

TERMS AND CONDITIONS OF USE OF INSTALLATION SOFTWARE

1. INTRODUCTION

- 1.1. The Company and/or its licensors own the Intellectual Property associated with, pertaining to or embodied in, the Installation Software and the Company has all necessary rights and authority to grant licences to customers wishing to Install and Use the Installation Software.
- 1.2. The Customer wishes to Install and Use the Installation Software.
- 1.3. The terms and conditions upon which the Company is prepared to license the Customer to Install and Use the Installation Software, are set out below.

2. GRANT OF LICENCE

- 2.1. In exchange for the Licence Fee, the Company hereby grants to the Customer, for the duration of the Agreement, a non-exclusive, non-sub-licensable and non-transferrable licence, to the Customer, to Use the Installation Software, provided that:
 - 2.1.1. If an Authorised Site(s) is specified in the Particulars, the Customer will only be entitled to Install the Installation Software on Hardware at the Authorised Site(s) and will not be entitled to Install the Installation Software on Hardware located at any site that is not specified in the Particulars as an Authorised Site; and
 - 2.1.2. If a User Limit is specified in the Particulars, then the number of Users Using the Installation Software, will not exceed the User Limit.
- 2.2. The Customer and the Users are entitled to Use the Operational Information strictly as may be required for: (i) the Customer to train the Users to Install and Use the Installation Software; and (ii) for the Users to Use the Installation Software.
- 2.3. Each copy of the Installation Software Installed on Hardware that is in the possession or under control of, the Customer will be subject to the provisions of the Agreement and, as such, to the same restrictions contained in the Agreement. The Licence does not permit the Customer to Install the Software on any Hardware that is not in its possession or under its control, nor to make the Software available over a network where it could be used by one User on multiple items of Hardware at the same time.
- 2.4. The Licence granted in the Agreement may, depending on the Installation Software in question, entitle the Customer to:
 - 2.4.1. View and annotate maps;
 - 2.4.2. Create files that enable the visualisation and annotation of maps;
 - 2.4.3. Subject to other restrictions contained herein, publicly display Content on-line, in video and in print, provided that credit for the Content is properly attributed to the Customer;
 - 2.4.4. Capture and validate addresses;
 - 2.4.5. Capture field data;
 - 2.4.6. Position mobile devices; and/or
 - 2.4.7. Access third party content.

2.5. The Customer acknowledges that its Users are entitled to Install and Use the Installation Software for internal purposes only and in accordance with the General Terms. In amplification of the foregoing, and without limiting the generality thereof, the Customer will not, and will not assist nor permit others to:

- 2.5.1. transfer to any other person or entity any of the rights to Install or Use the Installation Software;
- 2.5.2. sell, rent, sub-lodge or lease the Installation Software;
- 2.5.3. translate, Modify, create derivative works or adaptations based on the Installation Software;
- 2.5.4. operate a service bureau or time-share service; or
- 2.5.5. reverse engineer, decompile, disassemble or otherwise attempt to discover the underlying ideas or algorithms of the Installation Software.

2.6. Save as is expressly provided in the Agreement, the Customer and each User is specifically prohibited from creating any copies of the Installation Software.

2.7. The Company will not, and its not obliged, to provide any Source Code to the Customer and the Customer acknowledges and agrees that the Licence authorises the Installation and Use of a run-time version of the Installation Software by the Users.

3. DELIVERY

- 3.1. The Installation Software will be deemed to be delivered by the Company for Installation and Use by the Customer, in one or other of the following ways:
 - 3.1.1. By attachment of the Installation Software to an electronic message transmitted from the Company to the Customer; or
 - 3.1.2. By transmission of a link to an internet portal from which the Installation Software can be downloaded by the Customer;
 - 3.1.3. By download by the Customer via a third party on-line software distributor authorised by the Company to distribute the Installation Software; or
 - 3.1.4. By provision of the Installation Software on an electronic storage medium from which the Installation Software can be Installed.

4. USER LICENCES

- 4.1. The Licence is granted in relation to a number of Users. User licenses will not be shared or used by more than one User.
- 4.2. The Customer will be entitled to nominate the Users, and User licences may be re-assigned by the Customer from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer require Installation or Use of the Installation Software, provided that the total number of Users does not exceed the number specified in the Particulars.
- 4.3. The Customer will ensure that the Users provide accurate, current and complete information as may be prompted by the Company in the registration of its Users.
- 4.4. The Customer will ensure that Users maintain the confidentiality and security of any passwords and login credentials used to register as a User or to access and

Use the Installation Software and accepts liability and responsibility for all activities that occur and information that is input using the passwords and login credentials of its Users.

- 4.5. The Company will not be liable for any damage or loss that the Customer may incur as a result of an unauthorised person using a User's password or login credentials, either with or without the Customer's knowledge.
- 4.6. The Customer is responsible and liable for all the actions of its Users and will ensure that the Users abide by the terms and conditions of the Agreement and by all applicable laws and regulation relating to the access and/or use of the Installation Software.
- 4.7. The Customer will notify the Company immediately of any unauthorized access and/or use of the Installation Software or any other known or suspected breach of security.

5. SUBLICENSING

- 5.1. The Customer may not cede, assign and/or delegate any or all of its rights and obligations (including liabilities) under the Agreement to any person, except as is expressly provided for in this clause 5.
- 5.2. The Customer is only entitled to sublicense all or part of the rights granted to it in clause 2 to the Affiliated Sub-Licenses, which are specifically listed in the Particulars and in this event, the Customer will be responsible for the acts or defaults of any such Affiliated Sub-Licenses and their Representatives, as if they were the acts or defaults of the Customer.
- 5.3. In the event that the Customer sublicenses an Affiliated Sub-Licensee under the Licence, the Customer will ensure that the Affiliated Sub-Licensee it sublicenses performs the Customer's obligations in terms of the Agreement as if it were the Customer, including the payment of the Licence Fee.
- 5.4. The Customer will enforce its rights against any Affiliated Sub-Licenses sublicensed under the Licence, in favour of the Company and, to the extent that the Customer fails, refuses, is unwilling and/or enable to do so, it undertakes to cede, assign, transfer and make over to and in favour of the Company or its successors-in-title, all such right, title or interest it might have under such sublicence with such Affiliated Sub-Licensee, and which the Company could reasonably require to enforce such right against such Affiliated Sub-Licensee.

6. SUPPORT AND MAINTENANCE

- 6.1. The Company's obligation to provide support in relation to the Installation Software may be set out in a Service Level Agreement. If the Parties execute a Service Level Agreement then the terms and conditions contained therein will apply in relation to the support and maintenance of the Installation Software.
- 6.2. If the Parties do not execute a Service Level Agreement, the Company's obligation in relation to the support and maintenance of the Installation Software will be as set out in the General Terms.
- 6.3. The Company will not be obliged to provide the Support in relation to faults arising for any of the following reasons:
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 - 6.3.1. the use/accessing of the Installation Software on Hardware other than Hardware indicated by the Company as being appropriate therefor;

- 6.3.2. any defect or error in any software other than the Installation Software or the failure of the Installation Software to function through the introduction of a Destructive Element;
- 6.3.3. the use of the Installation Software for a purpose other than that for which it was designed; or
- 6.3.4. failures of the operating systems running on the Hardware on which the Installation Software is Used.

- 6.4. The Support does not include the provision of any of the following:
 - 6.4.1. installation of the Installation Software or of any other software;
 - 6.4.2. migration or transfer of information to and from a storage mechanism accessible by the Customer using the Installation Software or other software; or
 - 6.4.3. prolonged investigation into errors caused by incorrect use of the Installation Software by the Customer.

7. WARRANTY AGAINST DESTRUCTIVE ELEMENTS IN INSTALLATION SOFTWARE

- 7.1. Whilst not warranting that the Installation Software will be error free, the Company warrants that the Installation Software supplied by the Company to the Customer will, save as set out in the Agreement: (i) be free of any known viruses, time blocks or Destructive Elements and (ii) use its reasonable efforts to ensure that the Installation Software will not contain any other viruses, time blocks or Destructive Elements.
- 7.2. This warranty shall not apply to the extent that:
 - 7.2.1. the Installation Software is not Used materially in accordance with the Company's instructions; or
 - 7.2.2. any item of the Installation Software has been altered, Modified or converted by the Customer without the prior written approval of the Company.

8. LICENCE FEE AND PAYMENTS

- 8.1. In consideration for the licence granted to it in clause 2.1, the Customer will pay to the Company the Licence Fee as stipulated in the Particulars.
- 8.2. Where the Licence Fee is payable on a monthly, quarterly or annual basis, it will be paid by the Customer to the Company in advance, before the 5th day of that period.
- 8.3. Payment of the Licence Fee will be made in cash, in South African Rand, free of exchange, without deduction or demand and by electronic transfer to a bank account nominated by the Company.
- 8.4. The Company will be entitled to increase the Licence Fee, provided that:
- 8.5. The Company will not increase the Licence Fee on more than one occasion per calendar year and on such occasion, the Company will not increase the Licence Fee by more than 15%; and
- 8.6. The Company will give the Customer not less than 30 (thirty) days' prior written notice of such increase.
- 8.7. The Company reserves the right to suspend access to and Use of the Installation Software by the Customer in the event that the Customer has not paid any Licence Fee or instalment of the Licence Fee by its due date.

- 8.8. All amounts which the Customer is required to pay to the Company in terms of the Agreement and which are not paid on due date will bear interest at Prime from the due date until the actual date on which payment is received by the Company.
- 8.9. The said interest will be calculated monthly in arrears of the due date of payment and will be compounded monthly.
- 8.10. The Company's right to charge interest on outstanding amounts will not detract from any other rights that the Company may have in terms of the Agreement.

9. COMPANY'S USE OF CUSTOMER INFORMATION

The Customer acknowledges and agrees that the Company may collect and use information pertaining to the Customer, including but not limited to technical information about the Customer's Hardware and information gleaned from the Customer's Use of the Software, to conduct the Company's business, including the analysis of usage patterns and the extraction of aggregated information to facilitate the provision of Updates and to provide Support and other services to the Customer. The Company will use and disclose such information in an aggregated form or in a manner that does not identify the Customer.

10. NETWORK CHARGES

- 10.1. The Customer acknowledges that the Use of the Software requires a telecommunications network and that a third party telecommunications provider may levy a fee based on the amount of data, SMS, MMS, bandwidth and/or air time utilised when Installing or Using the Software (collectively, the "Network Charges").
- 10.2. The Licence Fee levied by the Company in respect of the Installation and Use of the Software is not inclusive of any such Network Charges. The Customer is liable directly to the telecommunications provider for any such Network Charges, and expressly waives any possible claim against the Company for payment of Network Charges incurred.

11. DISCLAIMER OF WARRANTIES

- 11.1. The Customer acknowledges that location or navigational information provided by the Company is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location information may lead to death, personal injury, property or environmental damage.
- 11.2. The Installation Software, and any services provided by the Company pertaining to, or based on, or accessed through the Installation Software, is licensed to the Customer on an "as is" basis, without warranty of any kind, whether express or implied.
- 11.3. All conditions, representations, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the Installation Software are expressly excluded to the extent permissible by law.
- 11.4. The Company expressly disclaims and waives all warranties regarding or relating to the Installation Software, including: all warranties of merchantability, fitness for a particular purpose, performance and non-infringement of third party Intellectual Property.
- 11.5. The Company does not warrant and specifically disclaims any representations that:
 - 11.5.1. the Installation Software will meet the Customer's or any User's requirements or that the operation of

- the Installation Software or its Use will be uninterrupted or error-free;
- 11.5.2. the Installation Software will remain current and operational for any period of time;
- 11.5.3. the Installation Software will remain usable and not be rendered obsolete, for any period of time;
- 11.5.4. the Installation Software will operate correctly or be functional in the environment in which the Customer intends to Use it or in conjunction with the other software with which the Customer intends to Use it; or
- 11.5.5. the safety, accuracy or reliability of any navigated routes or destinations contained in, proposed or recommended by, the Installation Software.
- 11.6. The Customer's sole remedy, in the event that: (i) the Installation Software fails to perform in accordance with the Specifications; or (ii) any defects or errors in the Installation Software become apparent, will be to demand that the Company remedy such non-performance/fault. In order to comply with its obligations in terms of this clause 11.6, the Customer will ensure (and will procure that each of its Users ensure) that the Company will have access to all Hardware on which the Installation Software has been Installed, for this purpose.
- 11.7. The Customer acknowledges and agrees that the Installation Software is designed for and intended to be Installed and Used on Hardware that meets a particular specification. The Customer is responsible for ensuring that the Hardware on which the Installation Software is Installed for Use, conforms in all respects with the specifications therefor, as indicated by the Company. The Company will not be obliged to provide the Software Support, nor be obliged to rectify any non-performance or failure of the Installation Software, where the Hardware on which the Installation Software is Installed, does not conform to such specifications.

12. LIABILITY

- 12.1. IN NO EVENT SHALL THE COMPANY OR ITS REPRESENTATIVES BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY LOSSES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS AND ANY OTHER TORT CLAIMS) ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE INSTALLATION SOFTWARE (BUT EXCLUDING ANY SUCH LOSSES RELATING TO THE COMPANY'S FRAUD, GROSS NEGLIGENCE, OR WILFUL MISCONDUCT).
- 12.2. Without derogating from the generality of the foregoing, the Customer will have no liability to the Customer or a third party with respect to loss of goodwill, profit or business or for any special, indirect or consequential loss or damage, whether in delict or in contract, even if it has been advised of the possibility of such damages.
- 12.3. To the extent that the Company's liability cannot be disclaimed in law, the Company's aggregate liability for Losses of the Customer, for any reason and upon any cause of action, will be limited to 50% (fifty per cent) of the aggregate Licence Fees received by the Company.

