

The Order, Master Services Agreement and the Terms and Conditions below together form this GAPMAPS End-User Licence Agreement for GAPMAPS Data (**Agreement**) and is entered into by and between GAPMAPS PTY LTD (ABN 87 130 401 197) located at SWF08, Level 1, 17 Star Crescent, Docklands VIC 3008, AUSTRALIA (**GAPMAPS**) and (**Licensee**).

## TERMS AND CONDITIONS

### 1. **Definitions.**

**“Authorised User”** means the Licensee’s Personnel authorised by the Licensee to use the Licensed Data Set in accordance with this Agreement, excluding the Licensee’s affiliates or related bodies corporate.

**“Business Days”** means any day Monday through Friday, not including Saturday, Sunday or a public holiday, in the state of Victoria, Australia.

**“Commencement Date”** means the date that GAPMAPS receives payment of the Fees.

**“Confidential Information”** means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is identified to the Receiving Party as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

**“Data Provider”** means a Third Party from whom GAPMAPS has sourced or procured a licence to Third-Party Data.

**“Delivery Method”** means delivery via CSV file through SFTP or API, as specified in the Order.

**“Demographics Data”** means the data set containing demographics data across various jurisdictions incorporating GAPMAPS Data and Third-Party Data, as described in the Order and listed at <https://datastore.gapmaps.com/>.

**“End User”** means the person or entity to whom Licensee supplies a good or service incorporating or containing, whether in whole or in part, the Licensed Data Set, the Derivative Data or the Permitted Use Results.

**“Fee”** means the amounts payable by the Licensee to GAPMAPS, as specified in the Order.

**“GAPMAPS Data”** means all data in which GAPMAPS has ownership rights or licensee rights, made available to Licensee pursuant to an Order and any revisions, updates, modifications, and enhancements of that data which GAPMAPS provides to the Licensee under the Agreement, including the Licensed Data Set and any other GAPMAPS POI Data or GAPMAPS Demographics Data not licensed to the Licensee nor specified in this Agreement.

**“GST”** means goods and services tax applicable to any taxable supplies as determined under the GST Law.

**“GST Law”** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related act imposing such tax and includes any subordinate legislation in respect of these acts.

**“Licensee Content”** means all data, content, and information (including Personal Information) created by or on behalf of Licensee that is stored using, inputted into or otherwise integrated with the Licensed Data Set.

**“Licensed Data Set”** means the POI Data or the Demographics Data, as described in the Order and listed at <https://datastore.gapmaps.com and any other data sets that GapMaps has rights to re-sell from time to time.>

**“Intellectual Property Rights”** includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, trade secrets, know-how, and all other rights resulting from intellectual activity.

**“Internal Use”** means the use of the Licensed Data Set for Licensee’s own personal or internal economic purposes.

**“Order”** means an account summary form, services schedule or statement of work containing the relevant services or data to be supplied, Term, renewal mechanism, and Fees.



“**POI Data**” means the data set containing business locations of leading brands operating in fast food, café, fitness, supermarket/grocery and other sectors incorporating GAPMAPS Data and Third-Party Data, as described in the Order and listed at <https://datastore.gapmaps.com/>.

“**Permitted Uses**” means, as selected in the Order:

- i. internal business or internal research purposes; or
- ii. creation of external products, applications, customer individual reports, research publications and analyses (**External Use**) using the Licensed Data to the strict extent that such External Use is as approved by GAPMAPS under the Order, and such that the extraction of the GAPMAPS Licensed Data Set from the External Use is not possible.

“**Personnel**” means in relation to a party, the directors, officers, employees, agents or subcontractors of that party.

“**Privacy Laws**” means all relevant or applicable privacy or data protection laws relating to the collection, use, processing, disclosure, storage or granting of access to the Personal Information applicable to the relevant party and includes (only to extent the relevant parties are subject to it or required to comply with it under this Agreement): the *Privacy Act 1988* (Cth), the Australian Privacy Principles, and any applicable State or Territory acts and regulations, all applicable binding privacy codes or policies, and any foreign Privacy laws and regulations.

“**Term**” means the term specified in the Order or MSA, commencing on the Commencement Date and including any renewal options specified in the Order.

“**Third Parties**” means any person or entity other than GAPMAPS or Licensee.

“**Third-Party Data**” means data or material from Third Parties, including from Data Providers.

“**Third Party Terms**” has the meaning given in clause 8.a.

All other capitalized terms used but not defined herein shall have the meaning given to them in the Agreement.

## 2. **Grant of Licence**

- a. **Limited Licence.** Subject to GAPMAPS’ approval of the Subscription Request, payment of the Fee and compliance with all the terms and conditions of this Agreement, GAPMAPS grants to Licensee a non-exclusive, non-transferable, non-sublicensable (subject to clause 2.c), revocable, worldwide licence to access and use (through its Authorised Users) the Licensed Data Set during the Term strictly for the Permitted Uses (**Licence**). Any other use of the Licensed Data Set outside the Licence is prohibited. GAPMAPS may agree to grant you additional usage rights for additional fees – however, this is at GAPMAPS’ sole discretion and GAPMAPS does not guarantee such a grant.
- b. **Limited Sublicence.** Notwithstanding the above:
  - i. If the Permitted Use does not include External Use – the Licence is non-sublicensable.
  - ii. If the Permitted Use includes External Use – the Licence is non-sublicensable unless GAPMAPS has provided its prior written approval and only to the strict extent as explicitly approved by GAPMAPS. This means the licensee cannot assign or transfer its rights in the Licensed Data Set under this Agreement to another party unless it has received the prior written permission of GAPMAPS.
- c. **Authorised Users.** No individual may access or use the Licensed Data Set other than an Authorised User. Licensee must procure each of the Authorised User’s compliance with the Licence and this Agreement.

## 3. **Fees and Delivery.**

- a. **Fees.** Once the Subscription Request has been approved by GAPMAPS, Licensee agrees to pay to GAPMAPS the Fees as set forth in the Order. All Fees are exclusive of applicable tax which shall be payable by Licensee as prescribed by applicable law. Licensee is responsible for the timely payment of the Fees.
- b. **Failure to Pay.** Should Licensee fail to make payment of the Fees, Licensee will not be provided access to the Licensed Data Set and GAPMAPS will not grant to Licensee the licence in the Licensed Data Set as otherwise set out in this Agreement.
- c. **Taxes.**



- i. **GST Exclusive.** Unless otherwise expressly stated, all Fees are stated exclusive of any applicable tax or duty.
- ii. **Payment of GST.** Licensee is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on the Fees, including GST, other than any taxes imposed on GAPMAPS' income. Such taxes, as applicable, will be invoiced by GAPMAPS and GAPMAPS will collect applicable taxes from Licensee to remit such taxes to the appropriate tax authority.

#### **4. Delivery**

The Licensed Data Set will be delivered to Licensee by GAPMAPS as per the Delivery Method. Data may also be delivered directly to Customers by a Data Provider where agreed between the parties or specified in the Order.

#### **5. Support and Maintenance**

- a. **Requesting Support.** During the Term, Licensee may request support in relation to the Licensed Data Set via: [help@gapmaps.com](mailto:help@gapmaps.com). GAPMAPS support and maintenance staff will be available via this email address during standard business hours, being 9:00am (AEST/AEDT) to 5:00pm (AEST/AEDT) on Business Days to answer general and technical questions regarding the Licensed Data Sets. GAPMAPS will use commercially reasonable endeavours to assist Licensee with its query within a reasonable period.
- b. **Technical Contact Person.** Licensee shall designate one technical contact person, who must be a Personnel of the Licensee as approved by GAPMAPS. The designated person should have a reasonable fluency in the English language to enable communication with GAPMAPS and have a reasonable knowledge of the Licensed Data Sets.
- c. **Nomination and Approval of the Contact Person.** Licensee must nominate by writing a contact person within three (3) Business Days of the Commencement Date via email to [help@gapmaps.com](mailto:help@gapmaps.com). Approval of the nominated technical contact person is at the sole discretion of GAPMAPS, but which will not be unreasonably withheld. GAPMAPS will notify Licensee as soon as reasonably practicable if it does not approve a nominated contact person, in which case Licensee must nominate an alternative contact person within three (3) Business Days of receiving the foregoing notification.

#### **6. Licensee Obligations**

- a. **Data Security.** Licensee shall use all reasonable and best-practice legal, organisational, physical, administrative and technical measures and security procedures to safeguard and ensure the security of the Licensed Data Set and to protect the Licensed Data Set from unauthorized access, disclosure, duplication, use, modification or loss (**Security Obligations**).
- b. **Minimal Measures.** The Security Obligations require the Licensee to, at a minimum, maintain throughout the Term:
  - i. Adequate security and control over all usernames, passwords, hints, personal identification numbers and any other codes used to secure and access the Licensed Data Set, including the usernames, passwords and other access controls required for Licensee to access the Licensed Data Set;
  - ii. Reasonable physical access controls over the Licensee's premises or hardware through which the Licensed Data Set can be accessed; and
  - iii. Where a Third Party facility not owned by the Licensee is used by the Licensee to store the Licensed Data Set, that the relevant contracts for the provision of that facility imposes security obligations on that Third Party at least equivalent to the Security Obligations.
- c. **Authority to Enter.** Licensee represents and warrants that it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder, and that Licensee's use of the Licensed Data Set and performance of this Agreement shall not violate, conflict with, or result in a material default under any other agreement, including confidentiality agreements between Licensee and third parties.
- d. **Compliance with Laws.** Licensee warrants to maintain, hold, process and otherwise use the Licensed Data Set in compliance with all applicable laws.



- e. **Licence Limitations.** The Licence granted in this Agreement is subject to any limitations specified in the Order and GAPMAPS approval of any such Order.
- f. **Prohibited Use.** Licensee warrants it will not attempt to:
  - i. reverse engineer, disassemble, decompile, adapt or otherwise attempt to derive or gain access to the data or methods used to compile the Licensed Data Set using any method;
  - ii. re-identify or de-anonymise the Licensed Data Set using any method; and
  - iii. except as explicitly provided for under the Permitted Use, modify, copy or create derivative works of the Licensed Data Set, including, but not limited to, merging external data with Licensed Data Set. Licensee agrees to not (i) circumvent security features used to prevent or restrict access to or use the Licensed Data Set, (ii) create user accounts by automated means or (iii) impersonate any person or entity.

## 7. **Prohibitions on Third Party Access**

- a. Licensee shall not, and shall not permit any other Third Party to so permit, access or use the Licensed Data Set except as otherwise expressly permitted by this Agreement.
- b. Without limiting the generality of clause 8a, Licensee shall not, and shall not permit any other Third Party to, except as this Agreement expressly permits:
  - i. remove or obscure any copyright, trademark or other intellectual property notice, or restrictive legend;
  - ii. copy, modify, or create derivative works or improvements of the Licensed Data Set;
  - iii. reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Licensed Data Set or any part thereof;
  - iv. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Licensed Data Set to any Third Party, including through or in connection with any time-sharing, service bureau, software as a service, cloud, or other technology or service;
  - v. use the Licensed Data Set for purposes of competitive analysis, the development of a competing software product or service, or any other purpose that is to GAPMAPS's commercial disadvantage, including without limitation, to develop a general database of locations or points of interest or any other general purpose database, unless prior authorisation has been provided by GAPMAPS; or
  - vi. cache or store the Licensed Data Set in or on any medium for any period of time.
- c. Licensee has the sole responsibility to ensure the Authorised Users, and where the Licence is sublicensable in accordance with clause 3.b any Third Parties that will reasonably come into possession of the Licensed Data Set, whether in whole or in part, are notified of GAPMAPS rights and that such persons comply with the terms of the Licence as well as any other applicable obligation under this Agreement. In the case of the latter, such Third Parties include any parties reasonably involved in the External Use.

## 8. **Third Party Suppliers**

- a. **Third Party Supply.** Licensee acknowledges the Licensed Data Set may contain or otherwise incorporate Third-Party Data. GAPMAPS does not make any warranty or representation on the availability, accuracy or completeness of any such Third-Party Data. Any reliance on Third-Party Data is at Licensee's own risk. Where GAPMAPS procures Third Party Data for or on behalf of a Licensee, Licensee acknowledges and agrees that its access to and use of such Third Party Data may be governed by third party terms between Licensee and the Data Provider (**Third Party Terms**). Where applicable, Licensee may be required to accept relevant Third Party Terms in order to use the Licensed Data Set and the Licensee is solely responsible for its compliance with such terms.
- b. **Third Party Request.** Licensee acknowledges and agrees GAPMAPS may be required by a Data Provider to amend, delete or discontinue a Licensed Data Set that is sourced from (or incorporates data sourced from) that third-party Data Provider, and in such case, GAPMAPS will have no liability to Licensee for any such amendment, deletion or discontinuation.

## 9. External Use of Data

- a. **Definitions.** In this Agreement, and for the purposes of this clause, the following words have the following meanings:
- **“Derivative Data”** means data created by Licensee through Permitted Use of the Licensed Data Set from which the Licensed Data Set is not capable of reverse engineering or which serves as a commercial substitute for the Licensed Data Set. This does not include Permitted Use Results.
  - **“Permitted Use Results”** means all material and information (including data) generated from Licensee engaging in the Permitted Use of the Licensed Data Set **excluding** the Licensed Data Set and any Derivative Data.
- b. **Right and Title to Derivative Data.** In consideration for the rights granted to the Licensee under this Agreement, all rights in and title to any Derivative Data (including all Intellectual Property rights subsisting in the Derivative Data) vests in GAPMAPS as such rights are created or developed.
- c. **Right and Title to Permitted Use Results.** To the strict extent that the Permitted Use Results exclude the Licensed Data Set and Derivative Data, whether in part or in whole, the right and title to that portion of the Permitted Use Results will vest in Licensee.

## 10. Intellectual Property

- a. **Acknowledgement.** Licensee acknowledges that GAPMAPS has expended significant resources in the gathering, assembly and compilation of the Licensed Data Set and is the valuable property and commercial asset of GAPMAPS. Licensee further acknowledges that the Licensed Data Set, in both its original form and in incorporated form within other analyses or studies, and alongside any additional data or further updates, changes or modifications, are original compilations that are protected by Australian copyright laws, international treaty provisions and other applicable laws.
- b. **GAPMAPS Intellectual Property.** GAPMAPS will retain all right, title and interest it may have in and to all GAPMAPS Data (which includes the Licensed Data Set), including without limitation any and all Intellectual Proprietary Rights in licenses, modifications, or derivative works; software, databases, and any and all data or information shared with Licensee, including any technology, designs, know-how, infrastructure and other technology used to collect, curate or transmit the GAPMAPS Data. The interest in the Licensed Data Set acquired by the Licensee under this Agreement is merely contractual and does not create a proprietary interest. Neither the Licence nor this Agreement will be construed or interpreted as granting to Licensee any rights of ownership or any other proprietary Intellectual Proprietary Rights in the Licensed Data Set or GAPMAPS Data as a whole.
- c. **Changes to GAPMAPS Data.** Licensee acknowledges that GAPMAPS may change, alter, modify, add to the GAPMAPS Data or the features or functions therein over time.
- d. **Form of Attribution.** Licensee must attach the following ownership notice to all communications, publications and otherwise of the Licensed Data Set:

*© 2024 GapMaps Pty Ltd. This material is proprietary and the subject of copyright protection, database right protection and other Intellectual Property Rights owned by GapMaps Pty Ltd or its licensors, as the case may be. The use of this material is subject to the terms of a licence agreement. Any unauthorized copying or disclosure of this material will lead to criminal and civil liabilities.*

- e. If Licensee contests any of GAPMAPS' right, title, or interest in or to the Data, including without limitation, in a judicial proceeding anywhere throughout the world, (a) GAPMAPS may terminate this Agreement without advance notice to Licensee or with an opportunity for Licensee to remedy and without further obligation or liability and (b) Licensee acknowledges and agrees that it will be in material breach under this Agreement.

## 11. Confidentiality

- a. **Licensee Obligations.** Subject to clause 12b, Licensee must keep, and ensure its Related Parties keep, confidential and not allow, make or cause any unauthorised use, disclosure, publication or dissemination of any Confidential Information of GAPMAPS without the prior written consent of GAPMAPS, which consent may be given or withheld, or given with conditions, at GAPMAPS' sole discretion.

Notably, Licensee must:

- i. immediately notify GAPMAPS if it has any reason to believe that the security or confidentiality of any username, password or log-in details securing access to the Licensed Data Set or GAPMAP's Confidential Information has been compromised;
  - ii. use, copy and retain the Confidential Information of GAPMAPS solely for the purposes of exercising its rights and performing its obligations under this Agreement; and
  - iii. take all reasonable steps and precautions to maintain the confidentiality of GAPMAPS' Confidential Information.
- b. **Exceptions.** The obligations under clause 12a do not apply to a disclosure to the extent that that disclosure:
- i. is required by law, provided that Licensee notifies GAPMAPS prior to the disclosure as soon as practicable;
  - ii. is made to the professional advisers of Licensee, subject to that adviser agreeing to maintain confidentiality of the relevant Confidential Information; or
  - iii. is required for Licensee to perform its obligations or to enjoy the Permitted Use.

## 12. **Data Breach**

- a. **Data Security.** GAPMAPS will take all commercially reasonable steps, and will comply with industry best practice, to prevent unauthorised access to the Licensed Data Set (**Data Breach**).
- b. **GAPMAPS' Obligations.** GAPMAPS will as soon as reasonably practicable notify Licensee where it becomes aware of a Data Breach and will use commercially reasonable endeavours to identify the source or cause of that Data Breach. If the Data Breach is not caused by Licensee, its Related Parties or any of the Authorised Users, GAPMAPS will provide reasonable assistance to the Licensee to further identify the source or cause of the Data Breach, collect and maintain any evidence of the Data Breach and minimise the prospects of any repeat incidents the same as or similar to the Data Breach.
- c. **Licensee Obligations.** Where Licensee has reasonable grounds to suspect a Data Breach has occurred, Licensee must:
  - i. use all reasonable efforts to notify GAPMAPS in writing including all relevant details regarding the suspected Data Breach as soon as Licensee becomes aware of the Data Breach, and in any event no later than 48 hours after becoming aware of the Data Breach;
  - ii. co-operate with GAPMAPS to investigate the suspected Data Breach;
  - iii. take all reasonable steps to mitigate the impact of the Data Breach;
  - iv. take all reasonable actions to prevent any repeat of the Data Breach; and
  - v. co-operate with GAPMAPS in good faith to minimise reputational damage or loss of goodwill, including liaising on communications with the OAIC, affected individual(s) and other third parties to minimise disruption or distress.
- d. **No Responsibility.** Licensee acknowledges and agrees that GAPMAPS will not be responsible for any Data Breach resulting from or otherwise aided by the Licensee's conduct or any failure to maintain the security or confidentiality of any password, or any failure to comply with its obligations under this Agreement.

## 13. **Privacy Laws**

- a. **Compliance with Privacy Laws.** The parties must ensure they and their Related Parties will comply with all Privacy Laws as may be applicable to any data collected, used, disclosed, stored or received in connection with this Agreement.

## 14. **Disclaimers.**

- a. **"As Is" Basis** . EXCEPT AS OTHERWISE SET FORTH HEREIN, LICENSEE EXPRESSLY AGREES THAT THE USE OF THE LICENSED DATA SET IS AT LICENSEE'S SOLE RISK, AND THAT THE LICENSED DATA SET MAY HAVE INHERENT DEFECTS. THE LICENSED DATA SET, SERVICES AND ALL GAPMAPS DATA, ARE PROVIDED ON AN "AS IS," "AS AVAILABLE," "WITH ALL FAULTS"



BASIS, AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE SUITABILITY OF THE LICENSED DATA SET FOR THE PERMITTED USE.

- b. **No Warranties.** TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, GAPMAPS DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY LICENSEE FROM GAPMAPS OR THROUGH THE SERVICES, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. THIS DISCLAIMER INCLUDES THE FOLLOWING:
- i. **Service Quality.** GAPMAPS DOES NOT WARRANT THAT THE SERVICES SUPPLIED IN CONNECTION WITH THE LICENSED DATA SET, WILL BE UNINTERRUPTED, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DOES NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.
  - ii. **Accuracy.** GAPMAPS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS FROM THE USE OF THE SERVICES, INCLUDING THE LICENSED DATA SET, INCLUDING ANY MAPS RENDERED THEREBY, GEOCODING RESULTS OBTAINED, OR DIRECTIONS GENERATED THEREFROM, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. THE LICENSED DATA SET IS PROVIDED FOR GENERAL INFORMATION PURPOSES ONLY. LICENSEE MAY FIND THAT CERTAIN EVENTS CAUSE THE CONTENT TO DIFFER FROM CURRENT CIRCUMSTANCES OBSERVABLE ON THE GROUND. LICENSEE SHALL EXERCISE BEST JUDGEMENT WHEN USING ANY CONTENT AVAILABLE THROUGH GAPMAPS.
  - iii. **Harm to Your Computer System.** LICENSEE UNDERSTANDS AND AGREES THAT LICENSEE USES, ACCESSES, DOWNLOADS, OR OTHERWISE OBTAINS SOFTWARE, SERVICES, MAPS, OR CONTENT THROUGH THE SERVICES OR ANY THIRD-PARTY SITES REFERRED TO ON OR BY THE SERVICES AT LICENSEE'S OWN DISCRETION AND RISK, AND THAT LICENSEE WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO LICENSEE'S PROPERTY (INCLUDING LICENSEE'S COMPUTER SYSTEM) OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR USE.

## 15. **Limitation of Liability and Damages**

- a. **Limitation under ACL.** To the extent that the supply of the Licensed Data Set or any other goods or services by GAPMAPS under this Agreement to Licensee is a supply to a 'consumer' (as defined in section 3 of the Australian Consumer Law) (**ACL**), GAPMAPS limits its liability to Licensee for any failure to comply with a guarantee under the ACL (other than a guarantee under sections 51, 52 or 53 of the ACL) to one or more of the following:
- i. in the case of a supply of goods: (i) replacing the goods or supplying equivalent goods; (ii) repairing the goods; (iii) paying the cost of replacing the goods or acquiring equivalent goods; (iv) paying the cost of having the goods repaired; and
  - ii. in the case of a supply of services: (i) supplying the services again; or (ii) paying the cost of having the services supplied again.
- b. **Exclusion of Consequential Losses.** TO THE FULLEST EXTENT PERMITTED UNDER LAW, GAPMAPS OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS OR SUPPLIERS, WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, OR USE OR COST OF COVER) ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THAT RESULT FROM LICENSEE'S USE OR THE INABILITY TO USE THE LICENSED DATA SET, EVEN IF GAPMAPS OR A COMPANY-AUTHORISED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. **Limitation of Liability.** IN NO EVENT SHALL THE TOTAL LIABILITY OF GAPMAPS OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS TO LICENSEE FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR LICENSEE'S USE OF THE LICENSED DATA SET (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF FEES PAID BY LICENSEE PURSUANT TO THE AGREEMENT IN THE PRECEDING TWELVE (12) MONTHS.
- d. **Jurisdiction.** CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF YOU RESIDE IN SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES, OR LIABILITY CONTAINED IN THIS AGREEMENT APPLY TO YOU TO THE FULLEST



EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION IN WHICH YOU ARE LOCATED.

- e. **Claim Period.** LICENSEE AND GAPMAPS AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**16. Indemnity**

- a. **Licensee Indemnity.** Licensee indemnifies GAPMAPS and its Related Parties against all liability, loss, costs and expenses (including any claim, action, demand or proceeding brought by any Third Party) arising from or in connection with:
- i. Any use of the Licensed Data Set by the Licensee, its Authorised Persons or its Related Parties;
  - ii. Any use of any Derivative Data or Permitted Use Results by the Licensee, its Authorised Persons, its End Users or any other Third Party;
  - iii. Any breach of the Licence or this Agreement by the Licensee, its Authorised Persons or its Related Parties;
  - iv. Any unlawful, wilful or negligent act or omission of the Licensee or its Related Parties, or any person for whose conduct the Licensee is liable;
  - v. Personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this Agreement; or
  - vi. any infringement or alleged infringement of any Intellectual Property rights or Moral Rights of any person in respect of the Permitted Use, the Permitted Use Results or Derivative Data.
- b. **Proportional Reduction.** The Licensee's liability to indemnify GAPMAPS and its Related parties under the preceding clause will be reduced proportionally to the extent that GAPMAPS contributed to the relevant loss or damage by way of GAPMAPS' negligence or breach of this Agreement.
- c. **Non-exclusive.** The indemnity granted in clause 16a is in addition to and does not exclude any other remedies GAPMAPS may have at law against Licensee.

**17. Term and Termination**

- a. **Term.** Subject to clause 18.b, the term of the Licence provided under this Agreement begins on the Commencement Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until the expiry of such date (the "Term").
- b. **Termination by GAPMAPS.** GAPMAPS may, at any time, by 30 days' written notice, terminate this Agreement for convenience.
- c. **Termination for breach.** In addition to any other express termination right set forth elsewhere in this Agreement, either party may terminate this Agreement, effective immediately on written notice, if the other party:
- i. breaches a term under this Agreement which is not capable of being remedied;
  - ii. breaches a term under this Agreement which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so; or
  - iii. to the extent permitted by law, the other party ceases to do business in the ordinary course, makes a general assignment for the benefit of creditors or commences or has commenced against it any insolvency, bankruptcy or receivership proceedings.
- d. **Effect of Expiration or Termination.** Upon expiration or earlier termination of this Agreement, the Licence granted hereunder will also terminate, and, without limiting Licensee's obligations and except as required to ensure Licensee's right and title in the Permitted Use Results, Licensee shall within 5 Business Days cease using and delete all copies of the Data). Within 15 days of Licensor's request, Licensee shall certify in writing to the Licensor that the Data has been deleted. No expiration or termination will affect Licensee's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Licensee to any refund.

- e. Upon termination of this Agreement, you shall remove and destroy all GAPMAPS Data from your internal systems.

## **18. Compliance and Audit**

- a. **Audit.** GAPMAPS shall be at liberty, upon giving at least thirty (30) days prior written notice to Licensee, to examine, independently or by appointing an independent third party, no more than once per contract year compliance by the Licensee with the terms and conditions of this Agreement in relation to the use of GAPMAPS Data.
- b. **Assistance.** Licensee must give all assistance necessary in connection with a Licensee Inspection and permit any third party inspectors appointed by GAPMAPS to the extent necessary.

## **19. Suspension of Access to Licensed Data Set**

- a. **Revocation of Access.** In the event that GAPMAPS reasonably suspects that any of the following has occurred:
  - i. Licensee has breached or is in breach of a term or condition under the Agreement; or
  - ii. there is non-permissible or fraudulent access or activity in relation to the Licensed Data Set;

then GAPMAPS will engage investigate the suspected event. If any of these events have occurred, GAPMAPS will revoke Licensee's access to the Licensed Data Set.

- b. **General Right to Suspend.** Notwithstanding, GAPMAPS reserves its general right to, in its sole discretion and acting reasonably, without notice or liability, to suspend, terminate or otherwise limit Licensee's access to the Licensed Data Set if:
  - i. Licensee breaches a term or condition under the Agreement;
  - ii. GAPMAPS reasonably suspects there is non-permissible or fraudulent access or activity in relation to the Licensed Data Set;
  - iii. Supply of the Licensed Data Set to the Licensee is prohibited, in whole or in part, by applicable law or regulation and violates the rights of a Third Party, including Intellectual Property rights and privacy rights; and
  - iv. Licensee's continued use of the Licensed Data Set threatens the security, integrity or availability of GAPMAPS goods and services.
- c. **Resumption.** GAPMAPS may resume Licensee's access to the Licensed Data Set in its sole discretion, which may be after the completion of its investigations.

## **20. Dispute Resolution**

If there is a dispute between GAPMAPS and Licensee in relation to any matter connected with this Agreement, the parties agree to first attempt to resolve the dispute via good-faith negotiations. If the dispute is not resolved within 14 days after the dispute is referred to the senior representatives of the parties, then the parties must try to resolve the dispute by mediation, to be held in Melbourne, Australia and administered by the Australian Disputes Centre according to its Guidelines for Commercial Mediation. These Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

## **21. Additional Terms**

- a. **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the applicable laws of the State of Victoria, Australia. Each Party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State of Victoria and each Party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in the State of Victoria generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other Party. Notwithstanding the foregoing, GAPMAPS may bring a claim for equitable relief in any court with proper jurisdiction.
- b. **Relationship.** Nothing contained in this Agreement will be taken as giving rise to any employment, agency, partnership or joint venture relationship between the parties.



- c. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. Nothing in this Agreement shall create any rights in any third party beneficiaries. The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement.
- d. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing. The parties shall deliver Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section. Refusal to accept Notice shall be deemed receipt.
- e. **Force Majeure.** In no event shall GAPMAPS be liable to Licensee, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond GAPMAPS reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- f. **Amendment.** Licensee's rights and obligations under this Licence may be amended or modified from time to time and at any time. If any such amendment or modification is material, GAPMAPS will post notice of it on its website or by email to you. Your access and use of the Data following any such amendment or modification shall be deemed your acceptance of such amendment and modification. You agree to review this Licence periodically to be aware of such amendments and modifications. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- g. **Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- h. **Assignment.** Licensee may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of GAPMAPS. Any purported assignment, transfer, or delegation in violation of this Section is null and void. GAPMAPS may assign this Agreement to a successor in connection with the merger, consolidation, or sale of all or substantially all of its assets or that portion of its business to which this Agreement relates without the consent of Licensee. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- i. **Equitable Relief.** Licensee acknowledges and agrees that a breach or threatened breach by Licensee of any of its obligations, notably in relation to the Permitted Uses or data security obligations, would cause GAPMAPS irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, GAPMAPS will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.