

# Licence agreement

concluded between

**Geocom Informatik AG**

Kirchbergstrasse 107

3400 Burgdorf

Switzerland

(hereinafter referred to as: Geocom)

and

**the end user of the Geocom products which are to be installed**

(hereinafter referred to as: end user)

## **Preamble:**

The end user for the purposes of this contract shall be the party explicitly agreeing to its terms for this installation process and thus carrying out this installation process. In the event that the installation is performed pursuant to an employment contract, the employer shall be considered to be the end user.

In the event that the end user already has a valid licence agreement with Geocom for the Geocom products which are to be installed, the acceptance of this agreement shall not have any additional legal consequences.

Otherwise, the agreement shall take effect upon the acceptance of the end user by placement of a checkmark in the corresponding box and the completion of the installation.

This agreement is therefore directed at the following end users in particular:

- I. **Existing customers (hereinafter referred to as: customers) of Geocom who have legally acquired the rights of use for the Geocom products, but who have not yet signed a licence agreement or accepted the end-user agreements by placement of a checkmark in the corresponding box and completion of the installation**
- II. **End users (hereinafter referred to as: test users) who, within the framework of the technical protection of Geocom products, are in possession of a licence file that was created by Geocom for test purposes and which has been given time restrictions. After the expiration date the software needs to be removed from the system.**
- III. **End users (hereinafter referred to as: GDN users) who have in the scope of Geocom Developer Network program legally acquired a GDN licenses, are allowed to use this license to develop or configure existing solutions. It is not allowed to use GDN licenses for any commercial purpose. (Data- capture, - maintenance, -analyses or any other)**
- IV. **End users who have come into possession of the Geocom products which are to be installed without contacting Geocom (hereinafter referred to as: factual user). The factual user acknowledge the to date un-authorized usage of GEONIS licenses. The factual user is obliged contacting Geocom and acquire the corresponding licenses, hence establishing a correct and legal basis for the installation and usage of the corresponding licenses in accordance to this license agreement**

## **1. Object of the agreement / General information**

- a. This agreement regulates the relationship regarding intangible property rights and other aspects associated, between Geocom and the customer for all software modules at hand at the customer (Item 1.2), as well as the accompanying media and/or application modules (Item 1.3) and the documentation (hereinafter referred to as: Geocom products) for which Geocom has intangible property rights (in particular the copyright) and for which the individual transaction has been subjected to this agreement. In respects to general licensing terms, this agreement between Geocom and the customer is usually only to be concluded once and shall be valid for all individual transactions concluded between the parties to the agreement. The individual transactions which are subject to this agreement can be determined from the individual offers.
- b. In this agreement, software modules shall be understood to mean machine-readable object code or parts thereof (including any program libraries that are dynamically integrated).
- c. In this agreement, media and/or application modules shall be understood to include all definition and configuration files, regardless of the formats used, all interface definitions, data models, fonts and ESRI styles, as well as all materials supplied to the customer which serve the operation, configuration or enhancement of the software modules.
- d. Geocom products, including protection mechanisms pertaining to the product licence, will only be supplied to customers on the basis of individual transactions which are subject to this agreement.
- e. With the exception of guarantee claims, the customer shall be considered to have implicitly accepted that each delivery is complete (type and quantity of the products delivered) in the event that Geocom has not received a justified written complaint concerning said delivery within 30 days of its receipt by the customer. The delivery note for the delivery in question shall be considered sufficient proof of acceptance.

## **2. Formal Requirements**

- a. All amendments to this agreement and/or the extraordinary termination thereof must be made in writing. Dispensation of this formal requirement can only be made in writing.
- b. Wherever in this agreement a reference is made to "in writing" and no individual case specific other agreement exists, "in writing" means documents with the legally binding signatures of both parties.
- c. In the event that the documents in question are unilateral, based on this agreement foreseen communications, from one contracting party to the other, then only the legally-binding signature of the party issuing the communication shall be necessary for compliance with the requirement that it be in writing.

### **3. Relationship to third parties with intangible property rights**

- a. Some Geocom products are based on products to which third parties (hereinafter referred to as: third party providers) have intangible property rights, in particular the copyright.
- b. Insofar such third party provider is Environmental Systems Research Institute, Redlands, CA, USA (hereinafter referred to as: ESRI), the customer is obligated to conclude a separate licence agreement (hereinafter referred to as: master license agreement) with ESRI for its products, insofar such agreement does not already exist between the customer and ESRI. In this respect, Geocom shall act as intermediary if needed.
- c. ESRI products can be licensed in the following forms:
  - Commercial use licence
  - OEM licence

Since the first of January 2013, OEM Licenses in combination with Geocom products can only be provided to customers in Switzerland and Germany

- d. In the case that OEM licenses are part of the offer, the customer shall impose to the following restrictions and/or obligations
  - The customer accepts that, as a result of the OEM licensing model, limited functions and components of the ESRI Products will be available and can only be used in combination with Geocom products. Likewise, ESRI product extensions can be made available as OEM License and as integrated part of the Geocom products.
  - The customer is obliged using the ESRI products in such a way necessary to properly utilise the Geocom products. The customer shall be prohibited from using the OEM-licensed ESRI products independently or separately from the Geocom products.
  - ESRI Deutschland GmbH, ESRI Schweiz AG and ESRI Inc. USA bear limited liability for any kind of damages, within the legal framework.
  - The customer is obliged to comply with the relevant export laws and regulations applied in the United States of America.
  - The customer allows Geocom to audit the usage of the software products if required and forward the results to ESRI.

### **4. Rights of use for Geocom products / Protection mechanisms**

- a. The customer shall be granted the right of use for the Geocom products specified in the following items. This listing is exhaustive. All rights for Geocom products not specified herein remain with Geocom.
- b. Should the customer have any doubts regarding the legality as defined in this agreement of any current or desired way of utilization, they shall submit a corresponding query in writing to Geocom.
- c. Geocom grants the customer the non-exclusive and non-transferable right of use for the Geocom products for the time period as defined in the corresponding offer.
- d. Geocom products licensed on an subscription base, remain the property of Geocom at all times. In case the subscription period is not prolonged the Geocom products (software) needs to be removed from the system.
- e. Geocom products that are licensed in the scope of a Geocom Enterprise License Agreement or as an add-on to an Esri Enterprise License Agreement, remain the property of Geocom at all times. In the occasion that the ELA is not prolonged, all the Geocom products (software) needs to be removed from the system. Further ELA specific agreements apply and are stipulated in the corresponding Enterprise License Agreement.

- f. This right of use covers all actions necessary for proper utilisation, in particular the installation, proper use as such and the creation of one backup copy for each licensed Geocom product.
- g. Licenses are non-transferable, were a transfer is considered to be any usage-relevant agreement with other legal or natural entities concerning the use of Geocom products, in particular sub-licensing. Usage by external personnel in accordance with the terms of the agreement is accepted, insofar as this usage is solely the interests of the customer and the customer has legally obligated the external employee in writing to comply with all obligations arising from this agreement. The transfer to subsidiaries within a corporate structure is also accepted, insofar as the customer has legally obligated the subsidiary in writing to comply with all obligations arising from this agreement.
- h. The licence quantities for the Geocom products are specified in the individual offers.
- i. Geocom products (the software modules in particular) are technical protected (hereinafter referred to as: protection) and are supplied with this protection. This protection generally comprises the following components:
  - Licence file
  - Software (in particular licence server software)
- j. Unless otherwise instructed by Geocom, the customer is not permitted to manipulate these components in any way.
- k. The customer is obliged to do everything within reason to protect the licence files from unauthorised access by third parties
- l. The de-compilation of Geocom products to reveal the source code (hereinafter referred to as: de-compilation) or the utilisation of the same is only permissible in the event that Geocom is bankrupt, and no successor company or natural individual has acquired the corresponding rights
- m. The provided documentation may only be reproduced by the customer after a formal written approval by Geocom. If this consent is forthcoming, the original trademarks must remain in their original form.
- n. Each infringement of the obligations stipulated in paragraph 4e, 4h and 4m shall result in the customer being liable to pay Geocom a contractual penalty amounting two times the actual list price of the corresponding products. Payment of the contractual penalty does not release the customer from their obligations. Reserved are in this respect possible damage claims, although contractual penalties can be charged against these.

## **5. Extraordinary termination of the agreement**

- a. Geocom has the right to withdraw from this agreement with immediate effect by notifying the customer in writing in the event that the customer does not make payment, in spite of being given a reminder and in spite of a suitable grace period.
- b. Geocom has the right to withdraw from this agreement with immediate effect by notifying the customer in writing if the customer violates one or more of the provisions stipulated in paragraph 4e, 4h, and/or 4m.
- c. In the event of the extraordinary termination of this agreement pursuant to paragraph 5a, all of the Geocom products which have already been supplied to the customer are to be dealt with as follows:
  - All Geocom products which have been physically delivered are to be returned to Geocom within 10 days of written notification. Confirmation of this circumstance, and in particular its completeness, is to be submitted to Geocom in writing.
  - All Geocom products on hand in electronic form at the customer, in particular software which has been installed or which is suitable for installation (or parts thereof) and the associated media, as well as any documents supplied electronically, including all backup copies thereof, are to be irrevocably deleted within 10 days of written notification. Confirmation of this circumstance, and in particular its completeness, has to be submitted to Geocom in writing.
- d. Each infringement of the obligations stipulated in this paragraph 5, shall result in the customer being liable to pay Geocom a contractual penalty amounting two times the actual list price of the corresponding products. Payment of the contractual penalty does not release the customer from their obligations.
- e. The extraordinary termination of this agreement shall also result in the termination of any maintenance contracts in existence between the customer and Geocom with immediate effect. Any maintenance fees which have already been paid shall be forfeit.

## **6. Material warranty / Guarantee**

- a. For one month following the delivery of the products, Geocom shall guarantee the products free of charge (hereinafter referred to as: guarantee) against any deviation from their expected objective condition as defined in the product description (hereinafter referred to as: defects).
- b. In a timely fashion, the customer shall inform Geocom in writing and in a comprehensible manner about any defects.
- c. In order for such notification to be comprehensible, it is particularly necessary that an exact description is provided regarding the operating conditions (hardware and software used) and of the specific procedure that was followed that resulted in the error, so that it is possible to exactly reproduce the error.
- d. Geocom shall undertake to correct the defect in question within a time period that corresponds to the necessary effort.
- e. Geocom does not guarantee that the products can be used free of errors uninterruptedly in all combinations desired by the customer in respect to data, IT systems or other programs, nor does it guarantee that the correction of program errors will not result in other program errors.

## **7. Warranty of title**

- a. Geocom declares that it has itself developed the products which it is providing / transferring to the customer within the framework of this agreement and that it is in possession of the

corresponding intellectual property rights, in particular the copyright, or that they have acquired the corresponding rights to the use and sale of these enhancements or parts thereof from their legal owners and that no prior third party rights are known to it at the time of the conclusion of this agreement.

- b. In the event that a third party should present a credible and sufficiently substantiated case against the customer based on the infringement of their alleged copyright to the products, Geocom will conduct the defence at its own cost and shall assume any costs or damage payments resulting for the customer from a legal verdict in this regard, if ...
  - the customer immediately notifies Geocom of this circumstance in writing, and ...
  - Geocom is given legal authorisation by the customer to conduct the defence, including the power to reach a legal settlement, and...
  - the customer offers Geocom all reasonable support, and...
  - the basis of the third party claim is that the product infringes upon an existing copyright.
- c. If, in the opinion of Geocom, the products might be infringing upon the copyrights of a third party, Geocom shall be entitled at its own discretion either to carry out changes in order to eliminate the copyright infringement, or to enter into negotiations with the aim of acquiring the corresponding copyright from the third party with a better claim to the copyright. Insofar as these measures do not lead to the desired result with appropriate and reasonable effort, and the copyright infringement is upheld legally, the customer shall have the right to withdraw from this agreement with immediate effect upon the provision of notification in writing. The customer shall owe Geocom a pro-rata fee for the effective period of utilisation.
- d. Geocom shall be released from the aforementioned obligations in the event that the copyright claim, or the credible and substantiated assertion of such (hereinafter referred to as: claim) is based on products to which the customer has made modifications and these modifications are the basis for such claim and/or the customer has utilised the products in conjunction with other programs or data and/or under other circumstances than those defined in the conditions of use and the claim is based on these circumstances.

## **8. Liability**

- a. The parties to this agreement shall be mutually liable for all direct damages to persons or property arising within the framework of this agreement up to a maximum amount of 1,000,000 Swiss francs per damage event.
- b. The degree of guilt defined as "slight negligence" shall be excluded insofar as this is legally permissible and regardless of the legal grounds.
- c. Geocom shall not be liable for any damages resulting from the usage of the products it has supplied in contravention of their specified conditions of use. Geocom shall also not be liable in the event that the products it has supplied are used on unsupported hardware and/or in conjunction with incompatible software<sup>1</sup> or in any other way that is contrary to the specified conditions of use.
- d. Any liability for indirect damages or subsequent damages of any kind, as well as for forgone profits or loss of income shall be excluded insofar as this is legally permissible and regardless of the legal grounds.
- e. Geocom shall not be liable for any data loss and/or data changes or inconsistencies at the customer. The customer is responsible for instituting a suitable backup concept for their data.

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In accordance with the product manuals as well as the installation instructions found on the websites of Geocom and ESRI ([www.geocom.ch](http://www.geocom.ch) and [www.esri.com](http://www.esri.com))

- f. The assertion of any indemnification claims against the other party to the agreement requires that said party be notified in writing of such claims within 30 days of the identification of the damage (relative forfeiture period), yet no later than 6 months after the damage has occurred (absolute forfeiture period).

## **9. Commencement of the agreement**

- a. This agreement shall come into force as soon as it has received the legally authorised signatures of both parties to the agreement or accepted the end-user agreements by placement of a checkmark in the corresponding box and completion of the installation.

## **10. Final provisions**

- a. Both parties to the agreement shall undertake to strive in good faith to achieve a mutually agreeable solution in the event that there are any differences of opinion.
- b. If efforts to achieve an amicable solution should fail, both parties agree that the place of jurisdiction shall be the location of the headquarters of the party making the complaint.
- c. The contractual relationship shall be governed exclusively by Swiss law. The conditions of the Vienna Convention for the International Sale of Goods (UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980) shall be excluded.
- d. In the event that individual provisions or parts thereof within this agreement should be shown to be void or legally invalid, the remaining provisions shall remain in force. In this event, the parties to the agreement shall replace the void or invalid provisions with mutually agreeable and legally valid provisions whose effect is as close as possible to that which was intended by the void or invalid provisions.