## NV5 GEOSPATIAL SOLUTIONS, INC. SOFTWARE LICENSE AGREEMENT FOR GEOSPATIAL SERVICES FRAMEWORK 3.0

## IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING THE SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

NV5 GEOSPATIAL SOLUTIONS, INC. ("NV5GS"), OR ITS AUTHORIZED LICENSOR, IS WILLING TO LICENSE THE SOFTWARE TO YOU OR THE BUSINESS ENTITY YOU REPRESENT ("LICENSEE") UPON THE CONDITION THAT LICENSEE ACCEPTS ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT ("AGREEMENT"). BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU ARE BINDING YOURSELF AND THE BUSINESS ENTITY THAT YOU REPRESENT TO THE TERMS OF THIS AGREEMENT.

IF LICENSEE DOES NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN NV5GS IS UNWILLING TO LICENSE THE SOFTWARE TO LICENSEE AND (A) LICENSEE MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) LICENSEE MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD/DVD PACKAGE AND ANY WRITTEN MATERIALS) TO THE PLACE OF PURCHASE FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, LICENSEE MAY RETURN THE ENTIRE PRODUCT TO THE PLACE OF PURCHASE FOR A FULL REFUND. LICENSEE'S RIGHT TO RETURN AND REFUND EXPIRES 60 DAYS AFTER PURCHASE FROM LICENSOR, AND APPLIES ONLY IF LICENSEE IS THE ORIGINAL END USER PURCHASER.

- 1. SOFTWARE. The Geospatial Services Framework software, including modifications, enhancements, improvements, updates, additions, derivative works, object code compiled therefrom, documentation and related material is referred to herein as the "Software."
- 2. LICENSE. Conditioned upon compliance with the terms and conditions of this License Agreement and payment of the required license fees as set forth on the applicable purchase order or invoice from NV5GS or an authorized licensor, NV5GS grants to Licensee a (1) non-exclusive, non-transferable, non-sublicensable license to install and use the Software for internal business purposes in a production environment; and (2) a non-exclusive, non-transferable, non-sublicensable license to install and use the Software to install and use the Software solely for non-production purposes of testing, development and integration.
- 3. General Limitations. Other than as specifically set forth herein, Licensee may not make or distribute copies of the Software or use the Software for commercial network services, interactive cable, or remote processing services that provide unlicensed end users with direct access to the Software. Licensee may make one copy of the Software in machine-readable form solely for backup purposes. Licensee must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Software. Except as otherwise expressly provided under the Agreement, Licensee shall have no right, and specifically agrees not to:
  - a. rent, lease, loan, sell, transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Licensor relicensing/transfer policy then in force), and Licensee acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
  - b. make error corrections to or otherwise modify, alter or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
  - c. translate, decipher, reverse engineer, or decompile, decrypt, disassemble or otherwise reduce the Software to humanreadable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;
  - d. use or permit the Software to be used to perform services for third parties outside Licensee's organization, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Licensor;
  - e. disclose, provide, or otherwise make available trade secrets, proprietary or confidential information contained within the Software in any form to any third party without the prior written consent of Licensor. Licensee shall implement reasonable security measures to protect such trade secrets, proprietary or confidential information; or
  - f. utilize more Software licenses at any given time than the total quantity in Licensee's licensed configuration on file with NV5GS.
- 4. SOFTWARE, UPGRADES AND ADDITIONAL COPIES. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) LICENSEE HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS LICENSEE, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; AND (2) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

## 5. TITLE.

- 5.1 License to Software. This is a license, not a transfer of title to the Software. NV5GS and/or its licensors retain all right, title, interest and all intellectual property rights (including copyrights, trade secrets, trademarks and patent rights) in and to all copies of the Software. Licensee acknowledges that the Software contains trade secrets, proprietary or confidential information of NV5GS or its suppliers or licensors, including, but not limited to, the specific internal design and structure of individual programs and associated interface information.
- 5.2 Rights in Data. All data created and/or processed by the Software is and remains the property of Licensee and shall in no way become attached to the Software, nor shall Licensor have any rights in or to the data of Licensee.
- 5.3 U.S. Government End User Purchasers. The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any contract into which this Agreement may be incorporated, Government end user will acquire the Software with only those rights set forth in this Agreement. Use of the Software constitutes agreement by the Government that the Software is "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

## 6. LIMTED WARRANTY: WARRANTY RESTRICTIONS; DISCLAIMER OF WARRANTIES.

- 6.1 Limited Warranty. Subject to the limitations and conditions set forth herein, NV5GS warrants that commencing from the date of shipment to Licensee and for a period no longer than sixty (60) days: (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software shall perform in substantial conformity with the documentation accompanying the Software or made available by NV5GS online. Except for the foregoing, the Software is provided "AS IS." This limited warranty extends only to the Licensee who is the original licensee. Licensee's sole and exclusive remedy and the entire liability of NV5GS and its distributors or suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at NV5GS' option, repair, replacement, or refund of the purchase price of the Software license, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to NV5GS or the party supplying the Software to Licensee may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does NV5GS warrant that the Software is error free or that Licensee will be able to operate the Software without problems or interruptions.
- 6.2 Warranty Restrictions. This warranty does not apply if: (a) the Software has been altered, except by NV5GS; (b) the Software has not been installed, operated, repaired, or maintained in accordance with instructions supplied by NV5GS; (c) the Software has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (d) the Software is licensed for beta, evaluation, testing or demonstration purposes; or (e) NV5GS has not received a license fee for the Software.
- 6.3 Disclaimer of Warranty. EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY LICENSOR, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS, AND LICENSEE MAY ALSO HAVE OTHER RIGHTS WHICHVARY FROM JURISDICTION TO JURISDICTION. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS ITS ESSENTIAL PURPOSE.
- 7. DISCLAIMER OF LIABILITIES LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, ALL LIABILITY OF LICENSOR, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS COLLECTIVELY, TO LICENSEE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID BY LICENSEE TO LICENSOR OR ITS AUTHORIZED RESELLER FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY FOR SOFTWARE IS CUMULATIVE AND NOT PER INCIDENT (I.E. THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). IN NO EVENT WILL LICENSOR, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS, BE LIABLE FOR ANY LOST REVENUE, LOST PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, COST TO COVER OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING, INCLUDING, WITHOUT LIMITATION, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE

SOFTWARE, EVEN IF, IN EACH CASE, LICENSOR, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT FULLY APPLY TO LICENSEE.

- 8. OPEN SOURCE SOFTWARE. Certain libraries and other third party software included in the Software are "free" or "open source" software and are subject to separate license terms ("Open Source Software"). Such Open Source Software is distributed WITHOUT ANY WARRANTY, without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. Licensor is not obligated to provide any warranty, maintenance, technical or other support for the Open Source Software or its use in the Software. A list of Open Source Software copyright notices and license terms is included in the Legal and Copyright Notices document provided with the Software installation at the top-level directory in LegalandCopyrightNotices.txt.
- 9. INFRINGEMENT INDEMNITY. Licensor shall defend or settle at its expense a claim or suit against Licensee arising out of or in connection with an assertion that the Software infringes any U.S. copyright or issued U.S. patent. Licensor shall indemnify and hold Licensee harmless from and against the damages, costs and expenses (including, without limitation, reasonable legal and expert witness fees), if any, finally awarded in such suit or the amount of the settlement thereof, provided that Licensor is notified in writing of the existence of such claim by Licensee within five (5) business days of Licensee's first learning of the same, and provided that Licensor is given full authority to control the defense, cost and settlement of the claim. Licensor will not be obligated to defend or otherwise indemnify Licensee in any lawsuit or as to any claim which arises from or relates to: (1) any combination of the Software with another product not supplied by Licensor; (2) if such a claim is based upon use of the

Software for purposes for which it was not designed; or (3) if the Software has been modified by any party other than Licensor. In lieu of the foregoing indemnification obligations, Licensor shall have the option, at its expense, either to procure for Licensee the right to continue using the Software or to replace or modify the Software so that it becomes non-infringing, or to refund to Licensee the amount actually paid by the Licensee for the Software. The foregoing sets the Licensor's complete and entire liability with respect to infringement claims, and Licensor shall have no further liabilities therefore.

- 10. TERM AND TERMINATION. The Agreement and the license granted herein shall remain effective until terminated. Licensee may terminate the Agreement and the license at any time by destroying all copies of Software and any Documentation. Licensee's rights under the Agreement will terminate immediately without notice from Licensor if Licensee fails to comply with any provision of the Agreement. All limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement.
- 11. GOVERNING LAW. The Agreement shall be governed as follows:
  - a. For commercial entities, the laws of the State of Colorado without regard to its choice of law rules.
  - b. For U.S. state and local governments and/or higher education schools governed by state laws, contracts shall be governed by the laws of the state in which they are located without reference to conflict of laws principles.
  - c. For the U.S. Government, contracts shall be governed by U.S. federal laws.
  - d. The Agreement will not be governed by the United Nations Convention on Contracts for International Sale of Goods, this application is expressly excluded.
- **12.** WAIVER. The failure of NV5GS to insist on the performance of any of the terms or conditions of this Agreement or to exercise any right hereunder shall not be a waiver of such terms, conditions, or rights in the future, nor shall it be deemed to be a waiver of any other term, condition, or right under this Agreement.
- **13. MODIFICATION OF TERMS AND CONDITIONS.** No terms and conditions other than those stated herein, and no modification of these terms or conditions, shall be binding on NV5GS without NV5GS' written consent.
- 14. LICENSEE RECORDS. Licensee grants to NV5GS and its independent accountants the right to examine Licensee's books, records and accounts during Licensee's normal business hours to verify compliance of with this Agreement as it relates to the Software. In the event such audit discloses non-compliance with this Agreement, Licensee shall promptly pay to NV5GS the appropriate license fees, plus the reasonable cost of conducting the audit.
- **15. EXPORT RESTRICTIONS.** The Software is subject to export controls under the laws and regulations of the United States of America, including but not limited to the U.S. Export Administration Regulations and U.S. Department of the Treasury, Office of Foreign Assets Control, and may be subject to additional export and import regulations of the country in which the software is obtained. You agree that you will comply with all applicable laws and regulations governing the export, import, reexport, transfer and use, and that you have the responsibility to obtain any required authorization from the appropriate authority. If NV5GS receives notice that You are or You become identified as a sanctioned or restricted party under

applicable law, then NV5GS will not be obligated to perform any of its obligations under this Agreement if such performance would result in violation of the sanctions or restrictions.

**16. GENERAL PROVISIONS.** If any part of the Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which will remain valid and enforceable according to its terms. This Agreement may only be modified by a writing signed by an authorized officer of NV5GS. The English version of this agreement will be the version used when interpreting or construing this Agreement.