



Aerial Photography and Height Data Supply (APHDS)

Public Sector End User Licence

This APHDS Public Sector End User Licence (**End User Licence**) is made between:

- (1) [Licensee as identified within the APHDS User License] (the **Licensor**); and
- (2) [Public Sector End User] (**End User**).

Background:

- A. The Licensor and [insert name] (the Supplier) entered into the APHDS User License, under which the Licensor is licenced to receive and share certain data of the Supplier (the **APHDS License**).
- B. Pursuant to the terms of the APHDS License, the Licensor intends to supply copies of the Supplied Data to the End User.
- C. When licensing the Supplied Data to fulfil its obligations to the End User, the APHDS License requires the Licensor to license the Supplied Data to you on the terms of this End User Licence.

1. Definitions & interpretations

1.1. The following definitions apply in this End User Licence.

Expression	Meaning
APHDS	means Aerial Photography and Height Data Supply.
Commencement Date	has the meaning given to it in Clause 4.1 below.
Commercial Activity	means any activity which involves or is intended to involve Financial Gain.
Competing Activity	means an activity that the Supplier or the Licensor notifies to the End User as being a Competing Activity from time to time.

Core Business	means any of the Licensor’s public sector activity, excluding any Commercial Activity and Competing Activity.
Financial Gain	means any revenue or credit received which exceeds the incremental costs of supplying or making available to a recipient any copy of any Supplied Data. Financial Gain does not include any receipts from Statutory Charges.
End User	means the recipient of the Supplied Data, as identified above.
End User Purpose	means the End User using the data to respond to, or interact with the Licensor to deliver or support the delivery of the Licensor’s Core Business.
IPR	means intellectual property rights, including copyright, utility models, rights to inventions, patent, trade mark, design right, rights in computer software, database rights, trade secrets, goodwill, know how, rights of confidence and all other similar rights anywhere in the world whether or not registered now or in the future and including applications for registration of any of them.
Statutory Charge	means charges which the Licensor or End User is expressly permitted to charge pursuant to a formal written enactment of a legislative authority that governs the United Kingdom of Great Britain and Northern Ireland, Scotland, Wales, and/or Northern Ireland to which the Licensor or End User is subject.
Supplied Data	means the data received by the Licensor from the Supplier, and provided by the Licensor to the End User under the terms of this End User Licence [pursuant to Clause 7 (End User Licensing) of Appendix 1 (Licensed Use Public Body) of the APHDS License].
Supplier	means [insert name of Supplier].

Term means the period from and including the Commencement Date to the date this End User Licence is terminated in accordance with Clause 4.2 below.

Working Day means any day other than a Saturday, Sunday or public holiday in England, Wales, Scotland or Northern Ireland.

1.2. In this End User Licence, unless the context otherwise requires:

1.2.1. words in the singular include the plural and vice versa;

1.2.2. references to: a) a Clause are to a Clause of this End User Licence; b) a party are to a party to this End User Licence; and c) a statute or statutory provision include any amendment, extension or re-enactment of such statute or provision;

1.2.3. any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Licence

2.1. In consideration of the mutual promises described in this End User Licence, the Licensor hereby grants to the End User a non-exclusive, non-transferable licence (revocable pursuant to the terms of this End User License) to use Supplied Data for the End User Purpose for the Term.

2.2. This Licence is limited specifically to the rights granted in Clause 2.1 and subject to the obligations set out in the remainder of this Licence, in particular the End User's obligations set out in Clause 3. This Licence allows the End User personally (not any affiliated body or group) to use Supplied Data only to the extent required for the End User Purpose, but does not allow the End User to use Supplied Data for any Competing Activity.

3. End User's Obligations

3.1. The End User shall use the Supplied Data exclusively for the End User Purpose and shall not use the Supplied Data for any other purpose.

3.2. The End User shall:

3.2.1. ensure that the Supplied Data is not copied, adapted, varied or modified except to and only to the extent to achieve the End User Purpose, subject always to the End User's other obligations in this End User Licence;

- 3.2.2. ensure that it does not use the Supplied Data for any Competing Activity;
 - 3.2.3. not sub-license, distribute, sell or otherwise make available the Supplied Data to third parties save where expressly permitted in writing by the Licensor and the Supplier;
 - 3.2.4. not use Supplied Data for any illegal, deceptive, misleading or unethical purpose or otherwise in any manner which may be detrimental to the reputation of Supplied Data or any person;
 - 3.2.5. use its best endeavours to use adequate technological and security measures the Supplier or the Licensor may reasonably recommend from time to time, to ensure that all Supplied Data which the End User holds or is responsible for are secure from unauthorised use or access;
 - 3.2.6. notify the Licensor and/or the Supplier as soon as it suspects any infringement of the Licensor's or Supplier's IPR and give the Licensor and the Supplier all reasonably required assistance in pursuing any potential infringement or remedying any unauthorised use;
 - 3.2.7. not alter or remove any of the Supplier copyright / database right notices, watermarks and licence numbers which are shown on the Supplied Data.
- 3.3. The Licensor reserves the right to charge the End User, and the End User shall pay within 30 days of receipt of invoice, a reasonable amount (to be determined in the Licensor's reasonable discretion) for the supply of the Supplied Data.

4. Commencement, Duration and Termination

- 4.1. This End User Licence will come into force when the End User accepts this End User Licence, such date being the **Commencement Date**.
- 4.2. This End User Licence shall continue during the Term unless and until terminated:
 - 4.2.1. by either party terminating this End User Licence with immediate effect at any time by giving notice to the other party in writing; or
 - 4.2.2. by the Licensor or the Supplier, with immediate effect, where the End User is in breach of any of the terms of this End User Licence; or
 - 4.2.3. by the Licensor or the Supplier, with immediate effect, in accordance with the terms of the APHDS License.

4.3. In the event of termination or expiry of this End User Licence, the End User shall within 30 days of such termination or expiry destroy (or at the Supplier's or the Licensor's option return) all the Supplied Data in any media which it holds or for which it is responsible (including any Supplied Data embedded in any other material) and provide, at the Supplier's or the Licensor's request, a sworn statement by a duly authorised person that it no longer holds any Supplied Data.

4.4. Those Clauses intended to survive termination or expiry (including, without limitation, Clauses 1, 3.2.5 and 3.2.6, 4.3, 55, 6, 7, 9, 11, 12 and 13) shall continue in full force and effect notwithstanding such termination or expiry.

5. Liability

5.1. Subject to Clause 5.2, nothing in this Licence shall make the Licensor liable in contract, tort (including without limitation negligence, pre-contractual or other representations) or otherwise arising out of or in connection with this Licence for:

5.1.1. any economic losses (including without limitation loss of revenues, profits, contracts, business or anticipated savings);

5.1.2. any loss of goodwill or reputation;

5.1.3. any special, indirect or consequential losses in any case whether or not such losses were within the contemplation of the parties at the date of this Licence.

5.2. Nothing in this Licence shall exclude or limit liability of a party for death or personal injury resulting from the negligence of that party or its servants, agents or employees or for fraudulent misrepresentation.

5.3. The Licensor and the Supplier exclude to the fullest extent permissible by law all express or implied warranties.

5.4. Subject to Clause 5.2, the Licensor's total liability in this Licence in aggregate shall not exceed the greater of:

5.4.1. any sum paid by the End User for the Supplied Data; or

5.4.2. [Insert Figure]

6. Indemnity

- 6.1. The End User shall indemnify and keep indemnified the Licensor and/or the Supplier against all their liabilities and losses and all demands, liabilities, claims made, or proceedings brought, against the Licensor and/or the Supplier in respect of any loss or damage and against all costs and expenses reasonably incurred in dealing with or in settling such demands, liabilities, claims or proceedings arising from the acts, omissions or defaults of the End User relating to this Licence or from the breach of any provision of this Licence by the End User except to the extent that any such liability is directly attributable to any negligent act of the Licensor.
- 6.2. The Licensor shall use reasonable endeavours to notify the End User as soon as practicable of any demand or claim made, or proceedings brought against the Licensor in respect of any relevant loss or damage.

7. Confidentiality

- 7.1. The Licensor and End User acknowledge and agree that:
- 7.1.1. the Supplied Data;
 - 7.1.2. any information that is marked or identified as confidential, or that would reasonably be considered to be confidential in nature, that relates to the affairs of a party,
 - 7.1.3. any special, indirect or consequential losses in any case whether or not such losses were within the contemplation of the parties at the date of this Licence.

together the **Confidential Information**, is the confidential information of both the Licensor and the Supplier.

- 7.2. With regards to the Confidential Information, the End User shall:
- 7.2.1. keep the Confidential Information secure, and not disclose it to any third party without the express prior written consent of both the Licensor and the [Supplier]; and
 - 7.2.2. notify the Licensor without delay of any unauthorised use, copying or disclosure of the other's Confidential Information of which it becomes aware and provide all reasonable assistance to the other to stop such unauthorised use, copying and/or disclosure.

8. Variation

The Licensor shall be entitled to vary this End User Licence with immediate effect by giving notice in writing to the End User.

9. Auditing

9.1. Upon the Supplier's or the Licensor's written request, the End User shall provide written evidence of compliance with its obligations under this End User Licence.

9.2. The End User shall for the Term and for a period of seven (7) years following expiry or termination of this End User Licence:

9.2.1. maintain accurate and complete records of its use of the Supplied Data;

9.2.2. Allow the Supplier and/or the Licensor (and their respective representatives) on reasonable notice during business hours to enter the End User's premises and to inspect and audit the End User's systems, operations and all supporting documentation to ensure the End User's compliance with this End User Licence and to take copies of any necessary records;

9.2.3. at its expense, make appropriate employees and facilities available to provide the Supplier and/or the Licensor with all reasonable assistance to enable such inspection, auditing and copying to take place; and

9.2.4. comply with reasonable measures stipulated by the Supplier or the Licensor as a result of any audit.

10. Assignment, subcontracting and sublicensing

Except as agreed in writing by the Supplier, neither party is entitled to assign, license, transfer or novate any of their rights and/or obligations under this End User Licence.

11. Contracts (Rights of Third Parties) Act 1999

11.1. Subject to Clause 11.2, a person who is not a party to this End User Licence has no right under the *Contracts (Rights of Third Parties) Act 1999* to enforce or enjoy the benefit of any term of this End User Licence.

11.2. the Supplier shall be entitled to the benefit of the terms of this End User Licence and the rights to enforce such terms under the *Contracts (Rights of Third Parties) Act 1999*.

12. Waiver

The waiver on a particular occasion by either party of rights under this End User Licence does not imply that other rights will be waived. No delay in exercising any right under this End User Licence shall constitute a waiver of such right.

13. Governing Law and Jurisdiction

This End User Licence is governed by the law of England and Wales and both parties submit to the exclusive jurisdiction of the English courts.