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**9.2 Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of (a) Switzerland if Licensee acquired the Open Spatial Materials in a country in Europe, Africa or the Middle East, (b) Singapore if Licensee acquired the Open Spatial Materials in a country in Asia, Oceania or the Asia-Pacific region, or (c) the State of California (and, to the extent controlling, the federal laws of the United States) if Licensee acquired the Open Spatial Materials in a country in the Americas (including the Caribbean) or any other country not specified in this Section 9.2 (Governing Law and Jurisdiction). The laws of such jurisdictions shall govern without reference to the conflicts-of-laws rules thereof. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to (and are excluded from the laws governing) this Agreement. In addition, each party agrees that any claim, action or dispute arising under or relating to this Agreement will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the Superior Court of the State of California, County of Marin, or the United States District Court for the Northern District of California in San Francisco, except that if Licensee has acquired the Open Spatial Materials in (a) a country in Europe, Africa or the Middle East, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of Switzerland, or (b) a country in Asia, Oceania or the Asia-Pacific region, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of Singapore. Nothing in the foregoing will prevent Open Spatial from bringing an action for infringement of intellectual property rights in any country where such infringement is alleged to occur.

9.3 No Assignment; Insolvency. Licensee may not assign this Agreement or any rights hereunder (whether by purchase of stock or assets, merger, change of control, operation of law, or otherwise) without Open Spatial prior written consent, which may be withheld in Open Spatial sole and absolute discretion, and any unauthorized purported assignment by Licensee will be void. In the context of any bankruptcy or similar proceeding, Licensee acknowledges and agrees this Agreement is and shall be treated as an executory contract that may not be assumed and/or assigned without Open Spatial prior written consent, which consent may be withheld in Open Spatial sole and absolute discretion whether pursuant to Section 365(c)(1) of Title 11 of the United States Code or any other applicable law respecting the treatment of executory contracts within bankruptcy. Any assignment (regardless of how or on what basis the assignment may occur) will be conditioned on compliance with the following: at least thirty (30) days before assigning or agreeing to any assignment of rights under this Agreement (including transferring any copies of or right to use the Software), (a) Licensee must provide written notice to Open Spatial, Uninstall all copies of the Software, and (without limitation of the generality of Section 9.7 (Audits)) allow Open Spatial or its designee to inspect the records, systems and facilities of (or operated for) Licensee and its subsidiaries and affiliates to verify (by any means available to Open Spatial, whether remotely or on premises) that all copies of the Software have been Uninstalled, (b) the proposed assignee must agree to comply (and Licensee must ensure that the assignee will comply) with all of the obligations of this Agreement with respect to such Software, which agreement must provide that Open Spatial is a third-party beneficiary of the assignee's agreement, and the assignee must provide a copy of the agreement to Open Spatial, and (c) Licensee and proposed assignee must comply with all other transfer procedures identified by Open Spatial.

9.4 Open Spatial Subsidiaries and Affiliates. Licensee acknowledges and agrees that Open Spatial may arrange to have its subsidiaries and affiliates engage in activities in connection with this Agreement, including, without limitation, delivering Open Spatial Materials and providing Relationship Programs and Services, provided that Open Spatial (and not such subsidiaries and affiliates) will remain subject to the obligations of Open Spatial under this Agreement. Licensee also agrees that Open Spatial subsidiaries and affiliates may enforce (including taking actions for breach of) this Agreement.

9.5 Exceptions to Prohibitions; Severability.

9.5.1 Exceptions to Prohibitions. The prohibitions contained in this Agreement will not apply where and to the extent applicable law does not allow such prohibitions to be enforced. Licensee may have other rights under the laws of the state or country within the Territory where the Licensed Materials are acquired, and this Agreement does not change Licensee's rights under the laws of such state or country if and to the extent the laws of such state or country do not permit this Agreement to do so. Licensee will bear the burden of proof to demonstrate that applicable law does not allow (i) the enforcement of such prohibitions; or (ii) this Agreement to change particular rights in a state or country (and that Licensee has not exceeded the bounds of the unenforceable prohibitions and unchangeable rights).

9.5.2 Severability. If and to the extent any provision of this Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision or any other provision of this Agreement in any other jurisdiction.

9.6 No Waiver. No term or provision of this Agreement will be considered waived, and no breach excused, unless such waiver is in writing signed on behalf of the party against which the waiver is asserted. No waiver (whether express or implied) will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach.

9.7 Audits. Licensee agrees that Open Spatial has the right to require an audit (electronic or otherwise) of the Open Spatial Materials and the Installation thereof and Access thereto. As part of any such audit, Open Spatial or its authorized representative will have the right, on fifteen (15) days' prior notice to Licensee, to inspect Licensee's records, systems and facilities, including machine IDs, serial numbers and related information, to verify Licensee's Installation of and Access to the Open Spatial Materials. Additionally, within fifteen (15) days of the audit request, Licensee will provide to Open Spatial all records and information requested by Open Spatial in order to verify Licensee's Installation of and Access to the Open Spatial Materials. Licensee will provide full cooperation to enable any such audit. If Open Spatial determines that Licensee's Installation of or Access to the Open Spatial Materials is not in conformity with the applicable agreements or terms of service, Licensee will obtain immediately and pay for valid license(s) to bring Licensee's Installation and Access into compliance and pay the reasonable costs of the audit. In addition to such payment rights, Open Spatial reserves the right to seek any other remedies available at law or in equity.

9.8 Language. The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations.

9.9 Construction. Ambiguities in this Agreement will not be construed against the drafter.

9.10 Force Majeure. Open Spatial will not be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from acts of God, supplier delay or other causes beyond Open Spatial reasonable control.

9.11 U.S. Government Rights. For U.S. Government procurements, all Open Spatial Materials are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software - Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the Open Spatial Materials by the U.S. Government shall be solely in accordance with license rights and restrictions described herein.

9.12 Export Control. Licensee acknowledges and agrees that the Open Spatial Materials and Services (including any data submitted by Licensee in connection with a Service and any Licensee-specific output generated by a Service) are subject to compliance with United States and other applicable country export control and trade sanctions laws, rules and regulations, including, without limitation the regulations promulgated by the U.S. Department of Commerce and the U.S. Department of the Treasury (collectively, "Export Control Laws"). Licensee represents, warrants and covenants that neither Licensee nor Licensee's Personnel (i) are a citizen or resident of, or located within, a nation that is subject to U.S. trade sanctions or other significant trade restrictions (including, without limitation, Cuba, Iran, Sudan, Syria and North Korea), (ii) are identified on any of the U.S. government restricted party lists (including, without limitation, the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons, the U.S. Department of Commerce's Denied Party List, Entity List and Unverified List and the U.S. Department of State's proliferation-related lists), (iii) will, unless otherwise authorized under the Export Control Laws, use Open Spatial Materials or Services in any restricted end use, including, without limitation, design, analysis, simulation, estimation, testing, or other activities related to nuclear, chemical/biological weapons, rocket systems or unmanned air vehicles applications, or (iv) will use the Open Spatial Materials or Services to disclose, transfer, download, export, or re-export, directly or indirectly, any Licensee-specific output generated by the Open Spatial Materials or Services, Licensee content, third party content, or any other content or material to any country, entity, or party that is ineligible to receive such items under the Export Control Laws or other laws or regulations to which Licensee may be subject. Licensee understands that the requirements and restrictions of the Export Control Laws as applicable to Licensee may vary depending on the Open Spatial Materials or Services provided under this Agreement and may change over time. Licensee shall be solely responsible for (i) determining the precise controls applicable to the Open Spatial Materials or Services, and (ii) complying with the Export Control Laws and monitoring any modifications to them.

9.13 Entire Agreement. This Agreement and any other terms referenced in this Agreement (such as the Relationship Program Terms and the Services Terms) constitute the entire agreement between the parties (and merge and supersede any prior or contemporaneous agreements, discussions, communications, agreements, representations, warranties, advertising or understandings) with respect to the subject matter hereof, except that particular Open Spatial Materials may be subject to additional or different terms associated with such Open Spatial Materials. The parties acknowledge that, in entering into this Agreement, they are not relying on any agreements, discussions, communications, agreements, representations, warranties, advertising or understandings other than as expressly set forth in this Agreement. Licensee acknowledges and agrees that Open Spatial may add to or change the Relationship Program Terms and the Services Terms from time to time, provided that Open Spatial will provide written notice of the additions or changes (and may allow Licensee not to renew, may permit Licensee to terminate, and may offer other options with respect to Relationship Programs or Services) before the additions or changes are effective as to Licensee. In the event of a conflict between this Agreement and any other terms of Open Spatial (including, without limitation, the Relationship Program Terms, the Services Terms, or such additional or different terms), the other terms will apply. Terms stipulated by Licensee in any communication by Licensee which purport to vary this Agreement or such other terms will be void and of no effect unless agreed in a writing signed by an authorized representative of Open Spatial. Any other modifications to this Agreement will also be invalid unless agreed to in a writing signed by an authorized representative of Open Spatial.

## **Exhibit A**

### **Definitions**

1. "Access" or "Accessible" means, with respect to a computer program or other materials, (a) to use or execute the computer program or other materials or (b) to use or otherwise benefit from the features or functionality of the computer program or other materials.
2. "Agreement" means this License and Services Agreement, including all exhibits and schedules thereto, as the License and Services Agreement may be amended from time to time in accordance with the terms thereof.
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5. "Open Spatial License Manager" means the tool known as Open Spatial License Manager or any future Open Spatial tool for managing, monitoring or controlling Installation of or Access to Open Spatial Materials.
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7. "Computer" means (i) a single electronic device, with one or more central processing units (CPUs), that accepts information in digital or similar form and manipulates the information for a specific result based on a sequence of instructions, or (ii) a software implementation of such a device (or so-called virtual machine).
8. "Customer Information Form" means a form completed by or on behalf of Licensee and submitted to Open Spatial or a Reseller, directly or indirectly, in connection with Licensee's order for a license of Open Spatial Materials, Relationship Program or Services.
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12. "Excluded Materials" means any materials, including Software, Supplemental Materials or User Documentation (and including, without limitation, any computer programs, modules or components of a computer program, functionality or features of a computer program, explanatory printed or electronic materials, content or other materials, if any), that may be provided or become available to Licensee, by any means, or that are on any media delivered to Licensee, for which (a) Licensee does not have a License Identification, or (b) Licensee has not paid (and continued to pay) the applicable fees. Licensee acknowledges that Excluded Materials are included on media or via download for convenience of the licensing mechanism used by Open Spatial, and inclusion does not in any way authorize, expressly or impliedly, a right to use such Excluded Materials.
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35. "Subscription" and "Annual License Fee" "(ALF) is the program offered generally by Open Spatial under which Open Spatial provides (among other things) updates and upgrades to, new versions of, and certain other support, services relating to Open Spatial Materials.
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37. "Territory" (a) means the country, countries or jurisdiction(s) specified in the License Identification, or (b) if there is no such License Identification, or no country or jurisdiction is specified in the License Identification, means the country in which Licensee acquires a license to the Open Spatial Materials. If the License Identification specifies, or Licensee acquires the Open Spatial Materials in, a member country of the European Union or the European Free Trade Association, Territory means all the countries of the European Union and the European Free Trade Association.
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41. "VPN Requirements" means (i) the Licensed Materials are Accessed through a secure virtual private network ("VPN"); (ii) the maximum number of concurrent users Accessing the Licensed Materials (on a Networked Basis or through the VPN) does not exceed the Permitted Number at any time; (iii) all copies of the Licensed Materials are Installed and Accessed exclusively in conjunction with the technical protection device (if any) supplied with the Licensed Materials; and (iv) the VPN connection is secure and complies with current industry standard encryption and protection mechanisms.

## **Exhibit B**

### **License Types**

1. Stand-alone (Individual) License. If the License Identification identifies the License Type as a "Stand-alone License" or as an "Individual License," Licensee may Install a single primary copy of the specific release of the Licensed Materials designated in the applicable License Identification on one (1) Computer, on a Stand-alone Basis, and permit Access to such primary copy of the Licensed Materials solely by Licensee's Personnel, and solely for Licensee's Internal Business Needs. Licensee may also Install a single additional copy of such Licensed Materials on one (1) additional Computer, on a Stand-alone Basis; provided that (i) such additional copy of the Licensed Materials is Accessed solely by the same person as the primary copy; (ii) such person is Licensee (if Licensee is an individual) or an employee of Licensee; (iii) such person Accesses the additional copy solely to perform work while away from that person's usual work location and solely for Licensee's Internal Business Needs; and (iv) the primary and additional copies are not Accessed at the same time.

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