

## End User License Agreement

### Terms of Use

#### Recitals

- A. Spookfish is the owner of the Products and Services and of the Intellectual Property Rights which relate to the Products and Services.
- B. Spookfish agrees to supply You with the Products and Services, subject to the terms of this agreement (**Agreement**).
- C. Spookfish reserves all rights not expressly granted to You.

BY CLICKING THE "CREATE ACCOUNT" BUTTON, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

Definitions of capitalised words are set out in clause 17 of the Agreement.

#### 1. Grant of Licence to Use Products and Services

- 1.1 **Grant:** Subject to the terms of this Agreement and payment by You of the Fee, Spookfish grants to You for the Term a non-exclusive, non-transferrable sole licence to use the Products and Services for the Permitted Purpose (**Licence**). Spookfish reserves all rights not expressly granted to you.
- 1.2 **Coverage:** The Licence applies in respect of the Coverage Area only as defined in the Additional Terms and Conditions.
- 1.3 **Users:** The Products and Services available under the Licence are only to be used by You and persons employed by You, as applicable.
- 1.4 **Renewal:** Unless otherwise notified by You in writing at least 7 days prior to the expiry of the Term, subject to any amendments to this Agreement required by Spookfish, the Term will automatically be renewed for a subsequent Term for the same duration as the original Term. Subject to clause 4.7, You will be charged a further Fee for the new Term.
- 1.5 **Replacement Product:** Spookfish may from time to time supply You with a replacement Product at its absolute discretion. If requested by Spookfish, You must stop using any previously supplied Product and use the replacement Product from date of delivery from Spookfish.
- 1.6 **No removal of Spookfish logo:** Unless otherwise permitted in writing, You must not remove or cause to be removed any Spookfish logo, watermark or other Spookfish attribution in any Product or Derivative Works.
- 1.7 **Unavailability:** Subject to clause 14, if a Product or Service is not available for a period of 7 consecutive days the Term will be extended by the period of unavailability.

#### 2. Restrictions on Right to Use Products and Services

- 2.1 **Permitted Purpose:** The Products and Services must only be used for the Permitted Purpose.
- 2.2 **No right to distribute, transfer, resell, assign or sublicense:** This Licence is granted only to You and persons employed by You, as applicable. You must not make available, enable others to access, distribute, transfer, resell, assign, sublicense or otherwise deal with any Product or Service (or the related Intellectual Property) or any of Your rights under this Agreement (including but not limited to renting or leasing the Products and Services to third parties) unless You obtain Spookfish's prior written consent. Without limiting the generality of this clause 2.2, no other person is permitted to access, use, copy, distribute or modify any Products or Services (or related Intellectual Property) provided to You by Spookfish under this Agreement (including but not limited to on local intranet or similar network, website or geospatial information system (GIS)) and any other person wishing to do so must obtain their own paid licence from Spookfish.
- 2.3 **No reverse engineering:** You must not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify or create derivative works of the Products or Services other than for a Permitted Purpose or related Intellectual Property Rights.
- 2.4 **No third party access:** Subject to clause 2.5, You must not make any Product or Service available in any medium or manner to any third party or allow or invite third parties to download, extract or access, as a stand alone file or otherwise, any Product or Service available to You. In particular (but without limiting this clause 2.4), You must not post on any website a link to Your Spookfish account and/or any Product. Unless otherwise provided for in this Agreement, Your Related Parties or Subsidiaries are not permitted to use Your Licence.

- 2.5 **Employees:** You may make Products and Services available to any person You directly employ, as applicable, but You must ensure that person complies with the terms of the Agreement and does not make the Products or Services available to anyone except Your employees. You are responsible and liable for any person that uses Your account access details.
- 2.6 **Limits on use of Website:** In Your use of the Website and Products and Services, You must not:
- (a) provide a link to another URL;
  - (b) upload content or other information to the Website unless permitted in writing from Spookfish to do so;
  - (c) do anything to damage, interfere or disrupt access to the Website or Products and Services or do anything which might impair their functionality;
  - (d) use the Website or Products and Services in any way to send unsolicited (commercial or otherwise) e-mail or any material for marketing or publicity purposes, or any similar abuse of either;
  - (e) publish, post, distribute, disseminate or otherwise transmit, defamatory, offensive, infringing, obscene, indecent or other unlawful or objectionable material or information;
  - (f) make available, upload or distribute by any means any material or files that contain any viruses, bugs, corrupt data, “trojan horses”, “worms” or any other harmful software;
  - (g) remove any content or information from the Website, other than that permitted under the terms of this Licence;
  - (h) falsify the true ownership of a Product or Service or other material or information made available via the Website;
  - (i) obtain or attempt to obtain unauthorised access, through whatever means, to the Website;
  - (j) use the Website or Products and Services other than in accordance with the Agreement; or
  - (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts.
- 2.7 **Spookfish Fair Use Policy:** You acknowledge that Spookfish may limit or cease the supply of the Products and Services if Spookfish, in its own opinion, considers your use of the Products and Services to be inappropriate or excessive.
- 2.8 **Breach:** If You breach any of clauses 2.2 to 2.6 inclusive, Spookfish reserves its rights to terminate the Agreement in accordance with clause 6.1, restrict Your access to the Website, Products and Services and/or take any other steps available to it at law.
- 3. YOUR ACCESS TO PRODUCTS AND SERVICES**
- 3.1 **Access:** Following the Commencement Date, You will be provided with access to the Products and Services. We will use our reasonable endeavours to ensure that our Website remains available but cannot guarantee that this will be the case at all times. This includes where planned or unplanned maintenance occurs, or where there are difficulties in internet communications.
- 3.2 **Downtime:** Spookfish agrees that, wherever possible, all planned maintenance will be done out of normal operational hours to ensure optimal uptime of the Website. As soon as Spookfish becomes aware of any Fault, Spookfish will use reasonable endeavours to:
- (a) allocate such resources as may be necessary to remedy the Fault; and
  - (b) otherwise take all reasonable steps to remedy the Fault so as to minimise any disruption to Your use of the Products and Services.
- 3.3 **Expiry:** Your Licence will expire at the end of the Term unless renewed in accordance with clause 1.4 and may be suspended or terminated earlier if You do not pay Your Fees or are otherwise in other breach of the Agreement in accordance with clause 6.1.
- 3.4 **Confidentiality:** This Licence is granted exclusively to You. You must keep and procure that each of Your employees keeps details of Your Licence, Products and Services and account access details secure and confidential. Unless expressly permitted by the Agreement, or otherwise authorised in writing by Spookfish, neither You nor any of Your employees may share Your Licence, Products and Services or Spookfish account access details with any person.
- 3.5 **Notification:** You must notify Spookfish immediately in writing if You become aware:
- (a) that there is or has been an unauthorised use of Your Licence and account access details, or any other security breach relating to Your Spookfish account;
  - (b) of any claim by any person of any rights to any of the Products and Services or Intellectual Property Rights;

(c) of any actual, suspected or anticipated infringement of the Products and Services or Intellectual Property Rights

#### 4. FEES

- 4.1 **Fees:** The Products and Services are only available to You on a subscription basis, unless otherwise notified to You in writing by Spookfish. The Fees payable by You for the Licence and the use of the Products and Services are as agreed in writing between Spookfish and You.
- 4.2 **Payment:** The Fees are payable by You to Spookfish at the beginning of each Term unless otherwise agreed by Spookfish.
- 4.3 **No cancellation:** Subject to clause 4.4, all Fees are non-cancellable and non-refundable except as expressly set out in the Agreement.
- 4.4 **Refund of Fees:** If You are not in breach of the Agreement, and Spookfish elects to terminate the Agreement under clause 6.2, Spookfish will refund to You any pre-paid Fees relating to the portion of Term remaining as at the effective date of termination.
- 4.5 **GST:** All Fees exclude GST and other taxes unless expressly stated otherwise.
- 4.6 **Late Payment:** If a scheduled Fee payment is not made in full for any reason, You give Spookfish permission to charge a Late Payment Fee and/or immediately limit or terminate access to the Products and Services provided under this Licence.
- 4.7 **Amendments:** Spookfish may, at its absolute discretion, increase the Fees at the end of the Term by an amount which reflects up to the current rate of Inflation plus 2.5%.

#### 5. YOUR WARRANTIES

- 5.1 **Warranty:** You warrant that:
- (a) any information You supply to Spookfish in respect of the Agreement is complete and correct. You must keep Spookfish informed of any change to Your information provided to us, including any change to Your contact details, or the details of a bank account or credit card used for payment.
  - (b) You will immediately notify Spookfish of any usage of any Spookfish Product or Service outside the Permitted Purpose, and provide any other information reasonably requested by Spookfish;
  - (c) You have the power to enter into this Agreement and to perform the obligations under it; and
  - (d) You have and will comply with all relevant laws relating to Your use of the:
    - (i) Licence;
    - (ii) Products and Services; and
    - (iii) Website.

#### 6. TERMINATION AND EXPIRY

- 6.1 **Breach:** In the event of any breach of a term of the Agreement by You, and if such breach is capable of being rectified, has not been rectified within 5 Business Days of notice to You, Spookfish may, in its absolute discretion, elect to terminate the Agreement by notice to You.
- 6.2 **Termination by Spookfish:** Regardless of anything else in the Agreement, Spookfish has the right, in its absolute discretion and upon giving You 10 Business Days notice, to terminate the Agreement and the Licence.
- 6.3 **Consequences:** If the Agreement is terminated under clauses 6.1 or 6.2 or expires under clause 3.3:
  - (a) the Licence immediately terminates and the Products and Services, and Spookfish account access details will no longer be available to You;
  - (b) You must immediately destroy, delete or return (at Spookfish's discretion) to Spookfish all Products and Services;
  - (c) subject to clause 6.4, You are not permitted to use any Products and Services, and Spookfish account access details for any purpose; and
  - (d) You will only be entitled to continued use of the Products and Services, Spookfish account access details and additional Products and Services if Spookfish grants You a new licence.
- 6.4 **Use of Derivative Works after Termination:** Unless otherwise notified to You by Spookfish, You may continue using Derivative Works following termination or expiry of this Agreement, subject to compliance with clause 7.5.
- 6.5 **Costs:** Spookfish reserves all rights following termination of this Agreement, including any rights available to Spookfish to collect any outstanding Fees which may be owed by You. You will be liable for any costs incurred by Spookfish in enforcing its rights following termination of this Agreement.

6.6 **Continuing obligations:** After expiry or termination of the Agreement or a Licence, clauses 1.4, 6.5, 7, 8, 10, 12 and 15 will still be binding on You in relation to Products and Services licenced or obtained during the Term.

## 7. INTELLECTUAL PROPERTY

7.1 **Ownership:** Spookfish owns the Website, Products and Services and all associated Intellectual Property Rights. Unless otherwise indicated, the Products and Services, and all of the content on the Website, including, but not limited to, text, graphics, data, photographic images, moving images, sound, illustrations, software, and the selection and arrangement thereof, and all associated Intellectual Property Rights, is owned by Spookfish, its licensors, or its third-party image partners. Except for the limited Licence granted to You in clause 1.1, no ownership or Intellectual Property Rights in any Product or Service will pass to You.

7.2 **Third Party websites:** Spookfish may include links on the Website to third party websites. Spookfish does not own the Intellectual Property Rights, or make representations in relation to the accuracy or otherwise, of content contained on such third party websites.

7.3 **Intellectual Property:** All Products and Services, the functionality of the Products and Services and all associated Intellectual Property Rights are owned by Spookfish and are protected by copyright, trade dress, moral rights, trademark and other laws relating to the protection of intellectual property. Spookfish reserves all of its Intellectual Property Rights.

7.4 **Trademarks and Trade names:** You must not remove any trademarks or trade names from the Products or Services. All right, title and interest in all Spookfish trademarks will remain with Spookfish or its licensor. Nothing in the Agreement confers upon You any rights to use, modify any of Spookfish's trademarks or trade names, except that Spookfish grants You a royalty free, limited non-exclusive, non-transferrable licence to use Spookfish trade marks to the extent necessary to comply with Your obligations under the Agreement. You must not sublicense this right.

7.5 **Derivative Works:** Subject to compliance with all other terms of this Agreement, You are granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. You and Spookfish will jointly own all rights in and to any Product embedded in a Derivative Work. Derivative Works may only be used by You in accordance with clause 6.4 and this clause 7.5.

7.6 **Other:** You must ensure that the laws of any jurisdiction throughout the Coverage Area are complied with to the extent necessary to ensure that the Intellectual Property Rights are protected. You must also not directly or indirectly challenge or assist any third party to challenge the validity of the Spookfish's title to the Products, Services or Intellectual Property Rights.

## 8. THIRD PARTY PROVIDERS

8.1 Spookfish engages Third Party Providers in order to provide products and services (including the Products and Services). You agree to comply with all requirements and restrictions that Third Party Providers may impose on You directly, or indirectly by imposition on Spookfish, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. You acknowledge that provision of the Products and Services is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with clause 10.7 of the Agreement, Spookfish' liability is reduced to the extent that loss or damage of any kind is caused, or contributed to, by Third Party Providers. For Your convenience, Spookfish has set out in Schedule 1 links to the terms and conditions of these Third Party Providers that You are required to comply with. You further acknowledge that by entering into the Agreement, You agree to comply with the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.

## 9. MAINTENANCE AND CUSTOMER SUPPORT

9.1 During the Term You may contact Spookfish Support with Your support queries. However, Spookfish cannot guarantee that it will be able to resolve any issue raised by You. Spookfish has no obligation to provide You with any additional maintenance or support, but if Spookfish agrees to do so Spookfish may charge You reasonable additional fees for the additional maintenance and support provided to You by Spookfish.

9.2 If You have any questions about an order You have placed, please contact Spookfish Support.

## 10. WARRANTY AND LIABILITY

10.1 **Warranty:**

- Spookfish warrants that the Products and Services are of acceptable quality as defined in the Australian Consumer Law.
- 10.2 **Exclusion of Warranties:** Subject to clause 10.1, the Website, Products and Services are provided "as is", and Spookfish and its content providers, agents and affiliates exclude, to the fullest extent permitted by applicable law, any warranty, express or implied, including, without limitation, any implied warranties of merchantability, satisfactory quality or fitness for a particular purpose, and all conditions and warranties which would otherwise be implied into this Agreement whether by law, statute or otherwise.
- 10.3 **Limit of Liability:** Spookfish' liability for:
- (a) a breach of a warranty under clause 10.1; or
  - (b) a breach of a warranty which is implied or imposed in relation to this Licence under legislation and cannot be excluded,
- will be limited to, at Spookfish' option replacing or repairing the Products or Services or supplying Products or Services equivalent to the relevant Products or Services, or paying the cost of replacing or repairing the Products or Services.
- 10.4 **No Liability for Claims:** To the extent permitted by law, in no event will Spookfish, its content providers, agents or affiliates be liable for any Claims of any kind arising from or connected with the use of the Website or the Products or Services, or the unavailability of the same, including but not limited to loss of use, loss of profits or loss of data, and direct, indirect, incidental, punitive and consequential damages. You are responsible for the entire cost of all servicing, repair or correction required due to Your use of this site or the Products or Services and whether in contract, tort (including but not limited to negligence) or otherwise. This exclusion applies, without limitation, to any Claims caused by or resulting from reliance by a user on any information obtained from Spookfish, or any Claims that result from mistakes, omissions, inaccuracies, distortions, interruptions, deletion or corruption of files or email, errors, defects, viruses, delays in operation or transmission or any failure of performance, whether or not resulting from acts of god, communications failure, theft, destruction or unauthorized access to Spookfish' records, programs or services.
- 10.5 **No Guarantee of Currency of Products and Services:** Spookfish does not warrant or guarantee that any of the Products or Services will be current, updated regularly or updated on any specific date or at any time.
- 10.6 **Aggregate Limit:** In no event will the aggregate liability of Spookfish, whether in contract, warranty, tort (including negligence, whether active, passive or imputed), product liability, strict liability or other theory, arising out of or relating to the use of the Products or Services exceed any compensation or Fee You have paid, if any, to Spookfish for access to or use of the Products and Services over the 12 month period prior to the alleged default, breach or event giving rise to the liability.
- 10.7 **Third Party Providers:** You acknowledge that Spookfish relies on the services of Third Party Providers in order to supply the Products and Services. Without limiting any of the above, for the avoidance of doubt, to the fullest extent permitted by applicable law, Spookfish will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by any Third Party Provider.
- 10.8 **No Representations:** While Spookfish uses reasonable efforts to ensure the accuracy, correctness and reliability of the Products and Services and the Website, Spookfish makes no representations or warranties as to the accuracy, correctness or reliability of any Product or Service or content contained on the Website. The Products and Services and the Website are subject to errors, omissions, inaccuracies and distortions and Spookfish will not be responsible for, or liable for any Claims made by or arising out of, any person or entity seeking to rely on any of the Products or Services or the Website. It is Your own responsibility to ensure that the Products and Services and the Website meet Your specific requirements. You expressly acknowledge and agree that use of the Products, Services or Website is at Your sole risk.
- 10.9 **Search Feature:** Spookfish may offer a search feature within the Website. Spookfish explicitly disclaims any responsibility for the content, availability or accuracy of information returned as a result by the search feature.
- 10.10 **Viruses:** Spookfish tries to ensure that the Products and Services and the Website are free from viruses and harmful code but Spookfish cannot guarantee that files You download from the

Website will be free of contamination or destructive properties. Spookfish suggests You install and use appropriate and up to date anti-virus and anti-spyware at all times.

10.11 **Surveys:** The date, time and number of surveys Spookfish conducts will be at Spookfish' absolute discretion. Spookfish does not guarantee that maps of a particular location or geography will be available at any point in time or that its map coverage is current, accurate, correct or reliable. If, for any reason, Spookfish is unable to conduct a survey, Spookfish will incur no liability under the Agreement in relation to the resulting Products or Services. Spookfish may choose to supply You with material obtained from archived aerial surveys at its absolute discretion but has no obligation to do so. Additional charges may apply to any archived data supplied by Spookfish.

10.12 **Indemnity:** You agree to indemnify Spookfish and its directors, officers, employees, agents and subcontractors, from and against any third party claims, and must pay on demand all losses, expenses, damages and costs (including reasonable legal fees incurred on a solicitor/client basis) suffered or incurred by Spookfish, which arise directly or indirectly out of:

- (a) any breach by You of any warranty or term of the Agreement;
- (b) Your use of Products and Services and the Website, including, without limitation, Your use of the Website to provide a link to another URL or to upload content or other information to the Website;
- (c) the exercise of Your rights or performance of Your obligations under this Agreement;
- (d) Your negligence or wilful act or omission.

10.13 **Australian Consumer Regulations:** The warranty against defects in clause 10.1 is given by:

Spookfish Australia Pty Ltd  
Email: [enquiries@spookfish.com](mailto:enquiries@spookfish.com)

In the event that the Products or Services are defective during the Term, then to claim under this warranty You must notify Spookfish of Your claim in writing to the Spookfish address above. You must bear the expenses of making a claim under the warranty. The benefits to You given by this warranty are in addition to the other rights and remedies of You under a law in relation to the goods to which the warranty relates. Our goods come with warranties which cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

## 11. COPYRIGHT COMPLAINTS

11.1 Subject to clause 10, if any third party brings a Claim against You alleging that Your use of the Products or Services in accordance with this Licence infringes their copyright, we will defend You against the Claim and pay any settlement to which we consent or final court-awarded damages for which You are liable.

11.2 You must:

- (a) promptly notify us of any such Claim;
- (b) not make any admissions in relation to the Claim without our prior written consent;
- (c) permit us to conduct the defence of the Claim including all negotiations for settlement; and
- (d) provide us with any assistance reasonably requested to allow us to defend the claim.

11.3 To the maximum extent permitted by law, this clause 11 sets out Spookfish' sole and exclusive liability, and Your sole and exclusive remedy, for any third party Claims brought against You in relation to an infringement of Intellectual Property Rights.

## 12. PRIVACY POLICY

12.1 Spookfish is committed to protecting Your privacy. Spookfish' Privacy Policy is available at [www.spookfish.com/privacy](http://www.spookfish.com/privacy). Please refer to it for information on how Spookfish collects, uses and discloses personal information. Spookfish will use any data supplied by You as set out in Spookfish' Privacy Policy.

12.2 By entering into this Agreement, You will receive Spookfish news, offers and feature updates by email, and expressly consent to receiving by email direct marketing communications from Spookfish.

12.3 By entering into this Agreement, You acknowledge that personal information provided by You in the course of accessing Products and Services (including, without limitation, credit or debit card details provided by You for the purpose of paying Spookfish) may be disclosed to and held by one or more of Spookfish' third party suppliers and partners (including, without limitation, providers

of payment processing services), and used by those third parties in connection with the supply of Products and Services. While Spookfish will take reasonable steps to protect personal information held by Spookfish from misuse, loss and unauthorised access, modification or disclosure, Spookfish will have no liability whatsoever with respect to any personal information held by a third party in connection with the supply of Products and Services.

### 13. PROMOTIONAL OFFERS

From time to time Spookfish may make promotional offers to vary the pricing of the Products and Services. Promotional offers will be subject to the terms of the Agreement.

### 14. FORCE MAJEURE

14.1 **Force Majeure Event:** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an event beyond that party's reasonable control (**Force Majeure Event**):

- (a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
- (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations under this Agreement because of the Force Majeure Event.

14.2 **Notice of Force Majeure Event:** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:

- (a) promptly give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
- (b) take all reasonable steps to overcome the effects of the Force Majeure Event; and
- (c) resume compliance as soon as practicable after the Force Majeure Event no longer affects it.

### 15. MISCELLANEOUS TERMS

15.1 **Spookfish customer:** You agree that Spookfish may identify You as a Spookfish customer in Spookfish business, promotional and advertising materials. Please notify Spookfish in writing if you do not wish for this to happen.

15.2 **Additional Terms and Conditions:** The Additional Terms and Conditions set out in Schedule 1 form part of, and should be read in conjunction with, this Agreement. The Additional Terms and Conditions may be varied during the Term, as expressly agreed by You and Spookfish, in order to include further Products and Services as they become available for an additional Fee.

15.3 **Amendment of this Agreement:** We reserve the right to amend this Agreement at any time. Your continued use of the Products and Services will be deemed to constitute your acceptance of the amended Agreement. It is your responsibility to ensure you are familiar with the most recent version of this Agreement prior to each use of the Products and Services.

15.4 **Waiver:** Any waiver of any terms of the Agreement will be effective only if in writing and signed by Spookfish. Any rights not expressly granted herein are reserved.

15.5 **Severability:** If one or more of the terms of the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.

15.6 **Entire Agreement:** This Agreement:

- (a) comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

15.7 **Governing Law:** This agreement is governed by the laws of Western Australia, Australia, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.

15.8 **Assignment:** Spookfish may assign all or any of its rights under this Agreement. You may not assign all or any of Your rights under this Agreement.

15.9 **Counterparts:** This Agreement may be executed in counterparts, which taken together constitute one and the same document, and any party may enter into this document by executing a counterpart.

## 16. PARTIES

16.1 If You consist of more than one person, this Agreement binds each of You separately and any two or more of You jointly.

16.2 If You are a trustee then You are bound both personally and in Your capacity as a trustee.

## 17. DEFINITIONS

In this Agreement:

**Additional Products** means the additional products (if any) set out in the Additional Terms and Conditions.

**Additional Terms and Conditions** means the additional terms and conditions (if any) set out in Schedule 1.

**Business Days** means any day other than a Saturday, a Sunday or a recognised public holiday in Western Australia.

**Claim** means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

**Commencement Date** means the date as specified in the Additional Terms and Conditions.

**Commercial Purpose** means:

- (a) to distribute, transfer, sell, sub-licence or pass possession of any Products or Services (in whole or in part) for the purpose of commercial benefit or gain by You; or
- (b) a purpose which is deemed by Spookfish (acting reasonably) to be most appropriately suited to an enterprise agreement.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Coverage Area** means the area described in the Additional Terms and Conditions for which Spookfish has available Products and Services, which may cover part or all of that area.

**Coverage Area Update Frequency** has the meaning given in the Additional Terms and Conditions.

**Derivative Work** means any new work created by or for You that includes or embeds all or part of a Product and Service.

**Fault** means any fault, failure, error or defect which prevents You from accessing the Website, Products and Services, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond our reasonable control or any conduct or activity undertaken by You, Your employees or agents.

**Fees** means the fees payable for each Term as set out in Schedule 1.

**Inflation** means the rate of inflation for the current year, to be calculated using the Reserve Bank of Australia's Inflation Calculator at [www.rba.gov.au/calculator/](http://www.rba.gov.au/calculator/) or such other replacement calculation tool from time to time.

**Intellectual Property Rights** includes all industrial and intellectual property rights throughout the world including copyright, moral rights, trademarks, names, logos, patents and patentable inventions, registered and registerable designs, rights to protect confidential information and any similar rights whether owned by Spookfish at the date of this Agreement or acquired or developed later.

**Late Payment Fee** means a fee, as notified by Spookfish to You, corresponding to the costs incurred by Spookfish (including, without limitation, administrative and other costs) in recovering any payment not made by You on the due or scheduled date for payment. Late Payment Fees incur interest at the rate of 7.5% per annum.

**Licence** means the licence granted in clause 1.1.

**Permitted Purpose** means the use of Products and Services in accordance with this Agreement by You and Your employees (if any) in Your ordinary business and at all times excludes any:

- (a) Commercial Purpose; and
- (b) Unlawful Purpose.

For avoidance of doubt, certain Products and Services may be used for personal, not-for-profit use only.

**Products and Services** has the meaning given in the Additional Terms and Conditions.

**Program Guide** means Spookfish's Australian Program Guide, as amended from time to time, available at [www.spookfish.com/program](http://www.spookfish.com/program).

**Related Parties** has the meaning given in the *Corporations Act*.

**Subsidiaries** has the meaning given in the *Corporations Act*.

**Spookfish** means Spookfish Australia Pty Ltd (ABN 20 616 063 122) and all its related entities.



**Spookfish Support** has the meaning given in the Additional Terms and Conditions.

**Term** has the meaning given in the Additional Terms and Conditions, commencing on the Commencement Date.

**Third Party Providers** means third party providers of products and services (potentially including the Products and Services) to Spookfish.

**Unlawful Purpose** means any unlawful purpose, including but not limited to stalking, harassing or intimidating any person or engaging in misleading or deceptive conduct.

**Website** has the meaning given in the Additional Terms and Conditions.

**You** has the meaning given in the Additional Terms and Conditions.

**Your Product Description** means the specifications applicable to Your account with Spookfish as set out in the Additional Terms and Conditions.

## 18. Interpretation

In this Agreement, reference to:

- 18.1 one gender includes the others;
- 18.2 the singular includes the plural and the plural includes the singular;
- 18.3 a person includes a body corporate;
- 18.4 a party includes the party's executors, administrators, successors and permitted assigns;
- 18.5 money is to Australian dollars, unless otherwise stated;
- 18.6 "including" and similar expressions are not words of limitation;
- 18.7 where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- 18.8 headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation;
- 18.9 a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- 18.10 if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

**Schedule 1 – Additional Terms and Conditions**

Item	Details
<b>You:</b>	The person or entity using the Products and Services and specified on the Spookfish Website as either an active account owner, administrator or member. In circumstances where multiple Licences have been subscribed to this extends to each Licence subscription, known as a “seat”, as set forth in Your Spookfish subscription confirmation email.
<b>Products and Services:</b>	<p><u>Your Product Description:</u> As set forth in Your Spookfish subscription confirmation email.</p> <p><u>Coverage Area:</u> All those parts of Australia as have been surveyed by Spookfish, or will be surveyed by Spookfish during the Term, and as and when those surveys are made available through the Spookfish Websites.</p>
<b>Commencement Date:</b>	The date set forth in Your Spookfish subscription confirmation email.
<b>Term:</b>	The term set forth in Your Spookfish subscription confirmation email. Your Agreement will continue in full effect, including pursuant to clause 1.4, until your account is terminated under clauses 6.1 or 6.2 or expires under clause 3.3.
<b>Fees:</b>	The Fees that apply to You will be specified on our pricing page at <a href="http://www.spookfish.com/pricing">www.spookfish.com/pricing</a> . You will be charged the Fees for each of the number of licences set forth in Your Spookfish invoice.
<b>Coverage Area Update Frequency:</b>	At the frequency specified for the Coverage Area in the Program Guide.
<b>Website</b>	<p><u>Spookfish website:</u> <a href="http://www.spookfish.com">http://www.spookfish.com</a></p> <p><u>Spookfish mapviewer:</u> <a href="https://maps.spookfish.com">https://maps.spookfish.com</a></p>
<b>Third Party Providers:</b>	<p><u>MapBox</u> <a href="https://www.mapbox.com/enterprise-tos/-start">https://www.mapbox.com/enterprise-tos/-start</a></p> <p><u>Amazon Web Services</u> <a href="https://aws.amazon.com/agreement/">https://aws.amazon.com/agreement/</a></p> <p><u>Microsoft Azure</u> <a href="http://microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&amp;DocumentTypeId=46">http://microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&amp;DocumentTypeId=46</a></p> <p><u>Pitney Bowes</u> <a href="http://www.pitneybowes.com/us/license-terms-of-use/software-and-data-end-user-license-agreement.html">http://www.pitneybowes.com/us/license-terms-of-use/software-and-data-end-user-license-agreement.html</a></p>
<b>Spookfish Support:</b>	<p>The level of Spookfish Support available depends of the Product and Services subscribed to which are specified on our pricing page at <a href="http://www.spookfish.com/pricing">www.spookfish.com/pricing</a>.</p> <p><u>Email:</u></p> <p>If email support is specified on the pricing page of the Spookfish Website as being included in the Products and Services provided to You by Spookfish, that support can be accessed through the email address set forth on Support and Help Centre on the Spookfish Website: <a href="https://support.spookfish.com">https://support.spookfish.com</a></p>

	<p><u>Phone:</u></p> <p>If phone support is specified on the pricing page of the Spookfish Website as being included in the Products and Services provided to You by Spookfish, that support is available between 9am and 7pm AEST on 1300 77 66 52.</p> <p><u>Live Chat:</u></p> <p>If Live Chat support is specified on the pricing page of the Spookfish Website as being included in the Products and Services provided to You by Spookfish, that support is available between 9am and 7pm AEST and can be accessed from the Support and Help Centre on our website: <a href="https://support.spookfish.com">https://support.spookfish.com</a></p> <p><u>Community Forum:</u></p> <p><a href="https://community.spookfish.com">https://community.spookfish.com</a></p> <p><u>Online Knowledgebase:</u></p> <p><a href="https://knowledgebase.spookfish.com">https://knowledgebase.spookfish.com</a></p>
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