

## END USER LICENCE AGREEMENT

### 1. Licence

- (a) "Product" is the definition of the data set identified in the Order Form being supplied under this End User Licence Agreement.
- (b) Upon receipt of the Product by you, Fugro Spatial Solutions Pty Ltd ("**Fugro**") grants you a non-exclusive licence in Australia to use, copy, reproduce, distribute and transmit the Product for internal corporate purposes on any GIS, CAD or Image server platform and for any Special Conditions as outlined on the Order Form.
- (c) "Internal corporate purposes" means:
  - (i) that you may only exercise your rights under this paragraph on your local area network or on wide area network but not on the public internet or any other network available for access by any person who is not your employee or a contractor to you that is providing services to you utilising the Product and complies with clause 4 (**Use by Contractors**) below. [If you require rights to make available the Product over the internet or otherwise to extend these rights, Fugro may agree to extend this licence by further written agreement and on payment of an additional fee]; and
  - (ii) Your business must not include distribution, sale or resale of the Products or any goods which include the Product or are substantially based on the Product unless specified in Special Conditions outlined on the Order Form.
  - (iii) Any products or services allowed under this agreement and published by you that are based on the Product must carry an acknowledgment of Fugro as the suppliers of the Product.
- (d) This licence only applies to your use of the Product as specified in the attached Order Form. In the event that you purchase more tiles, you must complete a separate Order Form and a separate licence will apply to that use.

### 2. Copies

- (a) You may adapt, modify and translate the Product from its original format to different mosaics, projections, formats, compressions or as otherwise necessary to exercise your rights under clause 1. Use of any and all copies and adaptations of the Product which are made as a result of the exercise of your rights under this agreement are subject to the same restrictions as the Product.

### 3. Payment

- (a) In consideration of the licence granted under this agreement, you must pay the relevant price as set out in the Order Form. Unless expressly included, the Fee does not include GST. You must pay the Fee as well as an amount equal to the Fee multiplied by the rate at which GST is imposed in respect of the Fee at the time the Fee is payable. You must also pay any delivery and handling

charges and any GST applicable to such charges as detailed in the Order Form.

- (b) "GST" means the GST as defined in the A New Tax System (Goods and Services Tax) Act 1999. Words used in this clause which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999*, have the same meaning as in that Act, unless the context otherwise requires.
- (c) Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this agreement.
- (d) If either party (Claiming Party) is entitled under this agreement to be reimbursed or indemnified by the other party (Reimbursing Party) for a cost or expense incurred by the other party in connection with this agreement:
  - (i) if the Claiming Party may claim an input tax credit in relation to the GST component of that cost or expense, the Claiming Party must calculate the amount claimed from the Reimbursing Party net of any GST component of the cost or expense, to which net amount GST will then be added; and
  - (ii) the Reimbursing Party must pay the net amount and GST on that net amount.

### 4. Use by Contractors

- You may allow a contractor to exercise your rights under this agreement provided the contractor:
- (a) only uses the Product for your internal corporate purposes.
  - (b) complies with the terms of this licence as though named as "you" in this agreement;
  - (c) undertakes to destroy or return to you the Product and any and all copies of the Product which are within the contractor's possession, custody or control when the contractor no longer needs to use the Product and/ or any copies of the Product for your internal corporate purposes; and
  - (d) the contractor signs a written statement specifying: the name and address details of the contractor; the project in relation to which the contractor requires access to the Product, the period for which the contractor requires access; and that they are aware of, understand and will comply with the terms of this licence, and you retain the original of that statement and provide it to Fugro on request from Fugro.

### 5. Records

- (a) You must maintain, during the term of this agreement and for 7 years after expiry or termination of the agreement, complete, accurate and up to date records of your compliance with this agreement, including without limitation:
  - (i) any contractor declarations referred to in clause 4(d);
  - (ii) log files of all agents and contractors accessing the Product; and

- (iii) records of all formats in which the Product is used, modified, adapted, translated or copied.
- (b) Fugro Spatial Solution Pty Ltd may inspect any records referred to in paragraph (a) on reasonable notice during normal business hours.

**6. Security**

You must ensure that the Product is protected at all times from misuse, damage, destruction or any unauthorised use.

**7. Term and Termination**

- (a) The licence commences the date on which you receive the Product and continues until terminated. The licence terminates automatically in the event that:
  - (i) you fail to comply with a term of this agreement; or
  - (ii) you become, threaten to become or resolve to become insolvent, the subject of any form or administration or receivership, to dissolve or you become unable to pay your accounts as and when they fall due.
- (b) as soon as reasonably practicable upon termination of this agreement, you must:
  - (i) at your own cost, return or arrange for the return of all copies of the Product within your possession, custody or control, in whatever form, to Fugro;
  - (ii) at your own cost, destroy or arrange for the destruction of all copies of the Product within your possession, custody or control which cannot be returned to Fugro under subparagraph (i); and
  - (iii) pay to Fugro within 30 days of termination any and all outstanding amounts owing to Fugro under this agreement.

This clause survives the termination of this agreement.

**8. Warranties**

- (a) Subject to clauses 9 (Indemnities) and 10 (Limitation of Liability), Fugro warrants that it is able to give the rights under this agreement.
- (b) You warrant that you have the authority to enter into this agreement and that you, your employees, agents and contractors will comply with this agreement.

**9. Indemnities**

- (a) You indemnify Fugro, its employees, agents and contractors (Fugro indemnified parties) from and against any and all loss, damage or expense to the extent that they are suffered or incurred by the Fugro indemnified parties, whether directly or indirectly as a result of: a breach of this agreement; or, as a result of any act or omission, whether negligent or otherwise, by you or anyone acting on your behalf or within your control.
- (b) Fugro indemnifies you, your employees, agents and contractors (the indemnified parties) from and against any and all loss, damage or expense incurred or suffered by the indemnified parties, whether directly or indirectly, to the extent that they are suffered or incurred by the indemnified parties

as a result of a claim that the use by the indemnified parties of the Product in accordance with this agreement infringes third party rights.

**10. Limitation of Liability**

- (a) All express or implied representations, conditions, warranties and terms relating to the Product or this agreement, not contained in this agreement, are excluded from this agreement to the extent permitted by law. If the law, including the *Trade Practices Act 1974 (Cth)* (as amended) or any similar legislation, implies or imposes a non-excludable condition or warranty which can be limited, and in the event of breach of the warranty in clause 8(a)(i) as your sole remedy, the liability of Fugro to you for breach of that condition or warranty will be limited, as Fugro determines, to: the replacement of the Product; the repair of the Product; payment of the cost of replacing the Product or acquiring an equivalent good; or payment of the cost of repairing the Product.
- (b) Subject to paragraph 10(a) above Fugro excludes liability to any person (including without limitation you, any user approved by you, and any person to whom information is provided by you or any user utilising the Product) for and in relation to any loss, damage or expense in relation out of utilisation of the Product in any way, including without limitation loss of revenue and profit, lost business opportunities, or any other direct, indirect, consequential, incidental, special loss or damage.

**11. General**

- (a) This agreement:
  - (i) represents the entire agreement between the parties in relation to the Product;
  - (ii) may only be varied by agreement in writing signed by both parties; and
  - (iii) supersedes any previous agreements or purchase order or invoice terms.
- (b) The laws of Western Australia govern the terms of this agreement and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

**End User Client Authorisation**

I hereby authorise the purchase and have agreed to the terms in this Agreement as the Authorised Representative of the End User.

**Purchase Order or Customer Ref No.**  
(Please attach copy)

\_\_\_\_\_  
(End User Company)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

