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(L204 10/2020)

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**11.3 Taxes and Fees, Shipping Charges.** License fees quoted to Licensee are exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

**11.4 No Implied Waivers.** The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or the right of such party thereafter to enforce that or any other provision.

**11.5 Severability.** The parties agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

**11.6 Successor and Assigns.** Licensee shall not copy, assign, sublicense, sublease, redistribute, or transfer Licensee's rights or the rights of a contractor or third party or delegate its obligations under this Agreement without VERTIGIS NA's and its authorized distributor's prior written consent, and any attempt to do so without VERTIGIS NA's and its authorized distributor's prior and written consent shall be void. This Agreement shall be binding upon the respective successors and assigns of the parties to this Agreement. Notwithstanding, a Government contractor that has acquired the Product(s) under contract to the Government may assign its rights under this Agreement to its Government customer upon written notice to VERTIGIS NA, provided the Government customer assents to the terms of this Agreement.

**11.7 Survival of Terms.** The provisions of Articles 2, 6, 7, 8, 9, 10, and 11 of this Agreement shall survive the expiration or termination of this Agreement.

**11.8 Equitable Relief.** Licensee acknowledges and agrees with VERTIGIS NA that any breach of this Agreement by Licensee, its employees, representatives, contractors or other third parties may cause serious and irreparable harm to VERTIGIS NA and/or its licensor(s) which cannot adequately be compensated in damages. Further, Licensee acknowledges and agrees with VERTIGIS NA that, in the event of such a breach, in addition to any and all remedies available to VERTIGIS NA, its licensor(s) or its authorized distributor at law, VERTIGIS NA, its licensor(s) and/or its authorized distributor shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or undertaking or proving injury as a condition for relief. Licensee hereby consents to any request made by VERTIGIS NA, its licensor(s) or its authorized distributor for an injunction, specific performance or other equitable remedy and to such an injunction, specific performance or other equitable remedy being issued against it restraining it from any further breach of such provision or requiring any action by Licensee whatsoever. Such injunction, specific performance or other equitable remedy shall not be construed to preclude or to be in derogation of any other remedy to which VERTIGIS NA may be entitled under the laws of Canada or the home jurisdiction of Licensee.

**11.9 U.S. Government Restricted Rights.** The Product(s) are provided with restricted rights. The Product(s) are commercial computer software, commercial data, commercial Online Services, and commercial computer software documentation. This Agreement contains VERTIGIS NA's commercial license terms and conditions for such items. The commercial license rights in this Agreement strictly govern Licensee's use, reproduction, or disclosure of the Product(s). No other license terms or conditions shall apply unless expressly agreed in writing by VERTIGIS NA and Licensee. The Software source code is unpublished and all rights to the Product(s) are reserved under international and national copyright laws. In the event any court, arbitrator, or board holds that the Licensee has greater rights to any portion of the Product(s) under applicable public procurement law, such rights shall extend only to the portions affected. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as provided in FAR 52.227-19 (June 1987), FAR 52.227-14 (ALT III) (June 1987), DFARS 252.227-7015 (Nov 1995), or NFS 1852.227-86 (December 1987), or the local, state, or foreign equivalent, as applicable. The owner or authorized licensor is VertiGIS North America Ltd., 300-1117 Wharf Street, Victoria, British Columbia, Canada V8W 1T7.

**11.10 Governing Law, Arbitration**



- a. *Licensees in Canada and the United States of America, Its Territories, and Outlying Areas.* This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia without reference to its conflict of laws principles. Except as provided in Article 11.8, any dispute arising out of or relating to this Agreement, or the breach thereof, which cannot be settled through negotiation, shall be finally settled by arbitration administered by the Canadian Commercial Arbitration Centre (in Canada) or the American Arbitration Association (in the US) under their respective Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered into a court of competent jurisdiction. If Licensee is a U.S. Government agency, this Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C 601-613), in lieu of the Arbitration provisions of this clause.
- b. *All Other Licensees.* Except as provided in Article 11.8, any dispute arising out of or relating to this Agreement, or the breach thereof, which cannot be settled through negotiation, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with said Rules. The language of the arbitration shall be in English. The place of the arbitration shall be at Vancouver, British Columbia, Canada.
- c. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- d. Either party shall, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

#### **11.11 Maintenance and Technical Support**

- a. Maintenance for qualifying Products and technical support services ordered directly from VERTIGIS NA will be provided in accordance with VERTIGIS NA's Maintenance and Technical Support Policy (L400) available at [www.geocortex.com/legal](http://www.geocortex.com/legal), which VERTIGIS NA, in its sole discretion, may revise from time to time.
- b. Maintenance for qualifying Products and technical support services ordered directly from a VERTIGIS NA authorized distributor will be provided in accordance with the distributor's then current standard maintenance program policy or VERTIGIS NA's L400, as indicated by the distributor.

**11.12 Force Majeure.** Except with respect to payment obligations under this Agreement, neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from, directly or indirectly, causes beyond the reasonable control of the affected party, including but not limited to fire, floods, earthquakes, epidemic, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, cyberattacks, disruptions or outages of third party services, acts of God or acts, omissions or delays in acting by any governmental authority; provided, however, that the affected party shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall resume performance hereunder as commercially reasonable whenever such causes are removed. The affected party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of Force Majeure.

**EXHIBIT 1**  
**SCOPE OF USE**  
(L300 10/2020)

The scope of use for each VERTIGIS NA Software identified below is described in the applicable footnotes listed in parentheses.

Geocortex Essentials Standard Edition (1, 2, 3, 4 (Starter Kit), 5, 6, 7, 8)

- Geocortex Essentials Standard Edition (4.x) (20)
- Geocortex Workflow (15, 16, 19)
- Geocortex Reporting (15, 16, 19, 22)
- Geocortex Printing (15, 16, 19, 22)
- Geocortex Web (GXW) (15, 19, 20)

Geocortex Essentials Enterprise Edition (1, 2, 3, 5, 6, 7, 8)

- Geocortex Essentials Standard Edition (4.x) (20)
  - Geocortex Workflow (15, 16, 19)
  - Geocortex Reporting (15, 16, 19, 22)
  - Geocortex Printing (15, 16, 19, 22)
  - Geocortex Workflow Builder Edition (15, 17, 19)
  - Geocortex Reporting Builder Edition (15, 17, 19, 22)
  - Geocortex Printing Builder Edition (15, 17, 19, 22)
  - Geocortex Mobile (GXM) (15, 19, 20, 21)
  - Geocortex Web (GXW) (15, 19, 20)
  - Geocortex Access Control (16, 19)
- Geocortex Essentials Builder Edition (1,2,3, 5)
    - Geocortex Workflow Builder Edition (15, 17, 19)
    - Geocortex Reporting Builder Edition (15, 17, 19, 22)
    - Geocortex Printing Builder Edition (15, 17, 19, 22)
- Geocortex Analytics (5, 7, 8)
  - Geocortex Essentials Developer Subscription (GEDS) (5, 6, 9)
  - Geocortex Workflow Builder Edition (5, 15, 17)
  - Geocortex Reporting Builder Edition (5, 15, 17, 22)
  - Geocortex Printing Builder Edition (5, 15, 17, 22)
  - Geocortex Mobile (GXM) (5, 15, 20, 21)
  - Geocortex Web (GXW) (5, 15, 20)
  - Geocortex Access Control (5, 16, 19)
  - Inline (GXl) (5)
  - Geocortex Item Manager (GXIM) (23)

1. "Development Server License." Licensee may install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
2. "Staging Server License." Licensee may use and install the Software for the following purposes; user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data update, and training activities.
3. "Production Server License." Licensee may install and use the Software or Data to provide services to multiple users on the same or other computer(s).
4. "Single Application License." Licensee may install and use the Software or Data for one (1) web-GIS application serving multiple users on the same or other computer(s). An Application is defined as a discrete web-GIS viewer with a specific URL.
5. "License." Licensee may use the subscription(s), Software, Online Services and Data for a limited time period. When the license term expires Licensee must either stop using the subscription(s), Software, Online Services, and Data, or renew or extend the license upon payment of applicable fees. Licensing is based on the greater of the number of Licensee's Named Users or the number of ArcGIS® Enterprise GIS Server cores deployed by Licensee.
6. Extensions to Software programs and GEDS Software follow the same scope of use as that granted for the corresponding Software programs.
7. The administrative tools for the Software may be copied and redistributed throughout the Licensee's organization.
8. Redundant Software installation(s) for failover operations may be implemented during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant except for system maintenance and updating of databases while the primary site or any other site is operational.
9. GEDS Software, Online Services, and Data may only be used at an installation location solely for the purposes of research, development, testing, and demonstration of a prototype application. GEDS Software and Data may be installed on multiple computers for use by any named GEDS developer.
10. Reserved.
11. Reserved.
12. Reserved.
13. Reserved.
14. Reserved.
15. For Commercial ASP Licensees, Commercial ASP Use is restricted to on premise deployment.
16. Licensed for use with a Geocortex Viewer (GVH, GXW, GXM). Not for use with Esri's Web AppBuilder.
17. Licensed for use with Esri's Web AppBuilder for ArcGIS®. Not for use with a Geocortex Viewer (GVH, GXW, GXM).
18. Reserved.
19. Active Geocortex Essentials maintenance or subscription required to use this Product.

20. Value-Added Applications:

- i. Value-Added Applications built with the Product are subject to the terms of use of ArcGIS Runtime Standard Level. Value-Added Application means an application developed by Licensee for use in conjunction with the authorized use of the Products.
- ii. Licensee may use the Product to create Value-Added Applications and distribute and license those Value-Added Applications to its end users in accordance with this Agreement to use anywhere not prohibited under export regulation or in violation of applicable privacy regulations and laws. Licensee is responsible compliance with applicable export control regulations and laws.
- iii. Licensee is responsible for the development, operation, and technical support of Licensee Content and Value-Added Applications.

21. Licensee may not use the Product to develop Internet or server-based Value-Added Applications.

22. Subscription license includes a SaaS consumption limit of 1GB per month. Licensee consumption in excess of 1GB per month may result in additional consumption costs to Licensee.

23. VERTIGIS NA disclaims and makes no representations or warranties whatsoever and provides no indemnities to Licensee for this Product or Licensee's use thereof. The Product is offered as-is and is available for use at Licensee's own risk. There is no maintenance or technical support provided for this Product. VERTIGIS NA reserves the right to discontinue this Product in its sole discretion without providing notice to Licensee.