has not had direct or indirect access to the information disclosed, provided that the Recipient provides satisfactory evidence of the same to the Discloser; or
  - 5.2.5 the Discloser agrees in writing does not constitute Confidential Information.
- 5.3 The Recipient shall maintain the confidentiality of the Discloser's Confidential Information and shall not, without the prior written consent of the Discloser, use, copy modify or disclose the Discloser's Confidential Information (or permit other's to do so) other than as necessary for the exercise of its rights and performance of its obligations under this Licence.
- 5.4 The Recipient may disclose the Discloser's Confidential Information to those of its employees, officers, advisers, agents or other representatives who need to know the Discloser's Confidential Information in order to perform the Recipient's rights and obligations under this Licence, provided that the Recipient shall ensure that each of its employees, officers, advisers, agents or other representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 5 as if it were a party to this Licence.
- 5.5 Each party may disclose the other party's Confidential Information to the extent required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction, provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 5.6 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 5.7 The Licensee shall indemnify and keep indemnified and hold harmless ATI from and against any losses, damages, liability, costs (including legal fees) and expenses which ATI may incur or suffer as a result of or arising from any breach by the Licensee of its obligations under this clause 5.

5.8 The obligations under this clause shall survive the expiry or termination of this Licence for a period of at least 2 years following the grant of the Licence and for as long as the information retains its value and secrecy.

## **6 RECORD KEEPING AND AUDIT**

6.1 The Licensee shall keep detailed, up-to-date and accurate records relating to the Licensee's compliance with, or performance of its obligations under, this Licence and such other information as ATI may require for at least 6 years after the termination of this Licence (the "Records").

6.2 The Licensee shall make available to ATI promptly on request (and, in any event, within 3 Business Days):

6.2.1 copies of the Records; and

6.2.2 such other information as ATI may require to evidence the Licensee's compliance with its obligations under this Licence.

6.3 The Licensee shall allow ATI on notice (at the Licensee's expense) to:

6.3.1 access the Licensee's premises (whether physically or remotely) and to take copies of the Records and other information held by the Licensee; and

6.3.2 inspect all Records regarding the Licensee's use of the Licensed Data,

for the purposes of auditing the Licensee's compliance with, or performance of its obligations under, this Licence.

## **7 LIMITATION OF LIABILITY**

7.1 The extent of the parties' liability under or in connection with this Licence (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 7.

7.2 Subject to clause 7.6, the liability of ATI shall not exceed £10,000 in total in respect of all claims.

7.3 Subject to clause 7.6, ATI shall not be liable for any consequential, indirect or special loss.

7.4 Subject to clause 7.6, ATI shall not be liable for any of the following (whether direct or indirect):

7.4.1 loss of profit;

7.4.2 loss of revenue;

7.4.3 loss of use of data;

7.4.4 loss of use;

7.4.5 loss of production;

- 7.4.6 loss of contract;
  - 7.4.7 loss of commercial opportunity;
  - 7.4.8 loss of savings, discount or rebate (whether actual or anticipated);
  - 7.4.9 harm to reputation or loss of goodwill; and/or
  - 7.4.10 loss of business;
- 7.5 Except as expressly stated in this Licence and subject to clause 7.6, all warranties and conditions whether express or implied by legislation, common law or otherwise are excluded to the extent permitted by law.
- 7.6 Notwithstanding any other provision of this Licence, the liability of the parties shall not be limited in any way in respect of the following:
- 7.6.1 death or personal injury caused by negligence;
  - 7.6.2 fraud or fraudulent misrepresentation;
  - 7.6.3 any other losses which cannot be excluded or limited by applicable law.

## **8 TERM AND TERMINATION**

- 8.1 This Licence shall commence on the Commencement Date and, subject to earlier termination in accordance with its terms, shall continue in full force and effect unless and until terminated by notice in accordance with this clause 8.
- 8.2 Either party may terminate this Licence at any time by giving notice in writing to the other party if:
- 8.2.1 the other party commits a material breach of this Licence and such breach is not remediable; or
  - 8.2.2 the other party commits a material breach of this Licence which is not remedied within 14 days of receiving written notice of such breach.
- 8.3 ATI may terminate this Licence at any time by giving notice to the Licensee if the Licensee:
- 8.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 8.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
  - 8.3.3 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
  - 8.3.4 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

- 8.3.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - 8.3.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 8.3.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 8.3.8 has a resolution passed for its winding up and/or has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 8.3.9 is subject to any events or circumstances analogous to those in clauses 8.3.1 to 8.3.8 in any jurisdiction; or
  - 8.3.10 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 8.3.1 to 8.3.8 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 8.4 Termination or expiry of this Licence will not affect any accrued rights and liabilities of either party at any time up to the date of termination.
- 8.5 In the event of termination or expiry of this Licence for any reason, the Licensee shall immediately:
- 8.5.1 securely destroy all data, information and other materials (including Confidential Information, Licensed Data) provided to it by ATI under this Licence (unless prevented by law from doing so) (except to the extent ATI has notified the Licensee it requires the secure return of any such data, information or other materials following termination or expiry in which case the Licensee shall immediately securely return such in accordance with ATI's instructions);
  - 8.5.2 cease any and all use or distribution of the Licensed Data;
  - 8.5.3 provide written confirmation to ATI of its compliance with clauses 8.5.1 and 8.5.2 within 10 Business Days of expiry or termination of this Licence;
  - 8.5.4 pay any outstanding fees to ATI under this Licence; and
  - 8.5.5 otherwise perform its obligations with respect to exit management as set out in this Licence.
- 8.6 The Licensee shall grant ATI access to the Licensee's premises (on reasonable notice being given by ATI to the Licensee) for the purposes of verifying that the Licensee has complied with clause 8.5.



8.7 If the Licensee is prevented by a law of the United Kingdom (or of any part of the United Kingdom) from destroying or returning to the other party all or part of the data, information and other materials (including Confidential Information, Licensed Data) that it would otherwise be required to destroy or return under clause 8.5, it shall inform ATI and identify the data, information and other materials (including Confidential Information, Licensed Data) that it is required to retain by law. The Licensee shall keep the data, information and other materials (including Confidential Information and Licensed Data) secure and confidential in accordance with the requirements of clauses 4 to 5.

8.8 Provisions which by their terms or intent are to survive termination of this Licence will do so.

## **9 DISPUTE RESOLUTION**

9.1 If any dispute arises between the parties out of or in connection with this Licence, the matter shall be referred to senior representatives of each party who shall use their reasonable endeavours to resolve it.

9.2 If the dispute is not resolved within 30 days of the referral being made under clause 9.1, the parties may resolve the matter through mediation.

9.3 Neither party is permitted to issue formal legal proceedings against the other until the steps referred to in clauses 9.1 and 9.2 have been completed and the parties have failed to resolve the dispute, except that either party may at any time seek urgent interim relief where it has strong cause to do so.

## **10 ANNOUNCEMENTS**

10.1 Subject to clause 10.2, no announcement or other public disclosure concerning this Licence or any of the matters contained in it shall be made by, or on behalf of, a party without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) during the term of this Licence. The parties shall consult on the form and content of any such announcement or other public disclosure, as well as the manner of its release.

10.2 If a party is required to make an announcement or other public disclosure concerning this Licence or any of the matters contained in it during the term of this Licence by law, any court, any governmental, supervisory or regulatory authority (including any recognised investment exchange) or any other authority of competent jurisdiction, it may do so. Such a party shall:

10.2.1 notify the other party as soon as is reasonably practicable upon becoming aware of such requirement to the extent it is permitted to do so by law, by the court or by the authority requiring the relevant announcement or public disclosure;

10.2.2 make the relevant announcement or public disclosure after consultation with the other party so far as is reasonably practicable; and

10.2.3 make the relevant announcement or public disclosure after taking into account all reasonable requirements of the other party as to its form and content and the manner of its release, so far as is reasonably practicable.

## **11 GENERAL**

- 11.1 The parties agree that this Licence constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 11.2 Each party shall, at the request of the other and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Licence.
- 11.3 Notices under this Licence shall be in writing and sent to a party's registered office. Notices to ATI may be sent via e-mail to [info@ati.org.uk](mailto:info@ati.org.uk), addressed for the attention of the CEO of ATI.
- 11.4 No variation of this Licence shall be valid or effective unless it is in writing, refers to this Licence and is duly signed or executed by, or on behalf of, each party.
- 11.5 ATI may assign, sub-contract or encumber any right or obligation under this Licence, in whole or in part, without the Licensee's prior written consent (such consent not to be unreasonably withheld or delayed).
- 11.6 Each party recognises that any breach or threatened breach of this Licence may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 11.7 Nothing in this Licence constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.
- 11.8 If any provision of this Licence (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Licence shall not be affected.
- 11.9 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Licence shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy.
- 11.10 This Licence may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.
- 11.11 Except as expressly provided for in this Licence, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Licence (and any documents referred to in it).
- 11.12 No one other than a party to this Licence, their successors and permitted assignees shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

- 11.13 This Licence and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 11.14 Subject to clause 9.3, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Licence, its subject matter or formation (including non-contractual disputes or claims).