

LICENCE REF: EULA[NNNNN].00.00

© GEOSMART INFORMATION LIMITED 2015

GeoSmart End User's Licence Agreement Example

PRODUCT: [GEOSMART GROUNDWATER FLOOD RISK MAP GW5 Version 2.0]

DATE: 26 November 2015

PARTIES:

- (1) [COMPANY NAME and ADDRESS with COMPANY NUMBER] (Licensee);
- (2) GeoSmart Information Limited, New Zealand House, 160 Abbey Foregate, Shrewsbury, SY2 6FD (Data Provider)

LICENCE:

In consideration of you paying the Licence Fees, as set out in our proposal [NNNNNP1], GeoSmart hereby grants you a non-transferable and non-exclusive annual licence to use Data for the duration of the Term, subject to the restrictions set out in this licence.

GeoSmart shall deliver the Data to you in the format and manner and at the intervals to be notified by GeoSmart to you.

DATA COVERAGE AND SPECIFICATION:

Area Covered – [SPECIFY AREA]

Specification – [categorised groundwater flood risk areas as geo-referenced raster or vector data]

PERMITTED USE AND CONDITIONS

For standard internal business use or as set out in [NNNNNP1] and the Terms below.

[ANY OTHER CLAUSES SPECIFIED]

TERMS

1. Definitions

In this licence, the terms below have the following meanings:

- a. **Accompanying Notes** means the document entitled 'Notes to Accompany the [GEOSMART GROUNDWATER FLOOD RISK MAP GW5 Version 2.0], available from GeoSmart's website from time to time;
 - b. **Commencement Date** means the date on which you indicate to us your acceptance of this Licence;
 - c. **Data** means the spatial data provided to you by us, under the product name specified in this agreement
 - d. **Fee** means the annual licence fee payable by you for Use of the Data, notified to you by us, as amended from time to time;
 - e. **Initial Term** means a period of [1] year commencing on the Commencement Date;
 - f. **Licence** means this End Users Licence Agreement;
 - g. **Renewal Period** means a period of 1 year commencing on the expiry of the Initial Term and each subsequent anniversary of such date;
 - h. **We, us, our** means GeoSmart Limited; and
 - i. **You, your** means the person or entity entering into this Licence in accordance with its terms.
2. Period of this Licence
- a. This Licence shall commence on the Commencement Date and continue for the Initial Term and the Renewal Period unless it is not renewed in accordance with Clause 2(b) or terminated earlier in accordance with the terms of this Licence.
 - b. No later than 30 days prior to the expiry of the Initial Term (or the then current Renewal Period), we shall notify you in accordance with the notice provisions in Clause 12 of the expiry date of the Licence and invite you to renew this Licence. If you fail to pay the Fee in accordance with Clause 5, this Licence shall terminate with immediate effect at the end of the Initial Term (or the then current Renewal Period).
3. Licence
- a. We grant you and your permitted agents and/or contractors acting on your behalf a non-exclusive, non-transferable, revocable licence to use the Data for indicating on a preliminary basis the risk of groundwater flooding at locations within the extent of the Data.
4. Your Obligations
- a. You shall:
 - i. ensure that the Data is not copied, adapted, varied or modified except to and only to the extent to which any of those acts are expressly permitted by this Licence;
 - ii. not use the Data for any illegal, deceptive, misleading or unethical purpose or otherwise in any manner which may be detrimental to the reputation of the Data or any person;
 - iii. Not use the Data for the development, production or supply of any products or services in which the Data can be identified, reverse engineered, or re-created.

- iv. use your best endeavours and adequate technological and security measures to ensure that all Data which we provide you and which you hold or are responsible for are secure from unauthorised use or access;
 - v. ensure that any copy protection measures are not altered;
 - vi. ensure that any maps created by using the Data include, in a conspicuous position, the acknowledgement, '[GEOSMART GROUNDWATER FLOOD RISK MAP GW5 Version 2.0]©', with a link to GeoSmart's web address www.geosmartinfo.co.uk.
 - vii. ensure that the scale of any map created with the Data is no greater than the maximum necessary to show the whole of the Data on one sheet of A5 paper, and that the resolution at which the Data is presented on the map is sufficiently low that anyone reading the map cannot ascertain [the risk of groundwater flooding] at a particular point on the map.
 - viii. ensure that anyone who has access to the Data and/or to view maps created from the Data are given the opportunity to read the Accompanying Notes.
 - ix. Ensure that the following disclaimer is prominently displayed on all outputs: 'Some of the responses contained in this report are based on data and information provided by the Natural Environment Research Council (NERC) or its component body the British Geological Survey (BGS).Data has been provided by ESI © 2015 and GeoSmart Information Ltd © 2015. Report contains Ordnance Survey data © Crown copyright and database right 2015. Report contains public sector (Environment Agency) information licensed under the Open Government Licence v3.0 Your use of any information contained in this report which is derived from or based upon such data and information is at your own risk. Neither NERC, BGS, ESI, Ordnance Survey, The Environment Agency nor GeoSmart gives any warranty, condition or representation as to the quality, accuracy or completeness of such information and all liability (including liability for negligence) arising from its use is excluded to the fullest extent permitted by law.'
 - x. ensure that, where maps created using the Data are made available to the public, no copy, either on paper or electronic (including photographs), of the map may be taken off your premises;
- b. This End User Licence does not give you the right to sub-license, distribute, sell or otherwise make available the Data to third parties save your permitted agents and/or contractors acting on your behalf (who may only use the Data subject to you keeping control of it).
 - c. You hereby assign to us all present and future IPRs you own in amendments or adaptations made to the Data and irrevocably waive your moral rights.

5. Fees and payment

- a. A Fee shall be payable by you for the Initial Term and each Renewal Period within 5 working days of the commencement of the Initial Term or Renewal Period, unless you have prior written agreement with GeoSmart Limited for the fee to be waived.
 - b. All Fees are exclusive of VAT and any other applicable taxes, which you shall pay at the rate prevailing at the date of the invoice.
- 6. Audit and Inspection
 - a. You shall provide evidence of compliance with your obligations under the Licence if we so request.
- 7. Changes to the Licence
 - a. We may change the terms of the Licence (including the amount of the Fee) at any time on 30 days' notice. Such changes will not affect any Fee you have already paid to us.
 - b. If you disagree with any changes proposed under Clause 7(a), you may terminate this Licence by giving us 30 days' written notice. Where appropriate you will, subject to Clause 5(b), be entitled to a rebate of a fair and reasonable proportion of any Fees already paid by you if the relevant licence period has not expired.
- 8. Termination
 - a. We may terminate this Licence immediately by giving you notice in writing if you:
 - i. fail to pay any amount due under this Licence, including but not limited to the provisions for payment in Clause 7.2, within 30 days after the date on which payment fell due;
 - ii. are in material breach of this Licence and the breach is either incapable of being remedied or is not remedied within 30 days of a written request to do so;
 - iii. are in persistent breach of this Licence;
 - b. Termination or expiry of this Licence shall not affect any rights or remedies which have arisen prior to the date of such termination or expiry.
- 9. Warranties and Liability
 - a. In no event shall either party be liable to the other in contract, tort (including negligence) or otherwise for:
 - i. any special, indirect or consequential losses or damages; or
 - ii. loss of profit, business, contracts, data revenues or anticipated savings or for any increased costs or expenses, save that nothing in this provision nor any other provision of this Licence shall prevent us from claiming for amounts lawfully due under the terms of this Licence or for sums due for infringement or breach of intellectual property rights.
 - b. Our total and aggregate liability (whether in contract, tort, including negligence, or otherwise) under or in connection with this Licence will not at any time exceed in aggregate an amount equal to the total Fees paid by you in the preceding 12 months of the date upon which the claim arose.

- c. Nothing in this Clause 9 shall exclude or limit any liability for:
 - i. death or personal injury arising from the negligence of the licensee or of its employees, contractors or agents; or
 - ii. fraud or fraudulent misrepresentation.
- d. We give no warranty, representation or undertaking:
 - i. as to the accuracy, completeness or usefulness of the Data; or
 - ii. that the use of any of the Data, the production or use of any Product, or the exercise of any of the rights granted under this Agreement will not infringe any Intellectual Property Rights or other rights of any third party; or
 - iii. that the Data or associated know-how and any other information communicated by us or on behalf of the BGS or NERC will produce Products of satisfactory quality or fit for the purpose for which intended; or
 - iv. which imposes or could be deemed to impose any obligation on the Licensor to bring or prosecute actions or proceedings against third parties for infringement of any Intellectual Property Rights in the Data Sets.
- e. We accept no responsibility for:
 - i. any use of the Data (or any associated know-how or other information communicated by us or on our behalf, nor for any reliance which may be placed by any person on any Data, Product or Response; or
 - ii. any loss or damage which may be caused by the condition of the disk or file on which the Data are provided.
- f. The liability of either Party for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, will not extend to any indirect damages or losses or any loss of contract or opportunity, loss of profit or loss of revenue, whether direct or indirect, even if the Party bringing the claim has advised the other Party of those losses or if they were within its contemplation.
- g. You will indemnify us and our agents (“the Indemnified Parties”) and keep them fully and effectively indemnified from and against any and all claims, damages and liabilities asserted by any third party arising directly or indirectly from the use of any Data Sets or the production, supply or use of any Data, except to the extent caused by the negligence of the Indemnified Party.
- h. Nothing in this Agreement excludes or limits the liability of either Party for death or personal injury arising from its negligence, or for fraud, or for any other liability that, by law, cannot be excluded or limited.
- i. You agree that any claim you seek to bring for breach of contract in relation to the supply of any Data that such a claim will not be brought against GeoSmart, ESI, BGS or NERC for any damages or losses suffered as a result of the supply of the Data or for any reliance placed by them on any Data; and

- j. the liability of GeoSmart, ESI and the BGS for any damages or losses suffered by Licensee arising from the negligence of GeoSmart, ESI, the BGS or NERC is effectively excluded or limited to the maximum extent permitted by law.

10. Transferring Rights and Responsibilities

- a. You are not entitled to assign or otherwise transfer any of your rights and/or obligations under this Licence whether in whole or in part without our prior written permission.

11. Governing Law

- a. This Licence shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.

12. Notices

- a. Any notice under this Licence shall be in writing and shall be sent to the address or e-mail address you have submitted to us (or in the absence of such details to the address of your principal place of business) or such other contact details as you shall notify to us in writing.

For standard internal business use or as set out in the Standard Terms

This Agreement shall be governed by and construed and interpreted in accordance with the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the Courts of England.

IN WITNESS of which this Agreement has been executed on the date below.

Signed by the authorised representatives of the parties:

Signed for and on behalf of

[COMPANY NAME]

Name

[CLIENT NAME]

Position

[CLIENT TITLE]

Signature

For and on behalf of

GEOSMART LIMITED

Name

[GEOSMART NAME]

Position

[GEOSMART TITLE]

Signature

Date

[DATE]

Date

[DATE]