

# GapMaps Master Services Agreement Terms



## Background

- A. GapMaps carries on the business of providing the Services.
- B. The Customer requests to receive, and GapMaps agrees to provide, the Services and the Deliverables on the terms of this Agreement.

## General Terms

### 1. Term

This Agreement commences on the Commencement Date and will continue until terminated in accordance with clause 13.

### 2. Services

#### 2.1 Generally

- (a) GapMaps will use reasonable endeavours to perform the Services in accordance with a Services Schedule and/or a Statement of Work in all material respects.
- (b) The Customer agrees that it will be responsible for the content of all of the Customer Data and for complying with all applicable Laws in respect of the Customer Data.

#### 2.2 SaaS Services

- (a) In providing the SaaS Services, GapMaps will use reasonable endeavours to ensure that the SaaS Services will be accessible and functional on a continuous basis, subject to:
  - (i) any Scheduled Downtime;
  - (ii) a Force Majeure Event; or
  - (iii) any of the events described in clause 11.5.
- (b) GapMaps may make any repairs, modifications, additions and upgrades to the SaaS Services, including engaging in system maintenance, as GapMaps may deem necessary or desirable (the **Scheduled Downtime**), provided that GapMaps takes reasonable steps to advise the Customer in advance of any Scheduled Downtime.
- (c) GapMaps must use commercially reasonable efforts ensure that the Scheduled Downtime is scheduled at times to minimise disruption to the Customer's use of the SaaS Services.
- (d) The Customer agrees and acknowledges that GapMaps may rely on Third Parties to obtain information necessary for the purposes of providing the Services and Deliverables. GapMaps provides no warranties regarding the accuracy or correctness of the information it receives from Third Party providers.

#### 2.3 Service Levels

In providing the SaaS Services, GapMaps will use reasonable endeavours to meet or exceed any applicable Service Levels. GapMaps may offer performance rebates if it does not achieve a Service Level, and that performance rebate will be the Customer's sole remedy for GapMaps' failure to achieve the Service Level.

## 2.4 Deliverables

If:

- (a) a ten (10) Business Days period of the delivery of the Deliverables has elapsed without the Customer giving notice, written or otherwise, to GapMaps; or
- (b) the Customer uses the Deliverables in a live or production environment,

the Deliverables will be deemed satisfactory and accepted by the Customer, and payment of all Fees for the Deliverable will be due and payable in accordance with this Agreement.

## 3. Customer's obligations

In receiving the Services, the Customer agrees that:

- (a) it will pay all Fees in accordance with clause 4 of this Agreement and a Services Schedule or a Statement of Work;
- (b) it will, and require its Users to, use reasonable efforts to prevent unauthorised access to or use of the SaaS Services, and notify GapMaps promptly of any such unauthorised access or use;
- (c) it is responsible for the accuracy, quality and legality of all of the Customer Data;
- (d) it will ensure that only the number of Users allocated in the Schedule access the Services;
- (e) it is responsible for all acts and omissions of Users as if they were the Customer's acts and omissions;
- (f) it is responsible for providing the services and equipment necessary to make use of the Services, which includes, without limitation, internet connectivity;
- (g) it must use the SaaS Services only in accordance with this Agreement and applicable Laws;
- (h) it must not interfere with or disrupt the integrity or performance of the SaaS Services;
- (i) except as expressed otherwise in this Agreement, it must not resell, rent, loan, sublicense, lease, distribute or license the use of, or attempt to grant any rights to, the SaaS Services to any Third Party, including but not limited to using the SaaS Services to operate a service bureau;
- (j) it must not use the SaaS Services to store or transmit infringing, fraudulent or otherwise unlawful material or otherwise use the SaaS Services in a manner which is unlawful or would infringe the rights of another person (including any Intellectual Property Rights);
- (k) it must not introduce to the SaaS Services, or use the SaaS Services to, store or transmit a Malicious Code; and
- (l) it must not attempt to gain unauthorised access to the SaaS Services or its related systems or networks.

#### 4. Fees and payments

- (a) Fees are exclusive of all taxes.
- (b) GapMaps must provide the Customer with a valid invoice for the Fees in accordance with the payment terms set out in a Services Schedule or a Statement of Work.
- (c) Unless a different timeframe is set out in a Services Schedule or a Statement of Work, the Customer will pay all invoices within 30 days following receipt of the invoice.

#### 5. GST

##### 5.1 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

##### 5.2 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

##### 5.3 Reimbursement of expenses

If this Agreement requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any Loss or outgoing (**Adjustment Amount**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Adjustment Amount net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Adjustment Amount (**Net Amount**); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

#### 6. Data Security

- (a) The Customer grants GapMaps a non-exclusive, royalty-free licence to use the Customer Data for the purposes of providing the Services in accordance with this Agreement, improving the Services, generating analytics, or any other use required by GapMaps from time to time.
- (b) GapMaps must use reasonable commercial endeavours to ensure that the Customer Data is stored and transmitted in a secure manner, including by:
  - (i) maintaining administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data;

- (ii) operating and maintaining a process for granting and revoking privileged access to any systems used to store or process the Customer Data;
- (iii) ensuring that the SaaS Services and the equipment, premises and software under GapMaps' control and used in the provision of the SaaS Services are updated from time to time and comply with all applicable regulatory requirements;
- (iv) making and maintaining regular backups of the Customer Data in accordance with GapMaps' normal data back-up procedures; and
- (v) not accessing the Customer Data other than in accordance with this Agreement.

(c) The Customer agrees and acknowledges that GapMaps may be required to provide Customer Data to Third Parties for the purposes of performing its obligations under this Agreement.

(d) GapMaps must use commercially reasonable endeavours when performing the Services to ensure that the Customer Data is not corrupted, deleted or subjected to unauthorised use, and that no errors are introduced to the Customer Data.

(e) At any time during the Term and within 30 days after the expiry or termination of a Services Schedule or a Statement of Work, the Customer will be entitled to request in writing, and GapMaps will provide, or allow the Customer to download a copy of the Customer Data in an industry standard format in relation to that Services Schedule or Statement of Work.

(f) After the 30-day period following termination or expiry of the relevant Services Schedule or Statement of Work, the Customer Data may be deleted by GapMaps.

#### 7. Intellectual Property

(a) The Customer acknowledges and agrees that all Intellectual Property Rights of whatever nature in the Services and Deliverables are and shall remain GapMaps' property, and nothing in this Agreement should be construed as transferring any aspects of such rights to the Customer or any Third Party.

(b) GapMaps hereby grants the Customer and the Users a non-exclusive, non-transferable, revocable and royalty-free licence to:

- (i) use and access the Services for the purposes of this Agreement during the Term; and
- (ii) use and access the Deliverables and Developed Materials for the purposes of this Agreement during the Term,

subject to the Customer complying with its obligations under this Agreement.

(c) Subject to clauses 7(a) and 7(d), immediately on the date of creation of any Deliverables and Developed Materials those Deliverables and Developed Materials will vest in GapMaps.

- (d) Nothing in this Agreement affects the ownership of a party's Background Material. Each party grants the other party a non-exclusive, non-transferable, royalty-free licence for the Term to use a party's Background Material solely for the purposes, and to the extent necessary, of the other party to perform its obligations and exercise its rights under this Agreement.
- (e) The Customer agrees not to modify, vary, adapt, reverse engineer, disassemble or decompile the Services.
- (f) The Customer will not, and will take reasonable measures to ensure that the Users do not:
  - (i) build a competitive product or service;
  - (ii) make or have made a product or service using similar ideas, features, functions or graphics of the Services;
  - (iii) make derivative works based upon the Services;
  - (iv) remove, modify or obscure any copyright, trade mark or other proprietary rights that appear on the Services; or
  - (v) "frame", "mirror" or otherwise copy any features, functions or graphics of the Services.
- (g) The Customer will immediately notify GapMaps if the Customer becomes aware that the Services may infringe the Intellectual Property Rights of a Third Party.

## 8. Confidential Information

### 8.1 Obligations of confidentiality

Subject to clauses 8.2 and 8.3, the Receiving Party must:

- (a) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;
- (c) only use the Confidential Information for the purposes of performing, and to the extent necessary to perform, its obligations under this Agreement;
- (d) not memorise, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement; and
- (e) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 8.3 complies at all times with the terms of this clause 8.1 as if that person were a Receiving Party.

### 8.2 Disclosure required by Law

The obligations of confidentiality under clause 8.1 do not apply to any disclosure of Confidential Information by

the Receiving Party that is necessary to comply with any court order or applicable Law if, to the extent practicable and as soon as reasonably possible, the Receiving Party:

- (a) notifies the Disclosing Party of the proposed disclosure;
- (b) consults with the Disclosing Party as to its content; and
- (c) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

### 8.3 Authorised disclosure

- (a) A Receiving Party may disclose Confidential Information to any Related Entity, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, prior to the disclosure:
  - (i) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed; and
  - (ii) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this clause 8 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.
- (b) The Receiving Party is liable for any breach of this clause 8 by a Recipient as if the Recipient were a Receiving Party in relation to the Confidential Information disclosed to the Recipient.

### 8.4 Breach of Confidence

Each party must promptly notify the other party if it becomes aware of any unauthorised access, use or disclosure of all or any part of the Confidential Information and must give that other party all reasonable assistance in connection with any claim which it may institute in connection with that unauthorised access, use or disclosure.

### 8.5 Return or destruction of Confidential Information

Subject to clause 6(e), immediately on the written request of the Disclosing Party or on the termination of this Agreement for any reason, a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party (or any Related Entity of the Disclosing Party);
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and
- (c) upon delivery of the Confidential Information under clause 8.5(b), permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

## 9. Privacy

- (a) In performing this Agreement, each party must comply, and must make sure that each party's Representatives also comply, with all Privacy Laws in respect of all Personal Information.
- (b) Without limiting clause 9(a), the Customer must:
  - (i) collect Personal Information from all relevant individuals in accordance with all Privacy Laws;
  - (ii) ensure that the Customer is entitled to transfer all relevant Personal Information to GapMaps so that GapMaps may lawfully use, process, and transfer Personal Information as necessary to provide the Services in accordance with this Agreement; and
  - (iii) ensure that all relevant individuals have been provided with an appropriate privacy collection statement at the time that the Customer collects their Personal Information, or if that is not practical as soon as practical after that time.

## 10. Warranties

- (a) Each party warrants that:
  - (i) it has full legal capacity and power to enter into this Agreement and to carry out the transactions contemplated by this Agreement;
  - (ii) it owns or is licensed to use its Background Material provided under this Agreement; and
  - (iii) it has obtained or will obtain all licences, permits and Third Party authorisations necessary for it to perform its obligations under this Agreement.
- (b) In addition to the above, GapMaps warrants that:
  - (i) it will provide the Professional Services using all due skill, care and diligence, and otherwise in accordance with this Agreement; and
  - (ii) it owns or is licensed to use the Intellectual Property Rights in the SaaS Services.
- (c) Any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or effect, this Agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by Law.

## 11. Liability and Indemnity

### 11.1 Liability

- (a) Where applicable Law provides any consumer guarantee, condition or warranty which cannot be excluded, GapMaps' liability for breach of such consumer guarantee, condition or warranty will be limited to the extent permitted by applicable Law to, at its option:

- (i) if the breach relates to goods, the replacement or repair of the goods, the supply of equivalent goods, or the payment of the cost of replacing or repairing such goods or acquiring equivalent goods; or
  - (ii) if the breach relates to services, the supply of those services again or the payment of having the services supplied again.
- (b) To the extent permitted by Law, and subject to clauses 11.2 and 11.3, a party's maximum aggregate liability to the other under or in connection with this Agreement or its subject matter (including under a warranty or indemnity), however arising (including breach of contract, negligence, misrepresentation or other claim), is limited to the Fees paid or payable by the Customer to GapMaps under this Agreement in the 12 months' immediately preceding the event giving rise to the liability.
  - (c) To the extent permitted by Law, GapMaps is not responsible for any loss or damage incurred by the Customer or any third party arising from:
    - (i) a Force Majeure Event;
    - (ii) the Customer's failure to follow GapMap's or the third party supplier's written instructions for Deliverables;
    - (iii) the Customer's abnormal use of the Deliverables;
    - (iv) telecommunications faults, power failures or defective network or Internet connections; and
    - (v) any acts or omissions of the Customer or any third party that may affect the delivery of the SaaS Services, Professional Services or Deliverables.

### 11.2 Exclusion of Consequential Loss

Neither party shall be liable to the other party for any Loss suffered or incurred by the other party in connection with this Agreement that does not arise naturally (that is, according to the ordinary course of things) from the event giving rise to the Loss, including but not limited to loss of reputation, loss of goodwill, lost profits, lost revenue, loss of use by Users, loss or damage to data; or failure to realise anticipated savings and loss of opportunities.

### 11.3 Contribution

The liability of a party for any cause of action (including under an indemnity) will be reduced proportionally to the extent that the liability arises as a result of a breach of this Agreement by the other party.

### 11.4 Indemnity

- (a) GapMaps agrees to indemnify the Customer against any and all claims, proceedings, liabilities, Losses, awards and expenses arising out of:
  - (i) a Claim by a Third Party that the Services infringe the Intellectual Property Rights of that Third Party;
  - (ii) death or personal injury; and
  - (iii) damage to tangible property.

- (b) Clause 11.4(a) will not apply to the extent the infringement is caused by:
- (i) the Customer failing to promptly provide GapMaps with written notice of such a claim against the Customer;
  - (ii) the Customer failing to give GapMaps sole control of the defence and settlement of such a claim against the Customer; or
  - (iii) the Customer failing to provide GapMaps with all reasonable assistance in relation to the defence and settlement of such a claim.
- (c) The Customer indemnifies GapMaps, and will keep GapMaps indemnified, from and against any Claims, actions, damages, Losses, liabilities (including legal costs on a full indemnity basis), expenses, payments that GapMaps suffers, incurs or is liable for, whether or not contemplated by the parties, as a result of any:
- (iv) material breach of this Agreement by the Customer;
  - (v) loss of, or damage to, any property caused by any act or omission of the Customer or the Customer's Personnel, including through negligence;
  - (vi) personal injury (including sickness or death) caused by an act or omission of the Customer or the Customer's Personnel, including through negligence;
  - (vii) fraud, criminal offence or wilful misconduct by the Customer or the Customer's Personnel; and
  - (viii) claims by the Customer or a third party against GapMaps arising because of any act or omission of the Customer in connection with this Agreement, except to the extent that the claim arises because of GapMap's negligence or breach of this Agreement.
- (d) If a claim is made by a party alleging the Customer's or the Users' use of the Services infringes that party's Intellectual Property Rights, GapMaps will, at its option either:
- (i) modify or replace the Services so that they become non-infringing; or
  - (ii) procure for the Customer the right to continue using the Services.

#### 11.5 Exclusions from liability

GapMaps will not be liable for Loss (including under a warranty or indemnity) suffered by the Customer, or failure to provide the Services or any Deliverable, to the extent caused or contributed to by any of the following:

- (a) a use of the Services in combination with materials or services not supplied to the Customer by GapMaps;
- (b) a use of the Services in breach of this Agreement;
- (c) operation or use of a Deliverable other than in accordance with the recommended operating

procedures and relevant user documentation or in accordance with normal business use and requirements;

- (d) enhancements, adaptations, translations or modifications of any Deliverable by a person other than GapMaps;
- (e) faults, malfunction or defect in any third party Material or third party software; or
- (f) telecommunications or power failure or fault or defective network or internet connection affecting the Customer or its Users, or affecting GapMaps provided that GapMaps is unable to reasonably mitigate through its business continuity and disaster plan.

#### 11.6 Duty to mitigate

Each party must use all reasonable endeavours to mitigate its liability.

#### 12. Suspension

- (a) GapMaps may suspend the delivery of the Services without liability to the Customer where:
  - (i) a Force Majeure Event occurs which materially affects GapMaps ability to deliver the SaaS Program or Services; or
  - (ii) upon giving three (3) Business Days' notice where the Customer is in breach of this Agreement, such suspension to continue for so long as the breach subsists.
- (b) GapMaps shall give reasonable notice of any suspension, unless, because of the urgency of the need, such suspension is required to put into effect immediately.

#### 13. Termination

##### 13.1 Termination

Either party may terminate this Agreement or a Services Schedule or Statement of Work immediately upon written notice to the other party if:

- (a) the other party is in material breach of this Agreement or a Services Schedule or Statement of Work, and:
  - (i) the breach is incapable of remedy; or
  - (ii) where the other party fails to remedy the breach within 10 Business Days of receiving written notice of the breach from the first party; or
- (b) the other party is the subject of an Insolvency Event and is in material breach of any term of this Agreement or a Services Schedule or Statement of Work (irrespective of whether the breach is capable of remedy).

##### 13.2 Consequences of Termination

- (a) Any termination of this Agreement will be without prejudice to any right, action or remedy which has accrued or which may accrue in favour of either party.
- (b) The termination of this Agreement will not terminate any existing Services Schedules or Statements of Work unless these are terminated at the same time.

- (c) Upon termination or expiry of this Agreement by either party, each party must immediately cease using the other party's Confidential Information, and comply with the provisions set out in clause 8.5.
- (d) Upon termination of this Agreement, the licence provided under clause 7(b) will be terminated, and the Customer and the Users will cease using the SaaS Services, Deliverables and Developed Materials.
- (e) The Customer is entitled to make a request under clause 6(e) for 30 days following any expiry or termination. GapMaps must delete the Customer Data within 30 days of any such termination.
- (f) This clause and clauses 6(e), 7 (with the exception of clause 7(b)), 8, 9, 10, 11, 14, 16, and 17 inclusive will survive expiration or termination of this Agreement.

## 14. Dispute Resolution

### 14.1 Delivering a dispute notice

If any dispute, controversy or claim arises between the parties arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, a party may deliver to the other party a written notice which sets out:

- (a) the nature of the dispute; and
- (b) the relief or remedy that the party seeks.

### 14.2 Acknowledgments

The parties agree that if a dispute arises out of or relates to this Agreement, a party may not commence any legal proceedings relating to the dispute unless it has complied with the provisions of this clause 14 except to seek urgent equitable or interlocutory relief. The procedures in this clause 14 will be completed within 40 Business Days from the giving of notice referred to in clause 14.1. After expiry of this time, a party may commence legal proceedings relating to the dispute.

### 14.3 Process

When a dispute arises between the parties in relation to this Agreement, then:

- (a) all amounts payable by the Customer to GapMaps which are not in dispute must be paid in accordance with this Agreement;
- (b) if the parties cannot resolve the dispute within 10 Business Days after notice has been given, then the dispute is to be referred to the respective chief executive officers or their nominees of each party (jointly referred to in the remainder of this clause 14 as **Chief Executive Officers**) for resolution; and
- (c) if the Chief Executive Officers cannot resolve the dispute within 10 Business Days after referral, then the parties must submit the dispute to a mediator for consideration in accordance with the Mediation Rules of the Resolution Institute, which Rules are taken to be incorporated into this Agreement.

### 14.4 Costs

Each party must pay its own internal and legal costs in relation to complying with this clause 14. The mediator's costs are to be shared equally between the parties.

## 15. Force Majeure

Where any failure or delay in the performance of obligations under this Agreement is caused, directly or indirectly, by a Force Majeure Event:

- (a) the Affected Party must as soon as practicable give the other party written notice of that fact;
- (b) the Affected Party is not liable for that failure or delay;
- (c) Affected Obligations under this Agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event; and
- (d) if the Force Majeure Event continues for more than 90 consecutive days and while it continues, any party other than the Affected Party may, at its sole discretion, terminate this Agreement and any applicable Service Schedule or Statement of Work by giving written notice to the Affected Party and all other parties (if any).

## 16. General

### 16.1 Entire understanding

This Agreement contains the entire understanding between the parties concerning the subject matter of this Agreement and supersedes, terminates and replaces all prior agreements and communications between the parties concerning that subject matter.

### 16.2 No adverse construction

This Agreement, and any provision of this Agreement, is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

### 16.3 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### 16.4 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

### 16.5 Successors and assigns

This Agreement binds and benefits the parties and their respective successors and permitted assigns under clause 16.6.

### 16.6 Assignment and subcontracting

- (a) GapMaps can assign, novate or otherwise transfer the benefit of this Agreement and may subcontract any of its rights or obligations

under this Agreement. The Customer agrees to execute any document necessary or desirable to give effect to this clause 16.6.

- (b) The Customer cannot assign, novate or otherwise transfer the whole or part of this Agreement without GapMaps' prior written consent.

#### 16.7 No variation

This Agreement cannot be amended or varied except in writing signed by the parties.

#### 16.8 Governing law and jurisdiction

This Agreement is governed by and must be construed in accordance with the laws in force in the State of Victoria, Australia. The parties submit to the exclusive jurisdiction of the courts of that State of Victoria, Australia and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

#### 16.9 Notices

Any notice or other communication to or by a party under this Agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing, legible and in English addressed to the address for service set out in page 1 or to any other address last notified by the party to the sender by notice given in accordance with this clause 16.9;
- (c) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00 am on the second Business Day after the date of posting to the addressee whether delivered or not; or
  - (iii) if sent by email transmission, and no undelivered email message is received within 24 hours, at the time and the date it was sent,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

#### 16.10 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute the same Agreement. Each party consents to the use of electronic communications in the execution of this Agreement, in accordance with the *Electronic Transactions (Victoria) Act 2000* (Cth).

#### 16.11 Operation of indemnities

Unless this Agreement expressly provides otherwise:

- (a) each indemnity in this Agreement survives the expiry or termination of this Agreement; and
- (b) a party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

#### 16.12 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

#### 16.13 Relationship of parties

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

#### 16.14 Costs

Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

#### 16.15 Non merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged.

#### 16.16 The rule about "contra proferentem"

This Agreement is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it, or because that party relies on a provision of this document to protect itself.

### 17. Definitions and interpretation

#### 17.1 Definitions

In this Agreement unless the context indicates a contrary intention:

**Acceptance or Accepted** means the acceptance by the Customer of the relevant Deliverables.

**Affected Obligations** has the meaning given to that term in the definition of Force Majeure Event.

**Affected Party** has the meaning given to that term in the definition of Force Majeure Event.

**Agreement** means this agreement, its background, schedules and annexures (if any) and the relevant Services Schedule or Statement of Work.

**Background Material** means any material in which the Intellectual Property Rights are owned by, licensed to or developed by or on behalf of a party which are pre-existing or created independently of this Agreement.

**Business Day** means a day excluding a Saturday, Sunday or public holiday in the capital city of the Jurisdiction.

**Commencement Date** means the date the Customer accepts or signs a Services Schedule or Statement of Work.

**Confidential Information** means:

- (a) the terms of this Agreement including Information submitted or disclosed by either party during negotiations, discussions and meetings relating to this Agreement;
- (b) information that at the time of disclosure by a Disclosing Party is identified to the Receiving Party as being confidential; and
- (c) all other information belonging or relating to a Disclosing Party, or any Related Entity of that Disclosing Party, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or

which the Receiving Party knows, or ought reasonably to be expected to know, is confidential to that Disclosing Party or any Related Entity of that Disclosing Party,

but excludes information which:

- (d) prior to the execution of this Agreement is in the public domain;
- (e) hereafter becomes part of the public domain other than as a result of an unauthorised disclosure by either party to this Agreement;
- (f) is or becomes available to a party to this Agreement from a Third Party lawfully in possession of such information and who has the lawful power to disclose such information to the party on a non-confidential basis; or
- (g) is rightfully known by a party to this Agreement (as shown by written record) prior to the date of disclosure under this Agreement.

**Customer Data** means the Customer's data or any data supplied by or on behalf of the Customer that is hosted on the SaaS Services or which is created by processing in the SaaS Services.

**Defect** means any material non-conformance of the Deliverables with the Acceptance Criteria.

**Deliverables** means a task to be completed or an item to be supplied to the Customer by GapMaps or on GapMaps' behalf under this Agreement in the course of providing the Services as described in a Services Schedule or a Statement of Work and includes the SaaS Services and any Developed Materials.

**Developed Material** means any information, technology, software, reports, results, processes, plans, discoveries, inventions, Intellectual Property Rights or other material (whether in electronic or material form) developed by or on GapMaps' behalf as a result of, or in the course of providing the Services, but does not include any Background Materials or the SaaS Services.

**Disclosing Party** means the party to whom information belongs or relates.

**Fees** means the fees for the Services as set out in a Services Schedule or a Statement of Work.

**Force Majeure Event** means an event beyond the reasonable control of a party being:

- (a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or Law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, epidemic, pandemic, quarantine, radiation or radioactive contamination;
- (b) an action or inaction of a Government Agency, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; or
- (c) termination or withdrawal by Third Party providers of any of the products, facilities or services used to provide the Services, or other service disruptions involving hardware, software or power systems within such party's possession or reasonable control and denial of service attacks,

to the extent that the act, event or cause directly results in a party (**Affected Party**) being prevented from or delayed in performing one or more of its material obligations under this Agreement, excluding any obligation to make a payment (**Affected Obligations**).

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute in the relevant jurisdiction.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time, and the expressions Consideration, GST, Input Tax Credit, Recipient, Supply, Supplier, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act.

**Initial Term** means the initial term set out in a Services Schedule or a Statement of Work.

**Insolvency Event** means any one or more of the following events occurring in respect of a person:

- (a) a resolution is passed for the winding up of that person (other than for the purposes of reconstruction or amalgamation, which, in the case of a party, is on terms which have been previously approved in writing by the other party);
- (b) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all or any part of the property of that person;
- (c) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of that person;
- (d) that person makes any composition or arrangement or assignment with or for the benefit of its creditors;
- (e) that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;
- (f) that person ceases, or threatens to cease to carry on its business;
- (g) that person becomes unable to pay its debts as and when they become due; or

any event analogous or equivalent to the events described in paragraphs (a) to (g) occurs in respect of that person.

**Intellectual Property Rights** means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, inventions, designs, copyright, trade marks, brand names, product names, domain names, database rights, rights in circuit layouts, plant breeder's rights, know how, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;



- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals, divisions and extensions of these rights.

**Jurisdiction** means the State of Victoria, Australia.

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that has the force of law.

**Loss** means any loss, damage, cost or expense.

**Malicious Code** means any virus, Trojan horse, worm, logic bomb or other malicious code that infect, manipulate, modify, deny, corrupt or inhibit the operation of the SaaS Services.

**Personnel** means any individuals, employees, agents, consultants, service providers or subcontractors of an entity from time to time.

**Personal Information** means information or an opinion, whether true or not, and whether recorded in a material form, electronic form or otherwise, about an identified individual or an individual who is reasonably identifiable, and includes anything that is defined as personal information or as sensitive information in the relevant Privacy Laws.

**Privacy Law** means any applicable Law, statute, regulation, ordinance, code, standard or requirements of any government, governmental or semi-governmental body which relates to privacy or health information, including without limitation the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles under that Act, the *Spam Act 2003 (Cth)* and the *Do Not Call Register Act 2006 (Cth)*, and any Australian (including State or Territory) legislation from time to time in force which relates to or affects privacy rights or Personal Information.

**Professional Services** means the professional services that are made available by GapMaps to the Customer from time to time, as described in a Statement of Work.

**Receiving Party** means the party to whom information is disclosed or who possesses or otherwise acquires information belonging or relating to a Disclosing Party.

**Recipient** has the meaning given to that term in clause 8.3(a).

**Related Entity** has the meaning given to that term in the *Corporations Act 2001 (Cth)*.

**Renewal Term** means the renewal term set out in a Services Schedule or a Statement of Work.

**Representative** means a party's directors, officers, employees, agents, contractors or subcontractors.

**SaaS Services** means the software as a service which is a data analysis and mapping platform and support services, as described in a Services Schedule.

**Scheduled Downtime** has the meaning given to that term in clause 2.2(b).

**Service Levels** means any minimum levels of performance or quality with respect to the SaaS Services specified in a Services Schedule or a Statement of Work.

**Services** means the SaaS Services and the Professional Services.

**Services Schedule** means a services schedule agreed by the parties in writing for the provision of the SaaS Services in the form specified by GapMaps from time to time.

**Statement of Work** means a statement of work agreed by the parties in writing for the provision of Professional Services in the form specified by GapMaps from time to time.

**Term** means:

- (a) in respect of this Agreement, the period from the Commencement Date until termination in accordance with clause 13; and
- (b) in respect of a Service Schedule or Statement of Work, the Initial Term together with any Renewal Term.

**Third Party** means a party other than the Customer or GapMaps.

**User** means any person authorised by the Customer to access and use the Services.

## 17.2

### Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) a reference to a party is to a party to this Agreement and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (h) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (i) the word "month" means calendar month and the word "year" means 12 months;
- (j) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;

- (k) a reference to a thing includes a part of that thing;
- (l) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (m) wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";
- (n) money amounts are stated in Australian currency unless otherwise specified;
- (o) a reference to time is to the time in the capital city of the Jurisdiction;
- (p) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body;

- (q) any agreement, representation, warranty or indemnity in favour of two or more parties (whether those parties are included in the same defined term or not) is for the benefit of them jointly and severally; and
- (r) any agreement, representation, warranty or indemnity by two or more parties (whether those parties are included in the same defined term or not) binds them jointly and severally.

### 17.3 Conflicting provisions

This Agreement is comprised of these terms and conditions, a Statement of Work, a Services Schedule and annexures. The Agreement sets out the terms and conditions that apply to the delivery of the Services or the Deliverables by GapMaps to the Customer. If there are any inconsistencies between the documents comprising the Agreement, the following order of precedence will apply:

- (a) these terms and conditions; and
- (b) a Services Schedule or a Statement of Work.