

NON-EXCLUSIVE LICENSE TO USE SPOT SATELLITE PRODUCTS BETWEEN SPOT IMAGE CORPORATION (SICORP) AND THE USDA FOREST SERVICE REGION 10 (END-USER)

The END-USER accepts and agrees to be bound by the terms of this End-User License Agreement (“EULA”) by doing any of the following: (a) accepting, in whole or in part, a quotation for the supply of the PRODUCT; (b) breaking the seal on the package containing the PRODUCT; (c) downloading and/or installing and/or manipulating the PRODUCT on any computer; (d) paying, in whole or in part, for the PRODUCT. (e) making available any DERIVATIVE WORKS; (f) damaging or destroying the PRODUCT; (g) retaining the PRODUCT for more than 7 days following receipt thereof.

ARTICLE 1 - DEFINITIONS

“**DERIVATIVE WORKS**”: means any derivative product or information developed by the END-USER from the PRODUCT, which does not contain any imagery data from the PRODUCT and is irreversible and uncoupled from the source imagery data of the PRODUCT. Notwithstanding the foregoing, by express exception, any Digital Elevation Model or Digital Terrain Model (in any form whatsoever, i.e. database for instance) derived from a PRODUCT shall never be considered as DERIVATIVE WORKS.

“**END-USER**”: means either the person, acting in his own name, or the legal commercial business entity, including its possible offices and branches in its country of residence, or the government agency, which is supplied with the PRODUCT and accepts this EULA. When the PRODUCT is supplied to a governmental entity (civil agency, public department, ...), the END-USER shall be deemed to be only such part of the government entity as located at the address to which the PRODUCT is supplied, except upon SICORP prior agreement in writing.

“**PRODUCT**”: means the SPOT satellite product(s) supplied by SICORP to the END-USER.

“**VAP**”: means any product developed by the END-USER, which contains imagery data from the PRODUCT, and resulting in a significant modification of the PRODUCT, through technical manipulations and/or addition of other data. Notwithstanding the foregoing, by express exception, any Digital Elevation Model or Digital Terrain Model derived from a PRODUCT shall always be considered as a VAP.

ARTICLE 2 - LICENSE

2.1 Permitted Uses

The END-USER is hereby granted by SICORP a limited, non-exclusive, non transferable, License:

- (a) to install the PRODUCT on as many individual computers as needed in its premises, including internal computer network (with the express exclusion of the internet, except as provided under paragraph (g) below) for the Permitted Uses under paragraphs (b) to (i) below;
- (b) (c) to use the PRODUCT for its own internal needs;
- (c) to alter or modify the PRODUCT to produce VAPs and/or DERIVATIVE WORKS;
- (d) to use any VAP for its own internal needs;
- (e) to make available the PRODUCT and/or any VAP to contractors and consultants, only for use on behalf of the END-USER, subject to such contractors and consultants agreeing in writing, in advance, (I) to be bound by the same limitations on use as applicable to the END-USER, and (II) to return the PRODUCT and VAP to END-USER, and to keep no copy thereof, upon completion of the contracting or consulting engagement;
- (f) to print any extract, maximum size 1024 x 1024 pixels, of a PRODUCT or a VAP, and to distribute such print for promotion purposes only. Such print shall include the following credit conspicuously displayed: “includes material © CNES ____ (year of production), Distribution Spot Image S.A., France, SICORP, USA, all rights reserved” written in full;
- (g) to freely use and distribute DERIVATIVE WORKS. Notwithstanding the foregoing, the END-USER shall not be entitled to sell, distribute, assign, dispose of, lease, sublicense or transfer, directly or indirectly, any DERIVATIVE WORKS to any third party established, incorporated or located in the territory of Canada. Before any sale, distribution, assignment, lease or transfer of any DERIVATIVE WORKS, the END-USER shall obtain from his customer the written commitment to comply with this restriction, and shall obtain from him that it be passed on to any and all users of the DERIVATIVE WORKS.
- (h) to share the PRODUCT and/or VAPs with any US DoD Title 50 Agency, any US Federal Civilian Agency, any US State & Local Government customers and with any Commercial Entity which resides in and has a billing and shipping address in Alaska (collectively “Alaska-Wide Users”). End-User must ensure that all Alaska-Wide Users receive a copy of and agree to be bound by the terms of this EULA.
- (i) to post the PRODUCT on the Internet in a downloadable format. Copyright information must accompany all downloads. © CNES ____ (year of production), Distribution Spot Image S.A., France, SICORP, USA, all rights reserved. END-USER agrees that PRODUCT will not be made commercially available by any person downloading the PRODUCT.

All rights not expressly granted by SICORP under the present Article 2.1 are hereby retained by SICORP.

2.2 Prohibited Uses

The END-USER recognizes and agrees that the PRODUCT is and shall remain the property of SICORP, and contains proprietary information of SICORP and thus is provided to the END-USER on a confidential basis.

The END-USER shall not, and shall cause any contractor or consultant engaged as per the provisions of Article 2.1(f) not to, do any of the following:

- (a) do anything not expressly authorized under Article 2.1; and
- (b) alter or remove any copyright notice or proprietary legend contained in or on the PRODUCTS.

ARTICLE 3 – INTELLECTUAL PROPERTY RIGHTS

- 3.1 The satellite imagery data contained in the PRODUCT are the property of Centre National d'Etudes Spatiales (CNES), France.
- 3.2 The PRODUCT is protected by French and international copyright laws.
- 3.3 In addition, the PRODUCT and the satellite imagery data contained therein are protected by articles L 341-1 to 343-4 of the French Code of Intellectual Property Law as amended by the statute of 1 July 1998, relative to database copyright and to similar statutes in European countries that have incorporated EU Directive n° 96/9 of 11 March 1996 on database copyright into their laws.

ARTICLE 4 – WARRANTY - LIABILITY

- 4.1 SICORP warrants that it has sufficient ownership rights in the PRODUCT to make the PRODUCT available to the END-USER under the terms thereof.
- 4.2 The PRODUCT is complex; SICORP does not warrant that the PRODUCT is free of bugs, errors, defects or omissions, and that operation of the PRODUCT will be error free or uninterrupted nor that all non-conformities will or can be corrected. It does not warrant that the PRODUCT shall meet the END-USER's requirements or expectations, or shall be fit for the END-USER's intended purposes. There are no express or implied warranties of fitness or merchantability given in connection with the sale or use of this PRODUCT. SICORP disclaims all other warranties not expressly provided in Articles 4.1 and 4.2.

In case the medium on which the PRODUCT is supplied by SICORP to the END-USER is deficient, as demonstrated by the END-USER and accepted by SICORP, SICORP shall replace said medium. Any such claim for replacement shall be notified to SICORP within seven (7) days after delivery of the PRODUCT to the END-USER.

- 4.3 In no event shall SICORP, nor anybody having contributed to development and/or production and/or delivery of the PRODUCT, be liable for any claim, damage or loss incurred by the END-USER, including without limitation indirect, compensatory, consequential, incidental, special, incorporeal or exemplary damages arising out of the use of or inability to use the PRODUCT, and shall not be subject to legal action in this respect.

The financial cumulative liability of SICORP and of anybody having contributed to developing and/or production and/or delivery of the PRODUCT is limited to distribution of the PRODUCT and shall not in any case exceed the price paid by the END-USER to purchase the PRODUCT.

ARTICLE 5 – MISCELLANEOUS

- 5.1 This End-User License Agreement shall run for an unlimited term. SICORP may, in addition to all other remedies to which it may be entitled under this EULA or at law, terminate immediately this EULA by notice in writing if the END-USER breaches any provision of this EULA. The END-USER shall have no claim to any kind of refund in this case. Upon termination, the END-USER shall return to SICORP the PRODUCTS and VAPs.
- 5.2 The END-USER shall not transfer part or all of this EULA without SICORP's prior written consent.
- 5.3 In the event that any provision of this EULA is declared invalid or unenforceable, the remaining provisions of this EULA shall be applicable.
- 5.4 This End-User License Agreement is governed by the laws of the Commonwealth of Virginia. All disputes shall be referred to the courts of Virginia.