

## **RISKSCAPE END-USER LICENCE AGREEMENT**

The End-User Licence Agreement ("EULA") is a legal agreement between you (the "Licensee") and Institute of Geological and Nuclear Sciences Limited ("GNS") and National Institute of Water and Atmospheric Research Limited ("NIWA") (together the "Licensors"). Carefully read the terms and conditions of this EULA before you install, execute or use the RiskScape software tool. By installing, executing or using RiskScape you become the licensee to this EULA and consent to be bound by its terms and conditions. If you do not wish to accept the terms promptly uninstall the RiskScape software and advise the Licensors.

### **BACKGROUND**

- A. The Licensors have developed RiskScape, a disaster impact mapping and modelling software tool that enables the estimation of probable losses from hazards to inform a comprehensive risk management process ("RiskScape"). The Licensors offer the use of the current version of RiskScape to the Licensee on the terms and conditions set out in this EULA.
  
- B. The Licensee wishes to obtain a licence to use RiskScape in accordance with the terms and conditions of this EULA.

### **IT IS AGREED:**

#### **1. INTERPRETATION**

**1.1 Definitions:** In this EULA:

**Data** includes databases and data files such as hazard data and asset data;

**Models** include algorithms such as fragility and vulnerability functions;

**Intellectual Property** means all statutory and other proprietary rights in respect of data, know-how, circuit layouts, confidential information, copyright, designs, patents, trade marks and all other rights as defined by Article 2 of the Convention of July 1967 establishing the World Intellectual Property Organisation as amended (including applications for such rights) as may exist anywhere in the world.

**Licensed Data and Models** means the Data and Models owned by the Licensors which includes any modifications, developments or updates of such Data or Models owned by the Licensors.

**RiskScape** has the meaning given to that term in paragraph A of the Background section.

#### **2. LICENCE**

**2.1 Intellectual Property in RiskScape:** The Licensors retain joint ownership of all Intellectual Property in RiskScape and any modifications, developments or updates made by the Licensors or the Licensee (or any employee, contractor or agent of the Licensee or Licensors) to RiskScape (“Improvements”). The Licensee will provide all Improvements to the Licensors and do all things necessary (including signing all documents) to ensure each Licensor can exercise its rights under this clause 2.1.

**2.2 Intellectual Property in Data and Models:** Any Intellectual Property in any Data or Models and any modifications, developments or updates of the Data or Models shall be owned by the party or parties (subject to the terms of any other agreement between any of the parties) that created that Intellectual Property. Each party will do all things necessary (including signing all documents) to ensure each other party can each exercise its rights under this clause 2.2.

**2.3 Grant by Licensors:** The Licensors grant to the Licensee a royalty-free, non-exclusive, non-transferable and non-sublicensable licence to use the most recent version of RiskScape together with the Licensed Data and Models in accordance with the terms and conditions of this EULA from the date the Licensee accepts the terms and conditions of this EULA until this EULA is terminated under clause 5. This licence does not include any support services in relation to RiskScape.

**2.4 Use by Licensee:** The Licensee will ensure it uses the most recent versions of RiskScape and Licensed Data and Models made available by the Licensors. The Licensee may only use the Licensed Data and Models within RiskScape.

**2.5 Grant by Licensee:** To the extent the Licensee creates or contributes Data or Models (or any modifications, adaptations or developments to such Data or Models (“Improvements”)) for use in RiskScape, the Licensee will provide such Data and Models and any Improvements to the Licensors and grants to the Licensors a worldwide, perpetual, royalty-free, non-exclusive, transferable and sub-licensable licence for the Licensors and any third party user of RiskScape to use such Data and Models and Improvements for the purposes of RiskScape modelling.

### 3. CONFIDENTIALITY

**3.1 RiskScape:** The Licensee acknowledges that RiskScape and the Licensed Data and Models constitute commercially sensitive information of the Licensors. The Licensee will not reverse engineer, modify, duplicate, merge or make any other copies

of RiskScape or the Licensed Data and Models or make them available to any other person except as agreed by the Licensors in writing and provided such third parties have first agreed in writing:

- a. to only use RiskScape or the Licensed Data and Models on the terms set out in clause 2.3 and 2.4;
- b. not to divulge RiskScape or the Licensed Data and Models to any person;
- c. to uninstall RiskScape and delete any copies of the Licensed Data and Models upon the Licensors' request;
- d. to otherwise be bound by the terms set out in this EULA.

**3.2 Use:** Subject to clause 3.1, the Licensee may prepare reports, results, information and interpretations based on the Licensee's use of RiskScape. All such reports, results, information and interpretations must contain full acknowledgement of both NIWA and GNS and the existence of this licence together with a disclaimer protecting the Licensors against liability to third parties as follows:

*Certain information in this Report, Result, Information was created pursuant to the terms of an End-User Licence Agreement available on the RiskScape website (<https://riskscape.org.nz/>) using the RiskScape tool owned jointly by National Institute of Water and Atmospheric Research Limited (NIWA) and Institute of Geological and Nuclear Sciences Limited (GNS). While all reasonable effort has been made to ensure that this Report, Result, Information is as accurate as practicable, neither **[insert name of Licensee]**, NIWA nor GNS nor the other data source organisations can be held responsible for any data, interpretations, conclusions and recommendations contained within the Report, Result, Information or for any actions taken based on the Report, Result, Information. **[insert name of Licensee]**, NIWA and GNS and the other data source organisations therefore, to the full extent permitted by law, exclude liability, including for negligence, for any loss or damage, direct or indirect and howsoever caused resulting from any person's or organisation's use or reliance on this Report, Result, Information.*

#### **4. LIABILITY**

**4.1 Indemnity:** The Licensee will indemnify GNS and NIWA (and their affiliates, officers, directors and agents) against any cost, loss, claim, damage and expense incurred or suffered by either GNS or NIWA (as the case may be) as a result of:

- a. a breach of this EULA by the Licensee or any negligent, wilful or fraudulent act of the Licensee; or
- b. the Licensee making available RiskScape and the Licensed Data and Models to any person under clause 3.1 or providing reports, results, information or interpretations to any third party based upon, or derived from, RiskScape and/or the Licensed Data and Models.

**4.2 Liability:** Neither GNS nor NIWA will have any obligation or liability of any kind to the Licensee or any third party for any loss of damage of any kind incurred by the Licensee or any third party in relation to RiskScape or the Licensed Data and Models. Neither GNS nor NIWA warrant or represent RiskScape or the Licensed Data and Models is accurate or complete, nor that it is fit for any purpose nor that use of RiskScape or the Licensed Data and Models will not infringe any patent, copyright, or registered design, or any other third party rights. The parties acknowledge that RiskScape and the Licensed Data and Models are being licensed to the Licensee for business purposes and that the Consumer Guarantees Act 1993 does not apply.

## 5. TERMINATION

**5.1 Termination on release of new version:** This EULA relates to the version of RiskScape the Licensee installed only. Upon release by the Licensors of a later version of RiskScape, the version of RiskScape the Licensee installed will no longer be supported and this EULA will terminate and the Licensee will be required to install the later version of RiskScape and consent to be bound by the terms and conditions of use relating to that later version.

**5.2 Termination on notice:** The Licensors may terminate this EULA on 30 days written notice to the Licensee for any reason.

**5.3 Immediate termination:** The Licensors may terminate this EULA immediately on written notice to the Licensee, if:

- a. the Licensee fails to remedy a breach of this EULA within 10 days of receipt of written notice from either GNS or NIWA requiring that breach to be remedied; or
  
- b. the Licensee ceases to be solvent; or
  
- c. there has been a change in ownership or control of the Licensee without the Licensors' prior consent.

**5.4 Return of RiskScape:** Upon termination of this EULA, the Licensee will promptly uninstall RiskScape and delete any copies of the Licensed Data and Models.

**5.5 Survival:** Clauses 2.1, 2.2, 2.5, 3 and 4 survive termination of this EULA.

## 6. GENERAL

**6.1 Notices:** Any notice to be given under this EULA will be in writing.

**6.2 Severability:** If any provision of this EULA is invalid or unenforceable, the remaining provisions of this EULA will remain in full force and effect.

**6.3 Waiver:** The waiver by either party of any default or breach of this EULA will not constitute a waiver of any other or subsequent default or breach.

**6.4 Entire agreement:** This EULA represents the entire agreement between the Licensors and Licensee. No amendment will be effective unless it is in writing and is by authorised representatives of each party.

**6.5 Counterparts:** This EULA may be may be executed in any number of counterparts (including pdf copies). The counterparts together will constitute a binding and enforceable agreement between the parties.

**6.6 Disputes:** Any dispute concerning the EULA shall be settled by full and frank discussions between the parties. In the absence of any agreement within 30 days of notification of any dispute the matter, at the request of either party, may be referred to a single mediator to be agreed upon between the parties. Failing agreement upon a mediator within 14 days, either party may request the Arbitrators' and Mediators' Institute of New Zealand to appoint a suitable mediator. The parties will agree upon a suitable and mutually acceptable framework and process to advance mediation to a successful resolution. In the absence of agreement as to a suitable framework / process the mediator will determine a suitable procedure. The parties will attend and advance the mediation in good faith and attempt to reach a just and equitable solution satisfactory to both parties. A dispute that is not resolved by mediation, within 30 days of the appointment of a suitable mediator, may be referred to the Courts by either party. Nothing in this Agreement will stop a party from commencing Court proceedings in relation to any dispute in connection with this EULA at any time where that party seeks urgent injunctive or interim relief.

**6.7 Assignment:** The Licensee must not assign, license, transfer or otherwise deal with the benefit or the burden of this EULA without the prior written consent of the Licensors, whose consent may be withheld in their absolute discretion.

**6.8 Variations:** The Licensors may from time to time need to amend this EULA by changing or removing existing terms or adding new ones. The Licensee can view the most current EULA on the RiskScape website (<https://riskscape.org.nz/>). The Licensors will make every effort to communicate any significant changes to the EULA to the Licensee via the RiskScape website. The Licensee's continued use of RiskScape will be deemed acceptance of the most current EULA.

**6.9 Governing law:** This Agreement is governed by New Zealand law.