

PSMA USER AGREEMENT – EVALUATION LICENCE CONDITIONS

This is a legal licence agreement between You and PSMA regarding your use of the Data.

By installing or otherwise using any part of the Data, You agree to be bound by the terms of this Agreement. If You do not agree with the terms of this Agreement You must not install or use the Data in any way.

By providing your contact details below, You agree to be bound by the terms of this Agreement.

1. Proper Consideration

- 1.1 You acknowledge that Your acceptance of the terms of this Agreement is proper consideration for the grant of the Licence.

2. Grant of Licence

- 2.1 PSMA grants You a non-exclusive, non-transferable licence to use the Data for the Evaluation Term solely for internally evaluating the Data.
- 2.2 The grant of the licence includes the provision of Data in a Full Access format, with no permission to share or sublicense.
- 2.3 Any rights not specifically granted in this Licence are reserved to PSMA.

3. Licence Conditions

- 3.1 You must not:
- (1) commercially exploit the Data or any material developed from the use of the Data;
 - (2) copy, alter, modify or reproduce the Data;
 - (3) reverse engineer, disassemble or decompile the Data;
 - (4) use or deal with the Data in any way that is likely to adversely affect the Intellectual Property Rights of PSMA or PSMA's reputation;
 - (5) publish, license or otherwise distribute (whether for consideration or not) Data (including, for example, address details, XY coordinates or vector format data) over an open electronic network (including the internet);
 - (7) grant any greater right, than the right(s) provided to You in this Agreement

4. Security of Data

- 4.1 You must at all times:
- (1) ensure the proper and secure storage of the Data and any information about the design, specification or content of the Data;
 - (2) take all reasonable steps to protect the Data from misuse, damage or destruction; and
 - (3) ensure that any copies of the Data are dealt with in accordance with PSMA's reasonable directions.

5. Labelling of Data

- 5.1 You must ensure that any copy or expression, including in material form, of the Data retains the copyright that is present on the Data at the time PSMA provides it to You.
- 5.2 You must comply with any reasonable directions of PSMA regarding the form and content of any copyright notice and/or disclaimer that is to appear on the Data.

6. Licence Fees

- 6.1 PSMA provides the Licence at no cost.

7. Intellectual Property Rights

- 7.1 You acknowledge and agree that there is no transfer to You of ownership of, or Intellectual Property Rights in, the Data or any copies, updates, new releases, modifications or alterations (including by way of Thinning or manipulation) of the Data.

8. Infringement of Intellectual Property Rights

- 8.1 You must notify PSMA as soon as practicable if You become aware:
- (1) of any actual, suspected or anticipated infringement of Intellectual Property Rights in the Data; or
 - (2) that use of the Data infringes, or is suspected or alleged to infringe, the Intellectual Property Rights of any person.
- 8.2 PSMA will decide what action, if any, to take in relation to the actual, suspected or alleged infringement, is responsible for the payment of all legal and associated costs and is entitled to keep any award of damages or account of profits.
- 8.3 You must render all reasonable assistance to PSMA in relation to any litigation regarding the infringements referred to in clause 8.1.

9. Confidentiality

- 9.1 In this clause 9:
- (1) **"Recipient"** means a Party to which Confidential Information is supplied by the other Party; and
 - (2) **"Provider"** means a Party by which Confidential Information is supplied to the other Party;
- 9.2 Subject to the terms of this Agreement, the Recipient must:
- (1) maintain and take all steps necessary to maintain all Confidential Information in strictest confidence;
 - (2) ensure that proper and secure storage is provided for the Confidential Information while in the possession or under the control of the Recipient;
 - (3) take all precautions necessary to prevent accidental disclosure of any of the Confidential Information;
 - (4) not disclose any of the Confidential Information to any person other than those of Recipient's employees, officers and agents who are required to receive and consider the Confidential Information in the course of (and solely for) the purposes of considering and negotiating an agreement between the Parties for the licensing of PSMA products and services;
 - (5) use Confidential Information solely for the purposes of considering and negotiating an agreement between the Parties for the licensing of PSMA products and services;

- (6) keep a record of what copies have been made of Confidential Information and by whom and supply this information to the Provider on request;
 - (7) keep confidential the fact that Confidential Information has been provided by the Provider to the Recipient; and
 - (8) not expressly or impliedly disclose the existence of Confidential Information.
- 9.3 In the event that You provide Confidential Information to any party, they must adhere to same obligations placed on You in this clause 9.
- 9.4 It is not a breach of clause 9.2 for a Party to disclose Confidential Information which it is obliged by law to disclose to the person to whom it is disclosed.
- 9.5 The Recipient must destroy all documents and other media which contain Confidential Information to the Provider:
- (1) immediately when requested by the Provider to do so; and
 - (2) if not earlier requested, on or before expiration or termination of this Agreement.

10. Privacy

- 10.1 The Parties acknowledge that the Data does not on its own constitute Personal Information.
- 10.2 You agree:
- (1) not to do any act or engage in any practice using the Data that would breach the *Privacy Act 1988* (Cth); and
 - (2) to comply with any direction of PSMA to observe any recommendation of the Privacy Commissioner relating to Your acts or practices that the Privacy Commissioner considers to be in breach of the obligations in this clause.

11. Implied Terms

- 11.1 All statutory or implied conditions and warranties are excluded to the extent permitted by law, including in respect of the state, quality or condition of the Data.
- 11.2 To the extent permitted by law, liability under any condition or warranty which cannot legally be excluded is limited to the supply by PSMA of equivalent property or the replacement by PSMA of the Data.
- 11.3 You acknowledge that You do not rely (and that it is unreasonable for You to rely) on the skill or judgment of PSMA as to whether the Data is reasonably fit for any purpose for which it is being licensed.
- 11.4 You agree that PSMA has no liability (including liability in negligence) to You for any loss or damage, consequential or otherwise, suffered or incurred by You caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind in the Data and/or advice, recommendation, information or services provided to You by PSMA.

12. Warranties

- 12.1 PSMA represents and warrants that it has and will retain all necessary rights to grant the Licence.
- 12.2 You represent and warrant to PSMA that:
- (1) You are empowered to enter into this Agreement on Your behalf and to do all things that will be required by this Agreement;
 - (2) all things have been done (including all authorisations) as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid and binding on You; and
 - (3) You have not relied on any representation made by PSMA which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by PSMA.

13. Indemnity

- 13.1 You indemnify and hold harmless DigitalGlobe, PSMA and each of its officers, employees and agents, (“**those indemnified**”) from and against any damages, loss (including loss of profits and any other consequential loss), costs, expenses (including legal costs and expenses) or liability incurred or suffered by any of those indemnified arising from:
- (1) any claim from a third party alleging infringement of their Intellectual Property Rights and which arises from use of the Data in a manner or for a purpose not reasonably contemplated or not authorised by PSMA under this Agreement;
 - (2) a breach of Your obligations under this Agreement; or
 - (3) any wilful, unlawful or negligent act or omission by You.

14. Changes to Legislation

- 14.1 Notwithstanding any other provision of this Agreement, You acknowledge and agree that PSMA and/or You must comply with any future legislation and/or Government policy which imposes binding restrictions or limitations on PSMA’s or Your use of the Data, including any restrictions or limitations relating to the supply of Data or elements thereof to any person, and the terms of this Agreement will be varied accordingly.

15. Term and Termination

- 15.1 This Agreement commences on the date you agree to be bound by the terms and will expire at the end of the Evaluation Term, subject to earlier termination.
- 15.2 PSMA may without cause, at any time, terminate this Agreement and the Licence granted pursuant to it by giving five (5) Business Days’ notice to You in writing. You must do all that is possible to mitigate Your losses arising from the early termination of this Agreement.
- 15.3 Upon expiry or termination of this Agreement, You must, at PSMA’s election, either return to PSMA or destroy any copies of the Data in Your possession, custody or control.

16. Disputes

- 16.1 Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives must be formally referred to the respective Managing Directors or Chairpersons of each Party.
- 16.2 Subject to clause 16.3, before resorting to arbitration or litigation, the Parties must in good faith explore the prospect of mediation.
- 16.3 Nothing in this clause prevents a Party from seeking urgent equitable relief before an appropriate court.

17. Miscellaneous

- 17.1 **Relationship:** This Agreement must not be construed as a joint venture or partnership. The relationship between the Parties is that of independent contractors only. You do not have any authority to bind PSMA in any respect nor to incur any liability or make any commitment on behalf of PSMA without PSMA’s prior written consent.
- 17.2 **Assignment and Novation:** You may not assign the benefit of this Agreement without PSMA’s prior written consent. PSMA may in its absolute discretion consent to the assignment or novation of this Agreement by You subject to such reasonable conditions as PSMA chooses to impose. You will consent to the novation of this Agreement as required by PSMA.
- 17.3 **Waiver:** No right under this Agreement will be deemed to be waived except by notice in writing signed by each Party. A waiver made by PSMA pursuant to this clause will not prejudice its rights in respect of any subsequent breach of this Agreement by You.
- 17.4 **Variation:** The provisions of this Agreement must not be varied except by agreement in writing signed by the Parties.

- 17.5 **PSMA's Rights:** Any express statement of a right of PSMA under this Agreement is without prejudice to any other right of PSMA not expressly stated in this Agreement or existing at law.
- 17.6 **Survival of Agreement:** The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration or termination of this Agreement (which include the provisions relating to confidentiality) must remain in full force and effect following the expiration or termination of this Agreement.
- 17.7 **Severability:** If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
- 17.8 **Entire Understanding:** this Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 17.9 **Governing Law:** The law of Australian Capital Territory governs this Agreement and the Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia.
- 17.10 **Notices:** Notices under this Agreement may be delivered by prepaid postage, certified mail or by email transmission. Notices are deemed given five (5) Business Days after deposit in the mail with postage prepaid or certified, or if sent by fax or email transmission upon completion as evidenced by a fax or email transmission record. Where notice is given by fax or email the original document must be posted on the same day as the transmission is sent.
- 17.11 **Third Party Beneficiary:** DigitalGlobe as a co-provider of the Data is, to the extent permitted by law, an intended third party beneficiary of this Agreement and entitled to rely on and enforce this Agreement in their own right.
- 18. Definitions**
- 18.1 In this Agreement, unless the contrary intention appears:
- (1) **"Agreement"** means this licence agreement;
 - (2) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
 - (3) **"Confidential Information"** includes Data and any information which:
 - (a) is specifically designated as confidential by a Party;
 - (b) by its nature may reasonably be understood to be confidential;
 - (c) relates to the financial, business affairs or management decisions of a Party or any Related Body Corporate;
 - (d) is or forms part of a Party's or their Related Body Corporate's supplier, customer or prospective customer lists, including contact details, addresses, personal information, requirements or any lists, records or databases containing such information;
 - (e) relates in any way to a Party's or any Related Body Corporate's Intellectual Property,
 but does not include information that:
 - (f) was rightfully in the other party's possession (as evidenced by written records), and not subject to an obligation of confidentiality on the part of that party, before the date set out at the beginning of this Agreement;
 - (g) is or comes into the public domain (other than as a result of a breach of this Agreement by a Party); or
 - (h) is required to be disclosed by any law.
- (4) **"Data"** means data permitted by PSMA for a defined sample area of Adelaide, South Australia and is made up of the following:
 - (a) Raster (including Imagery and digital elevation models);
 - (b) Vector (including polygon and point);
 - (c) A-spatial; and
 - (d) Metadata.
 - (5) **"DigitalGlobe"** means DigitalGlobe, Inc (Company Identification Number 31-1420852);
 - (6) **"Disclosing Party"** means the Party which discloses, communicates or gives access to its Confidential Information to a Recipient under this Agreement;
 - (7) **"Evaluation Term"** means the period ending thirty (30) days after the date of this Agreement;
 - (8) **"Full Access"** means access that allows the alteration, exportation or extraction of data, including any tables, fields records, attributes, content or metadata that is contained in or accompanies data;
 - (9) **"Intellectual Property Rights"** means all intellectual property rights including rights of any kind in:
 - (a) inventions, discoveries and novel designs (whether or not registrable as patents or designs);
 - (b) copyright (including future copyright) in all literary works, artistic works, computer software and other work or subject matter in which copyright subsists or may in the future subsist;
 - (c) any database protection rights whether arising under statute or otherwise;
 - (d) trade secrets; or
 - (e) trade and service marks (whether registered or unregistered);
 - (10) **"Licence"** means the licence to use the Intellectual Property Rights comprised in the Data in accordance with this Agreement, together with any rights in relation to the Data given to You by this Agreement;
 - (11) **"Party"** means either PSMA or You as the context dictates;
 - (12) **"Personal Information"** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (and includes any information obtained as a result of use of the Data in conjunction with third party data);
 - (13) **"PSMA"** means PSMA Distribution Pty Ltd (ACN 131 984 800);
 - (14) **"Recipient"** means the Party which receives or is given access to Confidential Information from the Disclosing Party under this Agreement;
 - (15) **"Related Body Corporate"** of a Party has the meaning given in section 9 of the *Corporations Act 2001* (Cth); and
 - (16) **"Thinning"** means computer manipulation of digital spatial data so as to reduce the computer storage space required by the data which is achieved by deleting intermediate or redundant data points defining a linear feature or boundary whilst preserving the general shape fidelity of the boundary or feature;

19. Interpretation

19.1 In this Agreement, unless the contrary intention appears:

- (1) the clause headings are for ease of reference only and must not be used for interpretation;
- (2) words in the singular include the plural and vice versa;
- (3) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (4) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (5) the word "includes" is not a word of limitation; and
- (6) each provision of this Agreement will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

Name

Job title

Organisation

Address

Email

Phone

Signature

Date