

# TADS

## End-user License Agreement for TADS

### 1. The Parties:

- **“Company”** – Wärtsilä Voyage Limited, 10 Eastgate Avenue, Eastgate Business Park, Little Island, Cork, Ireland;
- **The Licensee** – The organisation or person identified in the attached Schedule A or, where there is no Schedule A, YOU the user of this software or data.

### 2. Definitions:

**Agreement** means this agreement, the license granted under this agreement and any schedules to this agreement.

**Authorised User(s)** means those persons authorised to use the Data by the Licensee or, where relevant, by the Licensee's nominated vessel representative identified at Schedule A to this Agreement.

**Data** means data and/or software contained in items listed in Schedule A to this Agreement, listed in the e-mail confirming your purchase or, where there is no Schedule A or confirmation e-mail, the data and/or software accompanying this Agreement, and any updates of such data supplied to the Licensee by Company during the period of this Agreement. It also includes any accompanying documentation, security keys required to decrypt the data for display and customer service.

**ECDIS** means Electronic Chart Display Information System.

**ECDIS Monitoring Mode** means the mode selected on an ECDIS that enables the ENC data to be displayed and used for navigational purposes.

**ECDIS Planning Mode** means the mode selected on an ECDIS that enables the ENC data to be accessed and viewed for route planning purposes only.

**Effective Date** has the meaning given at clause 9.6 below of this Agreement.

**Licensed Vessel** means any vessel specified in Schedule A to this Agreement.

**Subscription period** means a period of time during which Company shall make ENC/SENC corrections available for Licensee. ENC/SENC corrections are based on data supplied by Hydrographic Offices. Subscription period commences on the date of ENC/SENC purchase by the Licensee and expires as per conditions of purchase.

**Pay As You Sail (PAYS)** service means the service that allows TADS ENC and SENC Data (TADS Data) to be pre-installed on Company' ECDIS. The TADS Data can be viewed and accessed free of charge for planning purposes. The PAYS service ensures that the Authorised User has immediate access to additional TADS coverage in case of re-routing for operational or contingency purposes.

**PAYS Report** means a list of TADS Data used for navigation in ECDIS Monitoring Mode. All TADS Data accessed in Company ECDIS during navigation is registered and transmitted automatically to Company via vessel's communication equipment connected to ECDIS.

**Use** means to load, install or process the Data on the workstations, or for the supplier of the data to do the same remotely for installation and setup purposes on behalf of the Licensee.

**3. Acceptance:**

By clicking to proceed with the installation, breaking the seal securing the CD, installing the Data onto a workstation or using this Data if already installed, you agree to the terms of this Agreement. If you do not agree to the terms of this Agreement, cease any use of the Data and return the Data to your supplier.

**4. Grant:**

- 4.1. Company grants to the Licensee, and the Licensee agrees to accept, a non-transferable and non-exclusive license to:
  - 4.1.1. use and, where identified in Schedule A to this Agreement, permit Authorised Users to use the Data only on Licensed Vessels;
  - 4.1.2. use and, where identified in Schedule A to this Agreement, permit Authorised Users to use the Data subject to the terms and conditions of the Agreement;
  - 4.1.3. use and, where identified in Schedule A to this Agreement, permit Authorised Users to access the Data remotely from any Licensed Vessel in preparation for use on such Licensed Vessel provided that the Data is not used on such Licensed Vessel at the same time;
  - 4.1.4. make, subject to the restriction set out at clause 6.5 below of this Agreement, hard copies of the Data; and
  - 4.1.5. make one (1) working copy of the Data for backup purposes only, such copy to be subject to all terms and conditions of this Agreement.
- 4.2. The Licensee agrees to ensure that the Authorised Users are made fully aware of, understand and agree to abide by the terms and conditions of this Agreement before they are allowed access to the Data. The Licensee accepts full responsibility for the actions of the Authorised Users and agrees in relation to any action of any Authorised User that, if it were an action of the Licensee, would constitute a breach of this Agreement that the Licensee will have committed a breach of this Agreement.

**5. Intellectual property rights:**

- 5.1. Intellectual property rights in the Data shall remain at all times the property of Company or its licensors and suppliers. The Licensee shall acquire no intellectual property rights in the Data save as otherwise provided in this Agreement.
- 5.2. The Licensee undertakes that all material belonging to or under the control of Company to which the Licensee gains access or receives directly or indirectly as a result of the operation of this Agreement shall not be used by the Licensee or the Authorised Users or accessed by any of its employees or any other person acting on its behalf for any purpose other than strictly as necessary to exercise its rights or perform its obligations under this Agreement, nor shall any such material be disclosed by the Licensee to any party not referred to in this clause 5.2.
- 5.3. Company is authorised to make the grant at Section of this Agreement in respect of the intellectual property in the Data.
- 5.4. The Licensee shall give prompt notice to Company if the Licensee its employees or any other person acting on its behalf becomes aware of any unauthorised use or exploitation of the whole or any part of the Data by any third party and shall procure that Authorised Users do likewise.

## **6. Restrictions:**

- 6.1. The Licensee warrants its understanding that the rights set out at Section of this Agreement are the totality of the rights granted to the Licensee and that this Section6 is not exhaustive and does not operate to prejudice the legal rights of Company or to oust the applicability of the general law.
- 6.2. Installation of the Data shall be restricted to a maximum of five (5) workstations on any Licensed Vessel where identified in Schedule A to this Agreement. Otherwise Installation of the Data shall be restricted to one (1) workstation.
- 6.3. Display of the Data shall be restricted so that a maximum of five (5) visual display units display the Data at any one time on any Licensed Vessel where identified in Schedule A to this Agreement. Otherwise display of the Data shall be restricted to one (1) workstation.
- 6.4. Selling, hiring out, sub-licensing, re-supplying, or in any way transferring the Data by the Licensee to any third party other than an Authorised User is not permitted. For the avoidance of doubt, bundling or repackaging of any or all elements of the Data in any way is not permitted.
- 6.5. Hard copies of the Data must not be sold, hired or transferred in any way to a third party without the express permission of Company, and shall not be used for navigation.
- 6.6. The License undertakes not to make alterations or modifications of, the whole or any part of the data or to permit the data or any part of it to be combined with or become incorporated in any other data.

## **7. Subscription:**

- 7.1. The Licensee is to ensure that the Authorised User is fully aware that:
  - 7.1.1. the Data only produces a reliable result if the latest editions of ENC/SENC, kept up to date, are used;
  - 7.1.2. ENC/SENC shall not be used after their expiration date; Company will not provide corrections for expired ENC/SENC;
  - 7.1.3. Licensee is solely responsible for timely charts purchase, update and Subscription period prolongation;
  - 7.1.4. The payment for Subscription period is not refundable in the event of the sale of the Licensed Vessel or a change of management.
  - 7.1.5. to the extent permitted under the law, Company cannot be held responsible for any loss or damage caused by the Licensee or its Authorized Users use of any part of the Data not being the latest edition.
- 7.2. Company accepts no liability for any changes made to correction data provided during the Subscription period during transmission to Licensee's or its Authorized Users' computer, during processing by Licensee's or its Authorized Users' computer or during their incorporation into data files on Licensee's or its Authorized Users' computer.

## 8. PAYS Service:

8.1. The Licensee is to ensure that the Authorised User is fully aware that:

- 8.1.1. TADS Data available for the PAYS service are provided free of charge for planning purposes during the PAYS service validity period. TADS Data available for PAYS service are listed in the TADS price list.
- 8.1.2. A certain portion of TADS Data are not available free of charge for route planning purposes and are to be pre-ordered prior to a voyage.
- 8.1.3. TADS Data used for navigational purposes in ECDIS Monitoring Mode are logged and transmitted to Company. PAYS reports are registered as commercial chart orders for a three (3) month subscription period in accordance with the current TADS price list.
- 8.1.4. ECDIS computers using TADS PAYS service shall always be connected to the Internet via vessel's communication equipment in order to ensure automatic transmission of PAYS Reports.
- 8.1.5. The cost of Internet traffic used for PAYS Reports transmission is not included in the TADS PAYS service fee.
- 8.1.6. In case of a failure of automatic PAYS Report transmission, Authorised User shall use its best efforts to ensure that PAYS Report is created and sent to Company by any communication means available, including, but not limited to:
  - by providing Company' service engineer with remote access via the Internet to Authorised User's ECDIS computer.
  - by saving all ECDIS log and track files manually and sending them to Company by e-mail as described in Company user manuals.

## 9. Term, termination and amendment:

- 9.1. The Agreement shall become effective from the execution date in Schedule A, and shall remain in force until the expiration date set forth in Schedule A. Where there is no Schedule A to this Agreement, the Agreement shall terminate one (1) calendar year from the date of first installation of the Data.
- 9.2. This Agreement shall in respect of each Licensed Vessel terminate forthwith if the Licensee or an Authorised User as the case may be permanently ceases to operate or transfers to any third party ownership of such Licensed Vessel.
- 9.3. Company reserves the right to terminate the Agreement without notice in case of any material breach of the clauses of this agreement, and with 90 days' notice at its sole discretion.
- 9.4. Upon termination or expiration of this Agreement the Licensee shall destroy all copies, including partial copies, of all Data supplied to it under this Agreement.
- 9.5. If Company' supplies to the Licensee replacement versions of the Data the Licensee shall destroy all copies, including partial copies, of the replaced Data,
- 9.6. Company reserves the right to amend the provisions of this Agreement. Details of any such amendments, and the date from which they will become effective (the **Effective Date**), shall be notified in writing by Company to the Licensee not less than 60 days prior to the Effective Date. The Licensee shall then have 30 days in which to terminate the agreement in writing. If the Licensee does not so terminate, the Licensee agrees that the amendment is accepted and will become effective from the Effective Date.
- 9.7. Company reserves the right to terminate the PAYS service immediately in cases where it becomes evident that Authorised Users are purposely interfering with the PAYS service provision or otherwise violating the terms and conditions of the Agreement.

#### 10. Disclaimer:

- 10.1. Company shall make all reasonable efforts to ensure that Data supplied under this Agreement is accurate. Company does not accept any responsibility for the accuracy of the parts of the Data supplied to it by third parties.
- 10.2. Company is not liable for loss or damage arising out of or in connection with use of the Data by the Licensee or its Authorised Users (except in case of death or personal injury solely and directly attributable to any negligent compilation or transcription by Company of the Data, unless this can be excluded under local law), in contract, tort, under statute or otherwise and whether or not arising out of any negligence on the part of Company in respect of any inadequacy of any kind whatsoever in the Data.
- 10.3. The Licensee acknowledges that it is responsible for complying with local laws and regulations of the jurisdiction in which it uses and imports the Data. The Data should not be accessed or imported in any jurisdiction where for any reason the use or availability of the Data is prohibited. Company does not represent that the Data complies with laws in all jurisdictions.
- 10.4. This License sets out the full extent of Company obligations and liabilities in respect of the supply of the Data. In particular there are no other conditions, warranties, representations or other terms, express or implied, that are binding on Company except as specifically stated in this License. Any condition, warranty, representation or other term concerning the supply of the Data which might otherwise be implied into, or incorporated in this License, or collateral contract, whether by statute, common law or otherwise is hereby excluded to the fullest extent permitted by law.
- 10.5. Nothing in this License is intended to affect any statutory rights that you may have if you are receiving this License as a consumer and are using this Data for private use and not for commercial use.

#### 11. General:

- 11.1. **Assignment and Sub-Licensing:** Save as otherwise provided in this Agreement the Licensee is not entitled to assign or sub-license to any third party any of its rights or obligations under this Agreement without Company' prior written consent. Company shall be entitled to assign or contract-out its rights and obligations under this Agreement to any person.
- 11.2. **Severability:** If any part, term or provision of this Agreement not being of a fundamental nature be held illegal or unenforceable the validity or enforceability of the remainder of this Agreement shall not be affected.
- 11.3. **Rights of third parties:** No right is granted to any person who is not a party to this Agreement in their own right and the Parties declare that they have no intention to grant any such right.
- 11.4. **Entire Agreement:** This Agreement supersedes and cancels all previous agreements and working arrangements whether oral or written, express or implied between the Parties in respect of or in connection with the matters referred to in this Agreement.
- 11.5. **Change of Details:** The Licensee shall inform Company of any change to the Licensee details contained in Schedule A within one (1) month of such change.
- 11.6. **No Waiver:** No waiver of any term or condition of this Agreement shall be effective unless made in writing and signed by the Party against which enforcement of the waiver is sought. The waiver of any breach of any term or any condition of this Agreement shall not be construed as a waiver of any subsequent breach of a term or condition of the same or different nature.
- 11.7. **Governing Law:** This Agreement shall be governed by and construed and interpreted in accordance with Swedish Law and any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.