

STANDARD TERMS OF LICENCE

1. LICENCE

Grant of Licence: NationalMap grants to the Licensee a non-exclusive, personal, non-transferable licence to use each Product in accordance with section 2 and as otherwise set out in this agreement.

Proprietary Rights: The Licensee acknowledges that this agreement does not confer any proprietary or ownership rights in any Product on the Licensee and that the Licensee only has a right to use each Product in accordance with this agreement and that:

- 1.1. all rights in and to each Product are the sole property of NationalMap or a Supplier, as the case may be;
- 1.2. copyright subsists in each Product and NationalMap or a Supplier, as the case may be, is the owner of all such copyright;
- 1.3. each Product embodies substantial creative effort, skill and labour on the part of NationalMap or a Supplier, as the case may be.

NationalMap warranty: NationalMap warrants that it has full authority and right to licence each Product to the Licensee in accordance with the terms of this agreement.

2. USE AND RESTRICTIONS

Permitted use: The Licensee may only use each Product for the following purposes:

- 2.1. internally in the course of its ordinary business operations as advised to NationalMap at the date of this agreement;
- 2.2. to make 2 copies of the Product for backup purposes.

Prohibited use: Unless expressly permitted in this agreement, the Licensee must not itself, and must not permit any other person to:

- 2.3. use, store, download, sell, transmit, redistribute, reproduce, adapt or otherwise deal with any Product in any form (whether machine readable or not) for any purpose;
- 2.4. reverse assemble or reverse compile the whole or any part of any Product;
- 2.5. permit any Product to be used, at any time, by more than that number of persons entitled to use that Product as Users under this agreement from time to time;
- 2.6. format or merge the whole or a substantial or material part of any Product so that it ceases to be readily identifiable as that licensed by NationalMap under this agreement;
- 2.7. do or suffer any act in respect of any Product which is not licensed under this agreement;
- 2.8. create, collect, capture, collate or organise and arrange data or software which is, in any material respect, the same as or similar to the whole, or any material or substantial part of, any Product; or
- 2.9. disclose any Product to, or use any Product for, the benefit of third parties.

3. SECURITY AND CONTROL

Licensee's obligations: During the term of this agreement the Licensee shall:

- 3.1. effect and maintain adequate security measures to safeguard each Product from access or use by any person not entitled by this agreement to such access or use;
- 3.2. retain each Product and all copies of the Product under the Licensee's effective control;
- 3.3. maintain accurate and up-to-date records of the number and location of each Product used by the Licensee;
- 3.4. ensure that its employees, agents and other parties who will use any Product are notified of this agreement and its terms prior to any such employee, agent or party using the Product; and
- 3.5. Where the Data contains information about identifiable individuals, the licensee agrees the following additional provisions:
 - To comply with the provisions of the Privacy Act 1993, including the information privacy principles, in respect of the Data as if you were an "agency" under that Act.
 - To not allow the Data to be indexed by any public internet web search engine and must ensure that all third parties to whom You provide the Data (whether or not supplied by You in a modified form or compilation) do the same.
 - To not do, or omit to do, anything that would cause LINZ to breach its obligations under the Privacy Act 1993.
 - To not use the Data for any unlawful purpose and must comply with all laws.
 - To not use the Data in Unsolicited Direct Marketing nor in recipient lists provided by You to other parties which are likely to be used for Unsolicited Direct Marketing. Unsolicited Direct Marketing means a targeted marketing communication, in any form, that the recipient has not consented to receiving.
 - To within 5 business days of LINZ's request to do so:
 - o amend or delete the Data (or any part of the Data) as requested by LINZ;
 - o ensure that all third parties to whom You provided the Data (whether or not supplied by You in a modified form or compilation) do the same; and
 - o provide evidence satisfactory to LINZ that the Data has been so amended or deleted.

Proprietary Notices: Proprietary Notices form part of this agreement. The Licensee must ensure that it complies with all Proprietary Notices and that any Product and any reproduction and adaptation lawfully made in accordance with the terms of this agreement include any Proprietary Notice, displayed as required by NationalMap.

Enforceability by LINZ: The Licensee agrees that clauses 3.1 and 3.5 above have been included for the benefit of both NationalMap and LINZ, and are therefore enforceable by LINZ under the Contract and Commercial Law Act 2017.

4. MAINTENANCE

Maintenance Support Programme: If a MSP Fee is specified in the Product Licence in respect of any Product and the Licensee pays the MSP Fee by the due date, NationalMap will, subject to any provisions specified in the Product Licence, provide the Licensee Updates, Upgrades and a telephone support service in accordance with this section 4.

Update/Upgrade: NationalMap will provide the Licensee with copies of Updates and Upgrades as they are released and made generally available by NationalMap to its customers from time to time.

Telephone Support: NationalMap shall provide telephone support to the Licensee during hours specified by NationalMap. The hours may be changed at any time by NationalMap without notice. The Licensee understands that telephone support is for technical questions regarding use of the most current version of the Product and is not to be used as a training tool by the Licensee. This telephone support shall be available at no cost beyond the stated fee, provided the frequency and length of calls is reasonable.

Negation of MSP: The Licensee acknowledges that if it fails to install any Update or Upgrade of the Product within 5 days of its receipt, NationalMap will not be obliged to provide the Licensee with further Updates, Upgrades or telephone support until the then current Update or Upgrade is installed by the Licensee.

Costs of Excluded Items: If any apparent problem with the Product that is reported by the Licensee to NationalMap is determined not to have been caused by the Product, NationalMap shall notify the Licensee, and any time and expense associated with NationalMap support shall be billed at NationalMap's then hourly rates.

5. FEES

Fee: In consideration of the licence and other rights granted by NationalMap under this agreement to the Licensee, the Licensee shall pay to NationalMap the Fees plus GST (if any) on or before 20th of the month following date of invoice without deduction or set-off.

6. CONFIDENTIALITY

No Disclosure: The Licensee must at all times keep confidential all ideas, information, data, trade secrets, procedures, processes, methods, systems, techniques, algorithms and concepts received from or relating to NationalMap including, without limitation, each Product and the terms of this agreement ("Confidential Information") except to the extent:

- 6.1. authorised in writing by NationalMap;
- 6.2. required by law;
- 6.3. it is, or becomes, available in the public domain with the authority of NationalMap and without any breach by the Licensee of this clause or any other confidentiality obligation at law.

Duty to Notify: The Licensee shall promptly notify NationalMap if the Licensee becomes aware of any disclosure or distribution of Confidential Information to any person. The Licensee shall give NationalMap all reasonable assistance in connection with any proceedings which NationalMap may institute against any such person for such disclosure or distribution.

7. RISK

Risk to pass on delivery: Risk (but not title) in each Product shall pass to the Licensee on delivery of the Product to the Licensee. If any part of the Product is subsequently lost, destroyed or damaged, NationalMap will replace the Product (embodying NationalMap's then current version of the Product) if requested by the Licensee and upon the Licensee paying NationalMap the full costs of such replacement.

8. DISCLAIMERS

Installation and Testing: The Licensee acknowledges that NationalMap is neither required to install any Product on the Licensee's computer equipment, system or network nor test whether the Product is compatible with or capable of being processed on that equipment, system or network. NationalMap does not warrant that the Product, when delivered, will be compatible with or capable of being processed on the Licensee's computer equipment, system or network.

Training: The Licensee acknowledges that NationalMap is not required to provide any training in the use of any Product to the Licensee except as the parties may agree from time to time.

Deletion of Product Data: The Licensee acknowledges that NationalMap is not required to refund any part of the Fees or compensate the Licensee in any way for any Product Data required to be deleted in accordance with clause 3.5 of this agreement.

Software: The Licensee acknowledges that it is responsible for obtaining, and for the consequences of using, software and any other thing necessary to make use of the Product.

Errors or Defects: NationalMap does not warrant or represent that each Product is free of errors, defects, omissions or other inaccuracies. The Licensee acknowledges that any Product Data may become erroneous over time.

Fitness for purpose: Except as expressly provided in this agreement no warranty, undertaking or term, whether express or implied, statutory or otherwise, as to the quality, performance, merchantability or fitness for purpose of any Product is given or assumed by NationalMap and all such warranties, undertakings and terms are, to the extent permitted by law, excluded.

Viruses: NationalMap will use all reasonable endeavours to ensure that each Product supplied by NationalMap will be free from infection, viruses or destructive code.

Implied Warranties: All warranties, terms and conditions which are implied into contracts by equity, common law or statute are expressly excluded from this agreement to the fullest extent permitted.

Consent: Neither NationalMap nor LINZ makes any representation or warranty that any person has consented to the provision of Data to you or consented to, or approved, any subsequent use or disclosure of that data by you.

9. LIABILITY AND INDEMNITY

Exclusion of Consumer Guarantees Act: The parties agree that the provisions of the Consumer Guarantees Act 1993 shall not apply in relation to the licence of any Product under this agreement.

Exclusion of liability: Notwithstanding any other provision of this agreement neither NationalMap nor any Supplier shall, in any circumstances, be liable for damages (even if NationalMap or a Supplier has been advised of the possibility of such loss or damage), including, without limitation, any direct loss, indirect loss, consequential loss, loss of profits, business interruption loss or loss of data suffered by the Licensee or any other person:

- 9.1. in connection with or arising from any defects, errors, omissions or other inaccuracies in any Product, whatsoever, now or over time;
- 9.2. in connection with or arising out of the use of any Product;
- 9.3. in connection with or arising from the deletion of any Product Data in accordance with clause 3.5 of this agreement;
- 9.4. as a result of any infections, viruses or destructive codes that may infect the Licensee's computer equipment or software due to the Licensee's use, installation or conversion of the Product; or
- 9.5. otherwise in connection with this agreement.

Limitation of Liability: In the event that any exclusion of NationalMap's or a Supplier's liability set out in this agreement is inapplicable, or is held unenforceable, NationalMap's and the Supplier's joint liability under or in connection with this agreement, or arising out of any use (by the Licensee or any other person), whether that liability arises in tort (including negligence), equity or any other basis, shall be limited to the (GST exclusive) fees paid by the Licensee for the Product version which gave rise to the loss or damage.

Indemnity: The Licensee shall indemnify and keep indemnified NationalMap and LINZ against any loss, cost, claim, liability or damage of any kind, (including any indirect loss, consequential loss or loss of profits) which NationalMap or LINZ may sustain or incur as a result of:

- 9.6. any disclosure or distribution of any Confidential Information in violation of this agreement;
- 9.7. the Product Data; or
- 9.8. any other breach of this agreement,

by the Licensee or any employee, consultant, subcontractor or agent of the Licensee or use of or reliance on any Product by any person.

LINZ exclusion of liability: Notwithstanding any other provision of this agreement LINZ shall not, in any circumstances, be liable for any losses or damages (even if LINZ has been advised of the possibility of such loss or damage), including, without limitation, any direct loss, indirect loss, consequential loss, loss of profits, business interruption loss or loss of data suffered by the Licensee or any other person in connection with this agreement.

LINZ limitation of liability: In the event that any exclusion of LINZ's liability set out in this agreement is inapplicable, or is held unenforceable, LINZ's liability under or in connection with this agreement, or arising out of any use, reproduction, modification, or creation of

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compilations or derivative works of or from the data (by the Licensee or any other person), whether that liability arises in tort (including negligence), equity or any other basis, shall be limited to the (GST exclusive) fees paid by the Licensee for the product version which gave rise to the loss or damage.

10. TERM AND TERMINATION

Term: In respect of each Product this agreement shall commence upon the date of the execution of this agreement and shall continue until the expiry of the Licence Period or terminated in accordance with this agreement.

Termination by Licensee: The Licensee may terminate this agreement by giving NationalMap 30 days' prior written notice. Termination of this agreement by the Licensee in accordance with this clause shall not entitle the Licensee to any refund of all or any part of any Fees or any other amount paid by the Licensee to NationalMap.

Termination by NationalMap: If the Licensee breaches this agreement and fails to remedy the breach (if capable of remedy) within 30 days of NationalMap giving the Licensee written notice specifying the breach, NationalMap may immediately terminate this agreement at any time by giving the Licensee written notice.

Third Party Termination: The Licensee acknowledges that if for any reason a license between NationalMap and a Supplier in respect of any Product Data, Product Software or Product is terminated, this agreement shall be deemed to have been terminated at the same time in respect of the relevant Product.

Accrued rights to continue: Any termination of this agreement shall not affect any accrued rights or liabilities of the parties nor shall termination of this agreement discharge the Licensee from any obligation to make payment of any amount owing under this agreement.

Discontinuance of Licence: On the expiry or termination of this agreement, the Licensee shall:

- 10.1. cease using each Product; and
- 10.2. within 5 days after its expiry or termination, certify to NationalMap that all copies of each Product have been returned to NationalMap and that all copies of the Product have been erased from the memory of the Licensee's computer equipment, system and network and all other forms of storage.

These clauses (10.1 and 10.2) apply to all copies of the Product in any form, partial or complete, whether modified or merged into other material or data of the Licensee.

11. GENERAL

Amendments by NationalMap: NationalMap may amend the terms of this agreement by notice in writing to the extent necessary to fulfil its obligations to LINZ.

Assignment: Other than amendments made pursuant to clause 11.1 above. The Licensee may not dispose of, assign, sub-licence or transfer, in any way, any Product or any of its rights or interest in relation to this agreement.

Entire agreement: This agreement constitutes the entire agreement and understanding between the parties relating to its subject matter and supersedes any previous agreement or understanding between the parties relating to any Product.

Severability: If one or more of the provisions of this agreement or any part of this agreement is held to be unenforceable, the remaining provisions of this agreement shall be construed as if such unenforceable provision was not contained in this agreement.

Waiver: The waiver by either party of any default or breach of this agreement shall not constitute a waiver of any other or subsequent default or breach.

Governing Law: This agreement shall be construed and governed in accordance with New Zealand law and the parties agree to submit to the non-exclusive jurisdiction of the Courts in New Zealand.

Supplier License File: The Licensee consents to NationalMap forwarding Licensee details to any Supplier for the sole purpose of generating a licence file. Each license file will be valid for the term that this agreement applies to the Product of the Supplier who generated the licence file.

Dispute Resolution: If a party believes that there is a dispute in relation to this agreement, it will notify the other party in writing giving details of the dispute. The dispute will then be promptly referred to a senior representative of each party involved in the dispute for resolution (who may use a mediator or expert opinion to assist). If they do not resolve the dispute within 10 Business Days after the notice, it will be submitted to arbitration in Wellington if requested by either party involved in the dispute.

Force Majeure: Neither party shall be liable for any failure to perform its obligations (other than to pay money) under this agreement, if such failure arises from an event beyond that party's reasonable control. Such events include, without limitation, any act of God, fire, strike, embargo, loss of power of essential services, lack of or inability to obtain raw materials, labour, fuel or other supplies, or the adoption or enactment of any law or regulation directly or indirectly interfering with or rendering more burdensome the manufacture or delivery of the Product. LINZ may, by notice in writing to you, cancel any order at any time before

delivery, due to circumstances beyond its control, and LINZ will not be liable in any way if it does so.

12. INTERPRETATION

Definitions: In this agreement, unless the context otherwise requires:

"Fees" means the Licence Fee, MSP Fee and any other fee payable in accordance with this agreement;

"Licence Fee" means the licence fee for each Product set out in the Product Licence;

"Licence Period" means in respect of each Product the licence period set out in this Product Licence;

"LINZ" means Land Information New Zealand and shall also include any duly authorised agent or subcontractor of Her Majesty the Queen in right of New Zealand acting by and through Land Information New Zealand;

"MSP Fee" means the maintenance service programme fee for each Product set out in the Product Licence;

"Product" means the product set out in the Product Licence and includes all information, data, software, copyright material, and interests contained therein.

"Product Data" in respect of each Product means the items of information which have been collected, captured, collated or organised and arranged in the Product and its form within the Product licensed to the Licensee in accordance with this agreement. "Product Data" includes the arrangement of that Product Data by or on behalf of NationalMap.

Notwithstanding anything in this agreement, NationalMap does not own and the Licensee shall have no right or interest in, any third party data files used to prepare the Product including any LINZ data files.

"Product Licence" means the Product Licence signed by NationalMap and the Licensee attached to these terms;

"Product Software" in respect of each Product means any machine readable object code version of software within the Product and all rights associated with that software. "Product Software" does not include any source code.

"Proprietary Notice" means any notice required by or on behalf of NationalMap, whether or not concerning title or ownership, specified in the Product Licence or otherwise, including any written notices, cautionary notes and disclaimers contained in the Product Data;

"Supplier" means a third party that has licensed any Product, Product Data or Product Software to NationalMap on terms that allow NationalMap to licence that Product, Product Data or Product Software to the Licensee under this agreement.

"use" when used as a verb means in respect of any Product (subject to any restrictions in this agreement) to:

- 12.1. load the Product onto the Licensee's computer equipment, system or network for use by that number of persons permitted as Users under this agreement from time to time; and
- 12.2. cause the Licensee's computer equipment, system or network, with the Product so loaded, to operate so as to cause the product outputs to be viewed, at any time, by not more than the number of persons permitted as Users to use that Product under this agreement from time to time; and
- 12.3. print or reproduce the Product Data in any print out, report, electronic display or other combined output;

but only to the extent of the Licensee's ordinary business operations as advised to NationalMap at the date of this agreement;

"Updates" may include any change or modification of Product Software made to correct an error or defect or to maintain the operational quality of the Product Software and may also include more accurate data, more up to date data, more precise data, resolved discrepancies and amended errors in Product Data.

"Upgrades" may include a new release of the Product Software or any part thereof, which adds new functionality or features to the last version of the Product Software.

"Users" in respect of any Product means the number of persons permitted to use the Product, at any one time, set out in the Product Licence.

Interpretation: In this agreement, unless the context otherwise requires:

- 12.4. references to a gender includes all genders;
- 12.5. headings are inserted for convenience only and shall be ignored;
- 12.6. references to clauses or schedules are references to clauses or schedules of this agreement;
- 12.7. references to legislation or to any provision of any legislation includes that legislation or provision as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision;
- 12.8. references to a party includes its employees, agents, managers, liquidators or other representatives and to any person includes any form of entity.

STANDARD TERMS OF TRADE

1. Definitions

- 1.1 In these Terms unless the context requires otherwise:
- "NationalMap" means NationalMap Limited.
 - "Confidential Information" means all knowledge and information of which a party, its employees or agents may become aware, relating to the business of the other party which is not publicly available.
 - "Developed Software" means software developed or customised by NationalMap for You under these terms.
 - "Force Majeure" means any event outside the reasonable control of a party and includes, without limitation, fires, or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, supplier delay due to force majeure, war or other violence, or the introduction of any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency.
 - "GST" means the applicable goods and services tax rate applying in accordance with the Goods and Services Tax Act 1985 (NZ), (or current Australian GST legislation if applicable)
 - "Intellectual Property" means all intellectual property rights including, without limitation, copyright, patent and design rights, drawings, documents, data, ideas, procedures, calculations and all other statutory and common law rights and interest.
 - "Intellectual Property Rights" means copyright, trademark, design, patent, or any other intellectual property rights.
 - "Price" means the price for the Products and Services stated in the Proposal.
 - "Products" includes licensed data, software and any other associated or ancillary products, to be supplied to You under the Proposal.
 - "Proposal" means NationalMap's written proposal to You detailing the Products and Services to be supplied, a renewal proposal or a quotation for Products or Services.
 - "Services" means the professional services offered and agreed to be provided by NationalMap to You under the Proposal and may include, without limitation, installation, helpdesk, support training services and any associated services.
 - "Terms" means these standard terms together with the Proposal.
 - "Third Party Software" means any software developed by a person other than NationalMap or You, subject to the Third Party Provider's licence terms, and which is to be supplied to You.
 - "Third Party Software Provider" means the developer/licensor of Third Party Software.
 - "You" means You as set out in the Proposal (whether an individual, company, or organisation).

2. Precedence of Terms

- The Proposal is subject to these standard terms, except to the extent that the Proposal expressly modifies any term in relation to the subject of the Proposal.
- These Terms shall not be superseded or replaced by any terms contained in any other document presented by You as your purchase order, unless agreed to in writing by NationalMap.

3. NationalMap's Responsibilities

- 3.1 NationalMap will:
- Use its best endeavours to supply to You the Products and Services for the Price stated or estimated in the Proposal;
 - use all reasonable endeavours to perform all actions which are agreed to be NationalMap's responsibility within the timeframes agreed;
 - carry out its obligations with skill, care, diligence and employing techniques, methods, procedures and materials of a quality and standard in accordance with industry practice in New Zealand (or Australia if applicable), having regard to such financial, physical or time constraints as You may impose;
 - use all reasonable endeavours to ensure that it and any employee or contractor complies with all reasonable directions and procedures relating to occupational health and safety and security as they apply to your premises;
 - use all reasonable endeavours to keep You informed of any event likely to materially affect NationalMap's performance of the Services or delivery of the Products; and
 - ensure that the Services are performed by suitably qualified or experienced personnel who have the requisite skills and expertise for the purpose.
- 3.2 You acknowledge that the timeframes referred to in clause 3.1.b are estimates only and whilst NationalMap will make all reasonable endeavours to meet such timeframes, it shall in no way be liable to You where those timeframes are not met.
- 3.3 In addition to clause 3.2, NationalMap will not be responsible or liable, in any way, for any breach of any of its responsibilities under sub-clause 3.1, where such breach is as a result of or contributed to by You failing to perform or delaying in your performance of any of your responsibilities.

4. Your Responsibilities

- 4.1 You will:
- use all reasonable endeavours to perform all actions which are agreed to as your responsibilities within the timeframes agreed.
 - ensure that the Products are used in an environment that meets specifications as advised by NationalMap or any Third Party Software Provider.
 - establish backup procedures and system security and recovery procedures for the Products (if applicable) and subject to clause 13 according to generally accepted industry practice.
 - make freely available to NationalMap (free of charge) such information, facilities, access and services as and when reasonably required by NationalMap to enable it to fulfil its obligations under these Terms;
 - keep NationalMap informed of any changes to your business operations that may impact the delivery of the Products and Services.
 - advise NationalMap immediately if You become aware of any unauthorised use or disclosure of Confidential Information or infringement of any licence relating to any of the Products.
 - Provide NationalMap, when requested, a list of named users of the software licenses owned by You; and
 - On receipt of a renewal proposal from NationalMap that your annual Software or Data Maintenance is due for renewal, you will advise NationalMap if you wish to discontinue that maintenance. If no advice is received from you in response to that proposal, by the said renewal date, the maintenance will by default continue from that date, on the basis and for the period, as outlined in the renewal proposal.
 - ensure that the Software is used in a proper manner by competent and trained employees only, or by persons under their supervision.
 - not alter or modify the Software or the documentation in any way except with the express approval of NationalMap, nor permit the Software to be combined with any other programs to form a combined work.
 - not request, permit or authorise anyone other than the NationalMap to provide any Software Support Services in respect of the Software or the documentation except where NationalMap advises that it is unable or unwilling to provide such services.

5. Failure to Meet Responsibilities

- 5.1 Without prejudice to its other rights or remedies under these Terms or at law, if You fail to meet your obligations under clause 4.1 or otherwise under these Terms, then:
- You shall pay all additional charges and expenses arising from any additional work or downtime incurred by NationalMap as a consequence; and
 - NationalMap shall be entitled to an extension of time to meet its own obligations, which recognises the effects of your failures.

6. Price

- You shall pay the Price as set out in the Proposal.
 - Unless otherwise stated in the Proposal, the Price is for data and software supplied by NationalMap to its specifications and is exclusive of installation and maintenance costs.
 - If the Proposal provides for the Price to be calculated by the amount of Services provided, the Price will be invoiced on the last day of each month during which those Services are provided.
 - The Price is plus GST and other taxes, which shall be paid by You, and is in New Zealand dollars (unless otherwise stated).
 - The Price does include import tax duties.
 - Where NationalMap provides You with a quotation, it is based on information available to it at the time, and NationalMap may charge You more or less than the amount stated if its costs (e.g. costs of labour, materials, tax, exchange rates or other costs) or the specifications change.
 - NationalMap reserves the right to invoice You for all reasonable additional out of pocket expenses, including but not limited to accommodation, meals, travel, telecommunications, printing, copying and courier fees. Such amounts will be invoiced to You monthly as they are incurred.
- ## 7. Payment
- Unless otherwise stated in the Proposal or agreed in writing by NationalMap, You shall pay for the supply of Products and Services on or before the 20th of the month following the date of invoice.
 - All payments must be made in New Zealand dollars (unless stated otherwise on the invoice) and must be made without set-off or deduction.
 - NationalMap may require You to pay a deposit, being an advance payment for the Products and Services to be supplied.
 - NationalMap may, at any time and for any reason, notify You that it is ceasing to supply the Products or Services to You on credit. This is without prejudice to your obligation to pay all amounts outstanding up until the date of NationalMap's notification to You under this sub-clause.

8. Default

- 8.1 You will be in default if:
- You fail to pay an amount due under the Terms by the due date for payment; or
 - You commit a breach of any of your other obligations under the Terms, or the terms of any other contract You have entered into, or that You enter into in the future, with NationalMap or one of its related entities; or
 - You become insolvent, have a receiver appointed, enter into any composition or arrangement with creditors, do any act which would render You liable to be placed in liquidation or have a receiver appointed over your property, commit any act of bankruptcy, or cease to be a full legal capacity.
 - You threaten to cease to carry on business or intend to take any steps to cease trading; or
 - an event or series of events (whether related or not) occurs which, in NationalMap's opinion may cause a material adverse change in your ability to meet your obligations to NationalMap; or
 - You assign any of your rights or Obligations under the Terms other than in accordance with clause 19.
- 8.2 If You are in Default then NationalMap may, at its option, do any one or more of the following:
- charge You default interest at 2% per annum above the base lending rate of the ANZ Bank on any late payments calculated on a daily basis from the due date of payment until the date payment is received;
 - require You to remedy the default in the manner and within a period that NationalMap advises;
 - charge You debt collection costs incurred in the collection of late payments.
 - suspend or terminate your account with NationalMap;
 - enforce any security interest(s) created by these Terms;
 - exercise any rights that NationalMap has under these Terms or that are available to it at law.

9. Variations

- Any changes to these Terms shall be valid only if agreed between the Parties and recorded in writing.
- Any delay in the provision of Services or Products due to an agreed variation to the Terms shall not alter the due date for payment as set out in the Proposal or these Terms unless specifically agreed in writing.
- If the parties agree to vary the quantity of any Product of Service supplied, NationalMap reserves the right to vary the unit price of such Product or Service.

10. Delivery

- Unless otherwise stated, delivery shall be deemed to occur on supply of the Products and Services at your place of business.
- NationalMap may engage a carrier to deliver the Products to You. You acknowledge that any dates given for shipment or delivery are stated in good faith only and do not create a binding obligation on NationalMap.
- You shall make no claim against NationalMap on account of late shipment or delivery, however caused.
- All freight charges will be at NationalMap's cost, unless otherwise stated.

11. Title and Risk

- The Intellectual Property Rights in any Products supplied under or used in performing these Terms are and will remain owned by NationalMap, and in respect of the Third Party Software, the Third Party Software Provider.
- You acknowledge that such Products comprise proprietary information and are subject to Intellectual Property Rights and You agree not to do or allow to be done anything which is inconsistent with those rights.
- Risk of loss or damage to Products supplied to You passes to You upon delivery.
- Risk of loss or damage to physical items supplied by You to NationalMap for use in performing the Services or providing the Products remains with You.
- You acknowledge that the Intellectual Property Rights survive termination of the Terms.

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12. Personal Property Securities Act 1999 (PPSA)

- 12.1 Title to, and property in, any Developed Software supplied by NationalMap to You and identified in the proposal as intended to be transferred to You (in this clause 12 called "the Collateral") shall not pass to You until payment of the total purchase price for the Collateral is received.
- 12.2 For the purposes of the Personal Property Securities Act 1999 (PPSA), this clause 12 creates a security interest in the Collateral to secure your obligation to pay the total purchase price for the Collateral.
- 12.3 You hereby grant to NationalMap, a security interest in the Collateral and in any proceeds arising from the sale of the Collateral to secure your obligation to pay the purchase price for the Collateral and any other obligations of yours to NationalMap under these Terms ("the Obligations") as and when the same become due.
- 12.4 You agree that if You are in breach of any of its Obligations:
- You will, promptly upon receiving a written request from NationalMap and at your cost and expense, deliver all or any of the Collateral to NationalMap at such place or places as it directs;
 - if You fail to deliver any of the Collateral as required under these Terms, NationalMap may, at any time, either itself or through an authorised agent, enter into any place where the Collateral is located and remove the Collateral;
 - NationalMap may sell all or any of the Collateral without giving prior notice of the sale to You; and
 - if NationalMap proposes to take all or any of the Collateral in satisfaction of the Obligations pursuant to s 120 of the PPSA, You waive your right to require NationalMap to sell the Collateral and agree that notwithstanding s 120(1) of the PPSA, You shall remain liable to NationalMap for the difference between the market value of the Collateral at the time it is first able to be sold by NationalMap free from all your rights and interests and other persons pursuant to s 123(1) of the PPSA and the amount of the Obligations which are owed to NationalMap.

13. Supply of Software

- 13.1 All software provided by NationalMap to You under these Terms for your use (including Developed Software, to which title has not been or is not intended to be transferred to You, and Third Party Software) is subject to the licence terms on which such software is supplied, including, for the avoidance of doubt, the Third Party Provider's end user licence agreement. You must use such software strictly in accordance with the terms of the applicable licence.
- 13.2 In regards to software other than Third Party Software, and subject to any licence agreement NationalMap may grant You, NationalMap grants you a non-exclusive, non-transferable right and licence to use the software (other than Third Party Software) solely for your internal business purposes as set out in the Proposal. You shall be entitled to make two copies of such software for backup and security purposes ("the Copies") provided that all copyright notices are incorporated into the Copies. The Copies are subject to the same restrictions as the original software provided by NationalMap to You, including these Terms.
- 13.3 NationalMap warrants that, on payment of the relevant specified licence/ subscription fees, You are licensed to use the software supplied to You in accordance with the terms of the relevant licence for such software, or in accordance with clause 13.2 (if applicable).

14. Confidential Information

- 14.1 Each party shall keep confidential at all times all Confidential Information of which it, its employees or agents may become aware of in relation to these Terms and will not use, communicate, cause to be communicated, copy, make available or otherwise resupply any Confidential Information to any third party:
- without the consent of the party supplying such information; or
 - unless it is to those of its employees, agents or representatives to whom disclosure is necessary for the purposes of fulfilling the party's obligations under these Terms.
- 14.2 The obligations of confidentiality as set out in clause 14.1 shall not apply to any Confidential Information which:
- is, or at any time becomes, available to the public through no fault of that party; or
 - is lawfully disclosed to such persons by third parties not under confidentiality obligations; or
 - is independently developed by the recipient party without the use of the other party's confidential information; or
 - is required to be disclosed by the recipient party by governmental agency or law; or
 - is, or is related to, these Terms and/or its performance; and is disclosed to its related companies, solicitors, auditors, insurers or accountants.
- 14.3 The rights and obligations as set out in clause 14 survive termination of the Terms.

15. Warranties

- 15.1 NationalMap warrants that:
- it will make all reasonable endeavours to comply with its responsibilities as set out in clause 3;
 - the Products and Services will comply with the standards and specifications contained in the Proposal.
- 15.2 The warranty set out in sub-clause 15.1:
- applies for only 90 calendar days ("the Warranty Period") from the date of delivery of the Products or Services; and
 - is excluded if any problems are caused by your, or any third party components or other items not approved by NationalMap; or
 - Your negligence or that of your employees or contractors; or
 - if there is a substantial change by You, or at your request, in the operational use of the Products and Services above what was agreed between the parties.
- 15.3 Your sole remedy for a breach of the warranty contained in clause 15.1 shall be for NationalMap to provide replacement Products or Services during the Warranty Period at NationalMap's cost and/or (at NationalMap discretion), provide a refund of any monies paid.
- 15.4 The warranty in clause 15.1 replaces all other representations or warranties (statutory, express or implied) by NationalMap. All such representations and warranties (except any which may not lawfully be excluded) are expressly excluded, including, without limitation, the implied warranties of merchantability and fitness for any particular purpose. The parties agree that the Products and Services under these Terms are supplied for the purposes of a business and any rights granted under the Consumer Guarantees Act 1993 are excluded.
- 15.5 In any event, where NationalMap is found liable for direct loss or damage suffered by You due to any material breach of these Terms by NationalMap, its liability is limited, in each case, to the lesser of:
- the total amount received by NationalMap under these Terms in one year; or
 - \$100,000.00.
- 15.6 NationalMap will, under no circumstances, be liable under the law of tort, contract or otherwise for any direct or indirect loss or damage (including, without limitation, loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of, or in connection with, the performance or non-performance of these Terms except as set out in clause 15.5.

16. Indemnity

- 16.1 You hereby indemnify NationalMap against all costs and liabilities incurred as a result of:
- accessing, using or maintaining your software and/or equipment;
 - possession or use of your data, our data, or other related data, products or records;

- delivering materials or information to a third party at your request.
- 16.2 You also indemnify NationalMap from and against any claim, suit, action or proceeding (collectively called "Action") brought against NationalMap to the extent that such Action is based on a claim that NationalMap's use of any product, service or information provided by You infringes any patent, copyright, trade secret or other proprietary right.

17. Force Majeure

- 17.1 No claim or liability will arise against NationalMap, nor will there be a breach of these Terms if, and to the extent that, NationalMap's failure or omission to carry out or observe any of the conditions of these Terms arises by reason of Force Majeure.

18. Termination

- 18.1 NationalMap may terminate these Terms by notice to You if clause 8.2(d) applies.
- 18.2 The provisions of clauses 8 and 18.1 do not affect NationalMap's right to suspend or terminate your account at any time and in its sole discretion.
- 18.3 Termination of these Terms for any reason shall not affect:
- the rights of NationalMap against You which have accrued up to and including termination;
 - the licence terms applicable to any product retained by You; and
 - the provisions of these Terms that by their nature survive termination, including Intellectual Property Rights, indemnities, limitation of liability and confidentiality provisions.
- 18.4 On termination of these Terms for any reason, You shall pay all monies due down to the date of termination and shall return any of NationalMap's property that is in your possession or control.
- 18.5 NationalMap may require You to deliver to NationalMap, at your expense, all Products supplied under the Terms then terminated, together with all documentation and other materials relating thereto, except for those products fully paid for; and
- 18.6 NationalMap will not be required to refund any sums paid by You.

19. Assignment

- 19.1 You shall not assign or transfer the rights or Obligations under these Terms to a third party without the prior approval of NationalMap.
- 19.2 NationalMap may resource its performance under these Terms as it sees fit, including sub-contracting any part of the work to be performed by it under these Terms. Notwithstanding any sub-contracting by NationalMap, NationalMap shall remain liable to You for performance of these Terms.

20. Solicitation of Staff

- 20.1 Without the prior written permission of NationalMap, You shall not employ, or solicit for employment (as an employee or contractor) any NationalMap staff member during the contract for NationalMap services, and for a period of three months after NationalMap has finished the contracted services.

21. Costs

- 21.1 You must pay NationalMap's costs and expenses (including legal costs as between solicitor and client, and debt collection costs) of and incidental to the enforcement or attempted enforcement of NationalMap's rights, remedies and powers under these Terms.

22. Dispute Resolution

- 22.1 If either party has any dispute with the other in connection with these Terms:
- that party will promptly give full written particulars of the dispute to the other addressed to and from the CEO or Managing Director of both parties.
 - the parties will promptly meet together and in good faith try and resolve the dispute.
- 22.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 22.3 A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings.
- 22.4 The mediation will be conducted by a LEADR panel mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.
- 22.5 If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator.
- 22.6 The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee.
- 22.7 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 22.8 The parties must always act in good faith and cooperate with each other to promptly resolve any dispute.
- 22.9 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.
- 22.10 The parties must continue to comply with their obligations under these Terms (including, for the avoidance of doubt, payment of any monies due under these Terms) during the dispute resolution process.
- 22.11 This clause will not apply to a dispute arising in connection with any attempted re-negotiation of these Terms; or, any application by either party for urgent interlocutory relief.

23. General

- 23.1 These Terms supersede all previous communications, representations, agreements or understandings, verbal or written, in respect of the supply of the Products or performance of the Services.
- 23.2 If, at any time, any part of these Terms is held (or deemed) to be invalid or unenforceable for any reason, then that part is deemed deleted from these Terms and the Terms will otherwise remain in full force and effect.
- 23.3 No failure or delay by NationalMap in exercising any power or right under these Terms shall be deemed to be a waiver of any such power or right.
- 23.4 These Terms shall not be modified or amended except by written agreement between NationalMap and You.
- 23.5 There are no conditions, warranties or other terms affecting arrangements between the parties relating to the matters which are the subject of these Terms, other than those referred to in these Terms (including the Proposal) and these Terms contain the whole of the contract between the parties.
- 23.6 These Terms are to be governed by and construed in accordance with the laws of New Zealand.