SURESELECT TRIAL Terms & Conditions

BACKGROUND

A.   The Licensor is the distributor of Sureselect, being a product comprising multiple test suites designed to help air navigation service providers recruit candidates that possess core competencies predictive of air traffic controller success.

B.   Access to and use of Sureselect and the Services by the Licensee is subject to these trial terms and conditions, including any other website terms referenced herein on the Licensor's Sureselect webpage).

C.   By indicating acceptance of these trial terms & conditions and/or accessing Sureselect through Licensor's Sureselect webpage the Licensee has agreed to be legally bound by these terms and conditions.

AGREEMENT

1.   **DEFINITIONS AND INTERPRETATION**

1.1   **Definitions**: In this Agreement, unless the context otherwise requires:

"Agreement" means these terms and conditions and including any other website terms referenced herein.

"ATC" means air traffic controller.

"Campaign" means up to 500 Candidates initiated by the Licensee during the Term for the Purpose. Tests offered are Cognitive Ability Test Suite, ATC Skills Simulation and Behavioural Traits.

"Candidates" means those persons to whom the Services are permitted to be made available by the Licensee as part of the Campaign in accordance with this Agreement.

"Candidate Terms" means the online terms and conditions each Candidate must accept prior to accessing Sureselect.

"Commencement Date" means the date on which your application to enrol is submitted.

"**Documentation**" means any user and technical documentation supplied by the Licensor with Sureselect and Services, to enable the Licensee and its personnel to use Sureselect and the Services.

"**Hosting Provider**" means Microsoft Azure.

"**Term**" means the period of six months from the Commencement Date.

"Intellectual Property Right" means all industrial and intellectual property rights (whether protectable by statute, at common law or in equity) as may exist anywhere in the world, including

any right attaching to copyright, trade and business names, design, trade marks, patents, trade secrets, inventions, know-how or confidential or other proprietary information.

"**Licensee**" means Civil Aviation Authority of Malaysia, having its registered office at No.27, Persiaran Perdana, Aras 1-4, Blok Podium, Presint 4, 62618 Wilayah Persekutuan, Putrajaya, Malaysia.

"**Licensor**" means Airways International Limited.

"**Licensor Data**" means all information and data (in any form) that is owned, held, used or created by or on behalf of the Licensor, and is acquired by the Licensee or its personnel in connection with this Agreement or the performance of the Services, including all data relating to the Licensor's operations, systems and customers, and all information, data or business knowledge about the Licensor, its personnel or customers.

"**Personal Information**" means information about an identifiable individual.

"**Sureselect**" means a web-based system comprising the following test suites:

(i) ATC skill simulations:
- short term memory
- remembering relationships
- spatial awareness
- multi-tasking in an ATC radar environment

(ii) Cognitive ability suite:
- detail accuracy
- coded reasoning

(iii) Behavioural traits,

and is designed to help air navigation service providers recruit candidates that possess core competencies predictive of air traffic controller success as more particularly described on our webpage, and any other materials, information or documentation provided to the Licensee by the Licensor in relation to that system, including all modifications, adaptations, updates and developments to that system.

"**Purpose**" means the purpose of using Sureselect to identify and select Candidates for initial ATC training.

"**Services**" means the provision of the following services by the Licensor to the Licensee:

(i) Provide access for the Licensee's administrators to access the system to add/edit Candidates, start supervised tests, send unsupervised tests, view Candidate results and generate/export Candidate results reports e.g. excel

(ii) Provide access for the Licensee's Candidates to undertake the tests within Sureselect in supervised and unsupervised environments;

(iii) Provide support to assist the Licensee in configuring the system for their usage including: configuring Campaigns and

configuring emails to be sent automatically by Sureselect (including reminder emails);

(iv) Support Services.

"Support Services" means remote training up to 3 (three) of Licensee staff on how to administer SureSelect tests and how to export and understand SureSelect test results.

Notes:

- Administering tests in SureSelect is very simple and candidates can easily be uploaded from CSV files; results are available to be viewed online, exported in Word, Excel and CSV format depending on the type of results.

- Questions on SureSelect may be emailed to productsupport@airways.co.nz during Business Day hours

- User guide access for the Term

"Trial Fee" means NZD$10,000.

1.2 **Interpretation:** In this Agreement, unless the context otherwise requires:

(a) any reference to a party to this Agreement shall include the successors and permitted assigns of such party or parties;

(b) clause headings are inserted for convenience only and shall be ignored in construing and interpreting this Agreement;

(c) the plural includes the singular and vice versa;

(d) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

(e) the word "including" and similar words do not imply any limitation;

(f) a reference to dollars or $ is a reference to New Zealand currency;

(g) references to a "person" includes references to an individual, company, corporation, partnership, firm, joint venture, association, trust, organisation, governmental or other regulatory body or authority or other entity in each case whether or not having separate legal personalities; and

(h) the Background is an integral part of the Agreement.

2. **TERM**

2.1 **Term:** Subject to clause 8, this Agreement commences on the Commencement Date and shall continue for the Term. The Term may be extended by written

agreement of the parties. Please contact us to discuss.

3. LICENCE OF SURESELECT

3.1 **Use:** Subject to the terms of this Agreement and in consideration of the mutual benefits and advantages under this Agreement, (the sufficiency of which is acknowledged), the Licensor:

  (a) permits the Licensee to access and use the Services on the terms of this Agreement; and

  (b) grants to the Licensee a non-exclusive, non-transferrable, revocable, limited licence to use Sureselect for the Purpose for the Term

3.2 **Limitations:** The Licensee:

  (a) has no right, and must not purport or attempt, to sub-license or otherwise make available all or any part of Sureselect to any other person; and

  (b) must not copy, reproduce, modify, translate or vary Sureselect by any means or in any form without the Licensor's prior written consent.

3.3 **Pre-existing Intellectual Property:** Intellectual Property Rights which is owned by, or is proprietary to, a party at the Commencement Date, shall remain owned exclusively by that party. All Licensor Data shall be owned by the Licensor at all times.

3.4 **The Licensor's ownership:** All Intellectual Property Rights and other rights in and to Sureselect and any relevant Documentation, including all modifications, adaptations, updates and developments of Sureselect, are and will remain the property of the Licensor or the Licensor's suppliers (as the case may be) as those rights arise. The Licensee agrees that it will do all things, including signing any documentation, necessary to give effect to this clause 3.4.

3.5 **New Intellectual Property:** Any new intellectual property which is created as a result of, or in connection with, the provision of the Services, or otherwise in connection with this Agreement, shall be owned by the Licensor.

3.6 **The Licensee's intellectual property:** For clarity, the parties agree that nothing in this Agreement shall affect the Licensee's rights in and title to the Licensee's know-how, intellectual property, methodologies and processes that it has developed:

  (a) prior to the date of this Agreement; or

(b) independently without access to or use of Sureselect or the Services.

3.7 **The Licensee's responsibilities:**

(a) Licensee restrictions: The Licensee

   (i) may only use Sureselect and the Services for the Purpose and in accordance with all reasonable instructions and directions given by the Licensor;

   (ii) must comply with all applicable laws and regulations in relation to its use of Sureselect and the Services;

   (iii) must ensure that each Candidate complies with the Candidate Terms; and

   (iv) must notify Airways immediately upon becoming aware of any breach of the Candidate Terms by a Candidate, and use all available means to prevent the continuance of a breach.

(b) Candidates: The Licensee shall ensure that use of Sureselect and the Services are restricted to Candidates. The Licensee must ensure that:

   (i) all Candidates are made aware of the terms of the Agreement and comply with all terms that are obligations of the Licensee; and

   (ii) all Candidates comply with all security and operational requirements relating to the use of Sureselect and the Services that are notified by the Licensor to the Licensee from time to time.

(c) Licensee inputs: The Licensee shall provide the following

   (i) The ID numbers of those Candidates who have been (1) accepted into ATC training; and (2) rated as an ATC.

   (ii) Supervisors (if required) for testing of Candidates shall be arranged by the Licensee

   (iii) Testing centres for testing of Candidates shall be arranged by the Licensee (if doing supervised training);

   (iv) If required, facilities and equipment shall be provided by the Licensee as follows:

- Modern web browser, for example a recent

release of Firefox, Chrome or Edge;

- Windows 11 operating system or equivalent or better;
- Internet connectivity and any maintenance activity required;
- Candidate testing station equipment including monitor, keyboard and mouse; and
- Any software licences required for the hardware.

(d) Licensee responsibilities: The Licensee shall, at its own expense:

   (i) Be responsible for the accuracy and completeness of all data that is entered into, or otherwise used with, Sureselect and/or Services by the Licensee, and acknowledges that the information derived from Sureselect and/or the Services is reliant on the accuracy and completeness of such data;

   (ii) Comply with all applicable laws, including those that may apply to personal information which is disclosed or processed under this Agreement;

   (iii) Provide all information, decisions, assistance, access and co-operation that Licensor may reasonably require to perform the Agreement

4. PROVISION OF SURESELECT

4.1 **Provision by The Licensor:** The Licensor shall, provide:

   (a) the Services to the Licensee; and

   (b) the Licensee access to Sureselect,

   on the Commencement Date.

4.2 Use: The Licensee acknowledges that:

   (a) Sureselect is an online platform for the assessment process as part of the Campaign. The Licensor does not take part in the final decision of assessing any Candidate and is not responsible for the actions of Candidates; and

   (b) for a Candidate to be able to access and use Sureselect, the Candidate

must agree to the Candidate Terms.

5. PAYMENT OF TRIAL FEE

5.1 **Payment of Trial Fee**: Upon agreeing to terms of this Agreement, the Licensor shall invoice the Licensee for the Trial Fee.

5.2 The invoice shall be paid in full by the Licensee by the 20th of the month following the date of the invoice.

6. WARRANTIES

6.1 **Power and authority:** Each party warrants to the other that it has full power and authority to enter into and to perform its obligations under this Agreement which will constitute valid and binding obligations on it in accordance with its terms.

6.2 **Exclusion of warranties**: The Licensor's warranties are limited to those set out in this Agreement and any implied condition or warranty (including without limitation any warranty as to merchantability, fitness for a particular purpose or under the United Nations Convention on Contracts for the International Sale of Goods (1980, Vienna)) are hereby excluded. Without limiting the foregoing, the Licensee acknowledges and agrees that

nothing in this Agreement will make the Licensor liable for any error, omission, defect, deficiency, or nonconformity in Sureselect. Without limitation, the Licensor does not warrant:

(a) the accuracy and completeness of Sureselect;

(b) that Sureselect will meet the requirements of the Licensee;

(c) that Sureselect will be free of errors; or

(d) the use of Sureselect will be uninterrupted.

6.3 **Third Party Services**: The Licensee acknowledges that certain aspects of Sureselect or the Services may be provided by one or more third parties, on those third parties' terms, including the Hosting Provider. Where a third party is involved in providing any aspect of the Services, the Licensee acknowledges that Licensor does not provide any warranties or guarantees in relation to those aspects of Sureselect or the Services, including in relation to availability, reliability or performance of the Services.

6.4 **Consumer Guarantees Act:** The Licensee agrees and represents that it is acquiring Sureselect and the Services for the purposes of a

business and that the Consumer Guarantees Act 1993 shall not apply to the supply of Sureselect or this Agreement.

7. INDEMNITIES AND LIABILITY

7.1 **Licensee indemnity**: The Licensee indemnifies and holds the Licensor and its employees and agents harmless from and against any and all claims, damages, liabilities, costs (including client and solicitor costs and the costs of complying with any order by a Court or other regulatory body) and losses (including losses arising from complying with any order by a Court or other regulatory body) arising out of any breach of this Agreement by the Licensee or its employees or agents.

7.2 **Exclusion of consequential loss:** The Licensor shall not be liable to the Licensee in connection with this Agreement for any claim for any loss of profit, loss of revenue or other form of economic loss, or for any form of indirect, consequential or special loss or damage. This limitation of liability applies however liability arises, whether in contract, tort (including for negligence), breach of statutory duty or otherwise.

7.3 **Limitation of liability:** To the fullest extent permitted by law , if the Licensor is held liable under or in connection with this Agreement, whether the claim is made in contract, tort (including negligence) or otherwise, the Licensor's aggregate liability shall not, in any event, exceed the Trial Fees paid and payable for the Term.

8. TERMINATION

8.1 **Termination by the Licensor for Default:** The Licensor may terminate this Agreement upon the happening of any Event of Default affecting the Licensee.

8.2 **Events of Default:** For the purpose of clause 8.1 an Event of Default shall happen if:

(a) the Licensee breaches clause 3.2;

(b) the Licensee commits any material breach of its obligations under this Agreement which substantially reduces the benefit or increases the burden of this Agreement to the Licensor and clause 9.1 (force majeure) does not apply provided however that if any such breach is capable of remedy then the Licensor must first give

written notice to the Licensee of any such breach and may only terminate this Agreement if such breach remains unremedied for a period of 14 days from the date of such notice;

(c) the Licensee shall have a liquidator appointed or shall pass a resolution for winding up or shall enter into any arrangement or composition with its creditors (other than for the purpose of amalgamating or reconstruction);

(d) a distress or execution is levied or issued against any part of the property or assets of the Licensee;

(e) a receiver or a statutory manager is appointed in respect of the Licensee's assets or any part thereof;

(f) the Licensee shall cease or threaten to cease to carry on its business;

(g) an warranty given pursuant to clause 6.1 is breached by the Licensee; or

(h) there is any change in the legal or beneficial control of the Licensee. For the purposes of this clause 8.2(h), "control" shall mean the ability of a person to direct the management

and/or policies of the Licensee, whether directly or indirectly, through ownership of voting securities, by contract or otherwise.

8.3 **Consequences of Termination:** Upon termination of this Agreement in accordance with this clause 8:

(a) any accrued right or liability of either party shall be unaffected;

(b) the coming into force or the continuation in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after such termination shall be unaffected; and

(c) the Licensee must immediately return or destroy (at the Licensor's option) all Confidential Information in its possession and at its own cost.

9. **MISCELLANEOUS**

9.1 **Force Majeure:** Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement

or, in the case of the Licensor, for any delay or disruption in the provision of the Services, Sureselect or updates, arising from any cause beyond that party's reasonable control including, without limitation, acts of God or public enemy, national emergencies, insurrection, riot, hostile or warlike action in peace or war, sabotage, government action, acts or omissions of third parties, or industrial disputes PROVIDED THAT if any delay or non- performance caused by a force majeure event continues for a continuous period exceeding 90 days either party may by written notice terminate this Agreement.

9.2 **Waivers:** A waiver (whether express or implied) by either party of any provision of this Agreement or of any breach of or default by the other in performing any provision shall not be effective unless in writing and shall not constitute a continuing waiver and shall not prevent the waiving party from subsequently enforcing any provision of this Agreement not waived nor from acting on any subsequent breach of or default of the other party under the provisions of this Agreement.

9.3 **Notices:**

(a) **Notice:** Each notice or other communication under this Agreement must be in writing and be made: (1) through the Licensor's webpage; (2) by email to the addressee at the email address specified on the Licensor's webpage; or (3) by email to the email address as otherwise notified in writing, from time to time designated for the purposes of this Agreement by the addressee to the other party.

(b) **Communication effective**: No communication shall be effective until received. The communication is deemed to be received by the addressee, in the case of email, when such transmission is deemed to have been dispatched in accordance with the Electronic Transactions Act 2002 (NZ).

9.4 **Further acts:** The Licensee shall sign and deliver any document and undertake any act, matter and thing which is reasonably required or requested by the Licensor to carry out and give effect to the intent and purpose of this Agreement.

9.5 **Confidentiality:** Any information of a confidential nature made available to a party pursuant to this Agreement (including all documents and information relating to Sureselect) shall be kept strictly confidential by the recipient party provided that this obligation shall not apply to any information which:

(a) is in the public domain other than by default of the recipient party;

(b) is obtained by the recipient party from a bona fide third party having the right to disseminate such information;

(c) is or had already been independently generated by the recipient party; or

(d) is required to be disclosed by law or by any Stock Exchange.

The obligations contained in this clause 9.5 shall endure beyond the termination of this Agreement until the confidential information comes into the public domain other than by default of the recipient party.

9.6 **Assignment etc:**

(a) Subject to clause 9.6(b), no party shall be entitled to transfer, assign, sublease, sublicense or otherwise part with its interest or any right, obligation or entitlement under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

(b) Either party may assign its interest in this Agreement to any subsidiary or holding company (as those terms are defined in the New Zealand Companies Act 1993) provided that it gives notice to the other party of any such assignment.

9.7 **Variation:** This Agreement shall not be varied unless such variation is expressly agreed in writing by both parties.

9.8 **Governing Law:** This Agreement is to be governed by and construed in accordance with New Zealand law and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

9.9 **Privity:** This Agreement is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.

9.10 **Waiver:** No failure, delay or indulgence by any Party in exercising any power or right conferred on that Party by this Agreement shall operate as a waiver of such power or right. Nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this Agreement.

9.11 **Entire Agreement:** This Agreement supersedes all previous conditions, understandings, commitments, agreements and representations whatsoever whether oral or written, and constitutes the entire agreement between the parties, relating to the subject matter of this Agreement.

9.12 **No Partnership/Agency**: Nothing contained in this Agreement is deemed to constitute the parties partners nor,

9.13 **Privacy**: The Licensee:
   (a) acknowledges and agrees that to the extent that Licensor is required to collect, hold or process Personal Information relating to the Licensee' personnel and/or Candidates, in collecting, holding and processing that information, Licensor is acting as an agent of the Licensee for the purposes of the Privacy Act 2020 and any other applicable privacy law; and

   (a) must obtain all necessary consents from the relevant individual to enable Licensor to collect, use, hold and process that information for the term of this Agreement to provide the Services to the Licensee, and as otherwise required to give effect to the terms of this Agreement.