

**Licence Agreement**

**“LOC and GP Simulation Software”**

Concluded pursuant to Section 2358 of the Civil Code 89/2012 Coll., as amended, (hereinafter referred to as **“Civil Code”**)

(hereinafter referred to as the **“Agreement”**)

1. Parties

**Air Navigation Services of the Czech Republic (ANS CR)**

a state enterprise existing and organized under the laws of the Czech Republic,

having its registered office at: Navigační 787, 252 61 Jeneč, Czech Republic,

Company Identification Number: 497 10 371

Tax Identification Number: CZ699004742

Bank connection: ČSOB Praha 5, bank account: 8815280/0300 BAN: CZ12 0300 1712 8000 0008 8153

Registered in the Commercial Register of the Municipal Court in Prague, Section A, Insert 10771,

Represented by: Ing. Jaroslav Beňa, Director of ATM/ANS Planning and Development Division

(the “**Licensee**”)

and

[\*]

Company existing and organized under the laws of [\*]

having its registered office at: [\*]

Represented by: [\*]

Bank connestion:

Bank account:

IBAN:

Tax Identification Number:

(the “**Licensor**”)

Hereinafter individually or collectively referred to as a **“Party”** or the **“Parties”**.

1. Preamble

WHEREAS

* 1. The Licensee provides air navigation services in the Czech Republic and requires for its training and simulation purposes in the area of ILS system simulation a software capable of simulating, for a localizer (LOC) and a glide path (GP), the transmitter adjustment, the antenna systems and the radiated signals as seen from the ground engineer's point of view as well as from the flight inspection aircraft;
	2. The Licensor has the qualities and abilities to provide the relevant software in the highest quality available, is able and will act with the knowledge and care usually associated with the subject matter of its business or its profession or condition, meets all the conditions and requirements set out in this Agreement, and is authorised to enter into this Agreement and duly perform the obligations contained herein;

the Parties have agreed to enter into this Agreement.

1. Subject matter
	1. The Licensor hereby grants to the Licensee the Software Licence specified in Article 4.1 of this Agreement to install and use the LOC and GP simulation software specified in Annex 1 to this Agreement (the „**Software**“) for the purposes and on the terms and to the extent set out in this Agreement, and the Licensee agrees to pay for the Software Licence and the services specified in Article 3.2 of this Agreement the price set out in Article 9.1 of this Agreement.
	2. The performance under this Agreement shall also include the following service:
* Delivery of the Software.
* Delivery of the Software documentation in accordance with Article 5 of this Agreement, and
* Training of the Licensee's personnel in accordance with Article 6 of this Agreement.
	1. The Software shall be delivered to Licencee electronically.
	2. The Licensor hereby declares that it is the owner of the Software and is entitled to grant a licence to use the Software. The Licensor represents and warrants to the Licensee that all third party software licences provided by the Licensor have been lawfully obtained from the respective third party.
	3. For the avoidance of doubt, the Parties declare that the source code of the Software is not supplied or licenced by the Licensor to the Licensee by this Agreement.
1. Scope and duration of Software Licence
	1. The Licensor grants to the Licensee 5 (five) perpetual, non-exclusive, non-transferable and non-assignable licences to install and use the Software for the purpose of operating LOC and GP simulation systems and to the extent set out in Annex 1 to this Agreement (the „**Software Licence**“).
	2. The Software Licence is granted by the Licensor to the Licensee as a perpetual licence, i.e. for an indefinite period of time.
	3. The Licensee may install, store, load, access, use and display the Software on Licensee's compatible computers. For the avoidance of doubt, the Parties agree that the results generated by the use of the Software shall be the intellectual property of the Licensee who may freely and without restriction share them with third parties.
	4. The Licensee may not rent, lease, transfer, sell or otherwise make available to third parties the Sotware Licence granted hereunder and/or the Software or any part thereof to any third party.
	5. The Licensee may not modify, port, adapt or translate the Software or use the Software to create (or cause to be created) derivative works or software which is substantially similar to the functionality and expression of the Software.
	6. Licensee shall not, and shall not permit any third party to, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, underlying ideas, underlying user interface techniques or algorithms of the Software by any means, whatsoever or disclose any of the foregoing. Licensee shall not, and shall not permit any third party to, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, underlying ideas, underlying user interface techniques or algorithms of the Software by any means, whatsoever or disclose any of the foregoing. Notwithstanding the foregoing, decompilation of the Software shall be permitted to the extent expressly permitted to Licensee under applicable law in the European Union if such decompilation is necessary to achieve operability of the Software with another software program, and Licensee has first requested Licensor to provide the information necessary to achieve such operability and Licensor has not provided such information within a reasonable time. Licensor may impose reasonable conditions and charge a reasonable fee before providing such information. Any information provided by Licensor or obtained by Licensee as permitted herein, may only be used by Licensee for the purpose described herein and may not be disclosed to any third party. Adjusting system settings does not constitute software modification or software customisation.
2. Software documentation
	1. The Licensor shall provide the Licensee with following Software documentation or appropriate substitute:
* Software operations manual
* Installation Guide
* User Guide
	1. Software documentation shall be provided to the Licensee in English language in paper and pdf format.
	2. The Licensee may make copies of the Software documentation for use by its employees, but no more than is reasonably necessary. Any permitted copy of the Software documentation made by the Licensee must contain the same copyright and other proprietary notices as appear on original Software documentation.
1. Training
	1. Licensor agrees to provide face-to-face Initial training to Licensee's designated personnel to enable them to fully operate the Software.
	2. The initial training shall be provided for 8 (eight) participants in a single session over a period of 5 (five) days.

* 1. The Initial training shall commence upon delivery of the Software in accordance with Article 7.2 of this Agreement.
	2. For each training session, the Licensor shall prepare an attendance sheet to be signed by each trainee at the end of the training session. Such attendance sheet shall be attached to the invoice for the training.
1. Place and time of performance
	1. The place of performance of this Agreement shall be the registered office of Licensee as specified in Article 1 of this Agreement.
	2. Licensor shall deliver Software, Software documentation and Initial training no later than **T0 + 12 months**, when "T0" is the date of publication of this Agreement in the Register of Agreements under Czech law and “month” means a period of 30 (thirty) consecutive running days.
	3. Licensor shall notify Licensee of the intended delivery of the Software, Software documentation and Initial training at least 90 days prior to delivery. The exact date of delivery shall be subject to Licensee´s approval for operational reasons and Licensee's resource planning.
2. Handover Protocol
	1. Upon delivery of the Software and the Software documentation, the Parties shall sign a handover protocol confirming that the Software and the Software documentation have been delivered in accordance with the terms of this Agreement („the **Handover Protocol**“).
	2. The Handover Protocol shall include:
* A reference to this Agreement;
* Identification of the Parties;
* What is being delivered;
* List of the Software documentation and other documentation supplied, if applicable;
* List of the Software licences acquired as part of the Software (including third party software licences);
* Any pending items and any defects found which do not prevent acceptance (with date of rectification or date of delivery of pending items);
* Date and place of delivery and acceptance;
* Signatures of the representatives of the Licensor and the Licensee.
* The information required in Articles 13.3 and 13.4. of this Agreement.
1. Price and payment
	1. The Parties agree that the maximum total price for the performance of this Agreement shall be:

**EUR [\*]** (in words: [\*] Euro) exclusive of VAT

and shall consist of:

* the price for the supply of the Software, the Software Licence and the Software documentation: EUR [\*](in words: [\*] Euro) exclusive of VAT,
* the price of the Initial training :

EUR [\*](in words: [\*] Euro) exclusive of VAT

* 1. The total price referred to in Article 9.1 of this Agreement shall be final and shall include all ancillary costs, travel and delivery costs, fees, charges, licence fees and taxes (except VAT) related to the performance of this Agreement. The price may only be changed by written amendments to this Agreement signed by both Parties and numbered in ascending order.
	2. Payment to the Licensor under this Agreement shall be made in Euros to the Licensor´s account referred to in Article 1 of this Agreement. For accounting purposes, training costs shall be invoiced separately.
	3. Payment shall be made on the basis of an invoice issued by the Licensor after the signing of the Handover Protocol referred to in Article 8 of this Agreement and the delivery of the Initial training. The Handover Protocol signed by the Parties and the attendance sheet from the Initial training shall be attached to the invoice.
	4. The invoice, marked with the Licensee´s Agreement number as stated in the heading of this Agreement, including its attachments, shall be sent in writing to the address of the Licensee specified in Article 1 of this Agreement or via e-mail from the e-mail address of the Licensor xxx@xxx to the e-mail address of the Licensee: fakturace@ans.cz, otherwise it shall be returned to the Licensor. Invoice shall be due within 30 (thirty) days of receipt by the Licensee.
	5. The Licensee may return the invoice if it contains inaccurate or incomplete information or if the price is incorrect. Any such return must be made before the due date of the invoice. In such a case, the Lincesor shall issue a new invoice or make a correction to the original invoice and set a new due date for payment. If the invoice is duly returned, the due date shall cease to run and a new due date shall run from the date of delivery of the corrected or completed invoice to the Licensee.
1. Taxes
	1. The Licensor declares that its tax domicile is in [\*].
	2. The Licensee declares that its tax domicile is in the Czech Republic.
	3. The total price referred to in Article 9.1 of this Agreement has been calculated and is expressed exclusive of VAT. VAT shall be applied in accordance with Act No. 235/2004 Coll. on Value Added Tax, as amended, and Directive 2006/112/EC. In the event that the Licensee is obliged to withold or deduct taxes from the payment of contractual price pursuant to Act No. 586/1992 Coll. on Income Tax, or in accordance with the applicable treaty on the avoidance of double taxation, the Licensor shall receive the amount after deduction.
	4. The Licensee is not responsible for the Licensor´s obligations to the tax authorities of the Czech Republic.
2. Contact persons
	1. The contact persons for the purposes of this Agreement are as follows:

For the Licensee [name], tel. +xxx xxx, e-mail: xxx@xxx

For the Licensor: [name], tel. +xxx xxx, e-mail: xxx@xxx

1. Rights and obligations
	1. Licensor is obliged to perform its obligations under this Agreement in a proper and timely manner within the periods set out in Article 7 of this Agreement. The Licensee is obliged to accept the performance of this Agreement and to pay to the Licensor the price in the amount and on the terms and conditions set out in Article 9.1 of this Agreement.
	2. The Licensor undertakes to assist the Licensee in installing and upgrading the Software on the Licensee's computers.
	3. The Lincensor shall comply with the rules of entry of external entities to the premises and objects of the Licensee. The obligations of the Licensor regarding the entry of external entities to the premises and objects of the Licensee are specified on the following website:

<https://www.ans.cz/categorysb?CatCode=A8>

* 1. The Licensor, as the employer in the performance of this Agreement, shall be responsible for compliance with health and safety and fire protection regulations by its employees or other persons working for the Licensor. Any damage resulting from the violatation of these regulations by the Licensor’s employees or other persons working for the Licensor shall be borne by the Licensor. If, as a result of its activities, the Licensor creates dangerous places or situations on the site, the Licensor shall take its own measures to secure the impending damage and shall immediately inform the Licensee therof.
	2. Cyber Security

Licensor declares that the Software delivered to the Licensee's information infrastructure does not contain any malicious code, technical vulnerabilities or other features that may have a negative impact on the Licensee's information and cyber security.

1. Intellectual Property Rights
	1. All intellectual property rights, including but not limited to the right to patent, copyright, trademark and design rights, in the Software and the Software documentation are and shall remain the absolute, unencumbered and valuable property of the Licensor or its suppliers, who are the rightful owners of such intellectual property. The Software, the Software documentation and any authorized copies made by the Licensee are the property of the Licensor or its third party suppliers and are protected by copyright. The structure, organization and code of the Software are the valuable trade secrets and confidential information of the Licensor or its suppliers. The Licensee shall not delete or in any way alter any copyright, trademark or other proprietary notices or marks (including logos and brand features of the Licnecor and its suppliers) appearing on or in the Software or the Software documentation.
	2. For the avoidance of doubt, the Parties hereby declare that any data, configurations, user settings or templates created by means of the Software or contained therein are subject to the Licensee´s intellectual property rights and the Licensor shall be entitled to use them only in the course of performing this Agreement and on the basis of the Licensee´s explicit instructions.
	3. The Handover Protocol referred to in Article 8 shall include a separate document containing the following information on the Software:
* exact and full title of the Sofware including its version or edition,
* part number or Software SKU (if relevant),
* licence model (if more than one licence model is available),
* duration of the of the Software warrranty support, including the warranty support start and end dates,
* information on the Software bundle with other producer´s sofware if applicable,
* date of acquisition of the Software licence rights,
* information on the Licensee´s customer account or reference to the framework agreement with the producer (if relevant), and
* number of licences obtained and their location limitation according to Article 4.1.
	1. The Handover Protocol referred to in Article 8 shall include a separate document containing a detailed list of all third party software licences provided by the Licensor as part of performance under this Agreement. The minimum details to be provided for each third party software licence shall be as follows:
* text of the software licence or standard licence name (e.g. GNU GPLv2 or BSD),
* identification of the document under which the Licensor acquired the licence,
* exact name of the software received according to the manufacturer; edition, version, type (if relevant),
* number of licences acquired,
* licence restrictions – e. g. Identification of the language version, bit version, user/device version, data centre, CPU, CORE, possibly other operational restrictions – location, country and others (if relevant),
* type of licence and licence programme (OEM, OLP, SELECT, possibly others),
* scope of support provided (duration, start and end dates) or exact relation to the Agreement, and
* date of acquisition of the software licence.
	1. Where applicable, a complete list of the open source software and/or free software used to create the Software shall be provided by the Licensor. The type of licence agreement shall be listed for each open source software and/or free software (specifying whether it is a standard licence agreement such as GPLv2, GNU GPL, BSD licence, etc.) or the full licence agreement shall be provided to the Licensee. The Licensor is responsible for ensuring that the open source software and/or free software is used in compliance with the licence terms applicable to the use of the respective open source software and/or free software. The Licensee shall not be liable for any breach of the licences relating to the open source software and/or free software used by the Licensor to perform this Agreement.
	2. The Licensor shall be liable to the Licensee for the integrity of the rights acquired under the Agreement and in particular for ensuring that the use of Software does not result in any unauthorized interference with the rights of third parties or any other breach of the law, that any property claims of third parties have been settled and that the Licensee cannot incur any financial or other obligations to third parties in connection with the use of the Software in accordance with this Agreement.
	3. The Licensor shall also be liable to the Licensee for damages incurred in connection with the exercise of the rights of third parties. If a third party makes a claim against the Licensee for infringement of its rights in connection with the Software or with the Software Licence, the Licensor is obliged to defend the Licensee effectively at its own expense and to indemnify the Licensee in full in the event that the third party successfully asserts its claim based on a legal defect in the Software. However, the Licensor’s obligations in this Article do not apply to any claim, suit or proceeding to the extent that it arises out of, relates to, or alleges: (a) Licensee’s breach of this Agreement; (b) revisions to the Software made without the Licensor’s written consent; (c) Licensee’s failure to incorporate updates or upgrades to the Software that would have avoided the alleged infringement; or (d) use of the Software in combination with hardware, software or other products or services not provided by Licensor.
	4. For the avoidance of doubt, the Licensor's liability for legal defects in title of the Software shall not be limited by the Warranty Period agreed in this Agreement.
1. Force Majeure
	1. Neither Party shall be legally liable to the other if it is unable to perform its obligations under this Agreement due to an event of force majeure, i.e. an event beyond its reasonable control. In such a case, the Party which is prevented from performing its obligations under the Agreement by the event of force majeure shall give notice of the event and the period referred to in Article 7 shall be extended by the number of days necessary to overcome the causes of the delay.
	2. Performance under this Agreement shall be resumed as soon as practicable after the event has ended. If the performance of all or part of this Agreement is delayed for more than 3 (three) months as a result of force majeure, either Party may request termination of this Agreement or the affected part thereof.
2. Assignment
	1. Neither Party to this Agreement shall be entitled to assign or transfer any of its rights or obligations hereunder to any third party without prior written consent of the other Party, which consent shall not be unreasonably withheld.
3. Confidentiality
	1. Licensor shall keep secret from third parties all confidential information of which it becomes aware in connection with this Agreement, in particular all data and information provided to it by Licensee.
4. Trade Secret
	1. A trade secret within the meaning of Section 504 of the Civil Code shall be the price calculation set out in Article 9.1 of this Agreement, which shall therefore not be published or made available in accordance with Article 23.5 of this Agreement.
5. Protection of personal data
	1. The Licensee and the Licensor shall comply with the rules on the protection of personal data in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), i.e. the GDPR Regulation, and pursuant to other generally binding legal provisions on the protection of personal data. More information on the protection of personal data by the Licensee is available at

 <https://www.ans.cz/categorysb?CatCode=A6>

1. Warranty
	1. The Licensor warrants that the unmodified Software, when used as directed, will perform substantially in accordance with the Software specification in Annex 1 and the Software documentation for a period of 7 (seven) years from the date of the signing of the Handover Protocol (the „**Warranty Period**“).
	2. The Licensor is obliged to provide the Licensee with the warranty support for the Software or part thereof during the Warranty Period. The warranty support shall cover the correction of critical bug. For the purposes of this Agreement, “**Critical Bugs**” are Software defects that prevent the Software from functioning according to the Software specification set out in Annex 1 to this Agreement and the Software documentation.
	3. Licensee shall notify Licensor of any Critical Bug in writing (by e-mail) or by phone (with confirmation by e-mail) without undue delay after discovery of the Critical Bug. Licensor shall be obliged to fix the Critical Bug no later than 3 (three) months after notification by Licensee. This period may be extended with Licensee´s consent.
	4. If, during the Warranty Period, the Software or any part thereof is unavailable due to the occurrence of the Critical Bug, then the said Warranty Period shall be extended on a day by day basis by a total number of days equal to the above mentioned period of unavailability of the Software or any part thereof.
	5. The Licensor does not warrant that the operation of the Software will be uninterrupted or error- free, or that the Software will meet requirements expected by the Licensee but not specified in the documentation.
	6. The warranty does not cover cases where the failure of the Software is due to modification, accident, misuse, misapplication and abnormal use by the Lincesee.
	7. For the avoidance of doubt, the Parties agree that all costs associated with Critical Bugs fixes during the Warranty Period are included in the price stated in Article 9.1 and shall not constitute any other cost to the Licensee.
	8. For the avoidance of doubt, Licensor´s liability for infringement of intellectual property rights as set out in Article 13 of this Agreement shall not be limited by the Warranty Period as stated above.
2. Termination
	1. The Licensee may withdraw from this Agreement if the Licensor fails to correct the Critical Bug even after the Licensee's third notice pursuant to Article 21.2 of this Agreement.
	2. The effects of the withdrawal shall commence on the date of delivery of the written notice of withdrawal to the Licensor. The notice of withdrawal shall be sent by registered letter through the holder of the postal licence to the address specified in Article 1 of this Agreement.
	3. Withdrawal from this Agreement shall not affect any rights to contractual penalties and damages under this Agreement arising prior to the effective date of such withdrawal.
3. Contractual penalties
	1. If the Licensee provides the conditions for the performance of this Agreement, but the Licensor fails to perform within the period referred to in Article 7.2 of this Agreement, despite a written notice from the Licensee and the granting of an additional period for performance of not more than 30 (thirty) days from the date of delivery of the notice to the Licensor, the Licensor shall be obliged to pay to the Licensee a contractual penalty of 0.05% of the price of the relevant performance for each day of delay.
	2. If the Licensor fails to correct the Critical Bug within the time limits specified in Article 19.3 of this Agreement, the Licensor shall be obliged to pay to the Licensee a contractual penalty of 0.05% of the price referred to in Article 9.1 of this Agreement for each day of delay.
	3. In the case of a breach of the rules of entry of external entities according to the Article 12.3 of this Agreement, the Licensor shall pay the Licensee a contractual penalty of 800,- EUR (in word: eight hundred euros) for each individual breach.
	4. The Parties agree that the provisions on contractual penalties shall be without prejudice to the right to compensation for damages arising from the breach of the obligation to which the contractual penalty relates, and that the right to compensation for damages may be claimed independently of the contractual penalty and in full.
	5. Contractual penalties shall be due and payable within 30 (thirty) days from the date on which a demand for their payment issued by the entitled Party is delivered to the liable Party.
4. Liability
	1. Each Party shall defend, indemnify and hold harmless the other Party from and against any and all third-party claims, losses, expenses, costs or damages arising directly out of any injury to or death of any person or damage to or loss of any property caused by it under this Agreement.
	2. The Licensor shall be liable for any damage caused to the Licencee by failure to comply with the obligation set out in Article 12.5 of this Agreement.
5. Miscellaneous
	1. No amendment, alteration, modification or addition to this Agreement shall be valid unless made in writing and duly executed by the Parties hereto.
	2. If any provision of this Agreement is held by any competent authority to be invalid or unenforceable, such provision shall be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Parties shall negotiate in good faith to agree on a mutually satisfactory provision to replace the provision so held invalid or unenforceable.
	3. The headings used in this Agreement are for convenience of reference only and shall not be used in interpreting the terms of this Agreement.
	4. Civil Aviation Security

By signing this Agreement, the Licensor acknowledges that it is not authorized to disclose or disseminate any information which could affect the security of civil aviation, namely due to the requirements for maintaining the security of civil aviation resulting from the relevant legislation (in particular the Aviation Regulation L 17 based on ICAO regulations), which require air navigation service providers to take appropriate actions as a basis for ensuring the protection of civil aviation against acts of unlawful interference. Particularly, the Licensor shall not reproduce or redistribute in any way any information acquired in connection with the performance of this Agreement.

* 1. Publication

The Licensor acknowledges that the Licensee is obliged to publish this Agreement and information and documents related to the performance under this Agreement pursuant to Act No. 340/2015 Coll. on the Register of Agreements, as amended. The Licensor also acknowledges that the Licensee is obliged to provide information pursuant to Act No. 106/1999 Coll. on Free Access to Information, as amended.

1. Applicable law and dispute settlement
	1. The Parties agree that this Agreement shall be governed by Czech Law, namely the provisions of the Civil Code.
	2. Any dispute, controversy and/or claim arising out of or in connection with this Agreement, which cannot be settled amicably by the Parties, shall be finally settled by the competent court of the Czech Republic.
2. Final provisions
	1. The Parties declare that the individual articles of this Agreement are sufficient with regard to the requirements for the establishment of the contractual relationship and that the contractual freedom of the Parties has been used and that this Agreement is concluded in a definite, serious and comprehensible manner.
	2. Both Parties declare that they are fully entitled to sign this Agreement in accordance with their own national regulations.
	3. This Agreement shall be valid upon signature by both Parties and shall enter into effect on the date of its registration in the Register of Agreements. The Agreement shall be deemed null and void if the registration is not completed within three (3) months from the date of signature of the Agreement by both Parties.
	4. **This Agreement has been signed electronically in one electronic copy only.**
	5. The following Annex forms an integral part of the Agreement:

Annex 1 - Software specification

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Ing. Jaroslav Beňa

Director of ATM/ANS Planning and Development Division

Air Navigation Services of the Czech Republic

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[\*]

[\*]

[\*]