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# **Kakadu Software License**

## Terms and Conditions

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## Part A Introduction

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### Parties

- 1 **Kakadu Software Pty Limited** ABN 28 622 830 335 of PO Box 1004, Glebe, NSW, 2037, Australia (**Kakadu Company**)
- 2 The licensee of the Software, as specified in the Order Form (**you, your**)

**The parties agree**

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## 1 This Agreement

- (a) This Agreement consists of:
    - (i) the Order Form;
    - (ii) Part A (Introduction) of this document, setting out the structure and operation of this Agreement;
    - (iii) Part B (Specific Terms of License Types) of this document, setting out the specific provisions that apply to each License Type; and
    - (iv) Part C (General Terms of All License Types) of this document, setting out the general provisions that apply to all License Types.
  - (b) If there is an inconsistency between the parts of this Agreement, the document or part of the document listed earlier in clause 1(a) will prevail to the extent of the inconsistency.
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## 2 License Types

- (a) The Software may be licensed to you on any of the following license types as further described in this Agreement (each, a **License Type**):
  - (i) Evaluation License;
  - (ii) Commercial License;
  - (iii) Cultural License;
  - (iv) Kakadu HT License;
  - (v) Kakadu HT Cultural License;
  - (vi) Speedpack License;
  - (vii) Speedpack Evaluation License; and
  - (viii) Single Named User License.
- (b) Your Order Form will specify the License Type applicable to you.

## Part B Specific Terms of License Types

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### 3 Evaluation License

#### 3.1 Applicability

- (a) The Evaluation License is the new name for the following previously named licenses:
  - (i) “SDK Evaluation License”; and
  - (ii) “HT Evaluation License” (previously named “HTJ2K Evaluation License”).
- (b) The Evaluation License is intended for an individual or organisation wishing to evaluate the Software with a view of procuring a longer term License Type.

#### 3.2 Grant of License

- (a) Kakadu Company grants you during the License Term a non-exclusive, non-transferable, worldwide and revocable license to install and use the Software and to use the Software to develop Applications, for evaluation purposes only, provided that:
  - (i) any use of the Software is confined to your internal use and non-commercial purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications);
  - (ii) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only;
  - (iii) any Applications developed by you or otherwise enabled by your use of the Software may not be used to conduct business or distributed to any third party. Any such distribution may require the purchase of an alternative license as separately agreed between the parties; and
  - (iv) you comply with any special conditions as specified in the Order Form.
- (b) Unless the parties agree otherwise, you will not be entitled to any updates or upgrades to the Software.

#### 3.3 License Term

The License Term will commence on the Commencement Date, and the Evaluation License will terminate on the earlier of:

- (a) 6 months from the Commencement Date; or
- (b) the date this Agreement is terminated under clause 12.

#### 3.4 Consequences of termination or expiry

Unless you have entered into a longer term License Type during the License Term, upon termination or expiry of the Agreement or the License Term, you must cease all use of the Software and Applications for any purpose, destroy any copies and components of the

Software, Applications and derivative works of the Software and provide written certification to Kakadu Company that you have complied with your obligations under this clause 3.4.

### 3.5 Fees

Unless otherwise specified in the Order Form, the License Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.

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## 4 Commercial License

### 4.1 Applicability

- (a) The Commercial License is the new name for the following previously named license: “SDK Commercial License”.
- (b) The Commercial License is intended for commercial organisations, individuals and entities using the Software for commercial purposes.

### 4.2 Grant of License

- (a) Kakadu Company grants you during the License Term a non-exclusive, non-transferable, worldwide and revocable license to install and use the Software, including to develop Applications for your internal business and commercial purposes, provided that:
  - (i) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
  - (ii) you comply with any special conditions as specified in the Order Form.
- (b) Kakadu Company authorises you to sublicense to your subcontractors the rights referred to in clause 4.2(a) solely for your benefit, provided that:
  - (i) the subcontractor’s use of the Software is limited to your direct beneficial purposes only;
  - (ii) you remain responsible for ensuring that any such subcontractor complies with the terms of this Agreement as they relate to the use of the Software (on the same basis as applied to you, subject to the limitations described in this clause 4.2(b));
  - (iii) the subcontractor’s use of the Software does not increase your rights under this Agreement; and
  - (iv) you remain liable for all acts and omissions of your subcontractors.
- (c) During the License Term, Kakadu Company will provide you with updates and upgrades to the Software as they generally become available from time to time.

#### 4.3 License Term

- (a) The License Term will commence on the Commencement Date and will continue for 3 years, unless the license or Agreement is terminated earlier in accordance with this Agreement (the **Initial Term**).
- (b) The Initial Term may be extended for further periods of 12 months each (**Extended Term**) if:
  - (i) you provide Kakadu Company with at least 30 days' written notice before the end of the then current License Term;
  - (ii) you provide Kakadu Company any information in relation to your organisation and your use of the Software, as reasonably requested by Kakadu Company; and
  - (iii) the parties agree to a renewal fee that will apply to the Extended Term, and you pay that renewal fee within 30 days of the end of the then current License Term.
- (c) If any of the events described in clause 4.3(b) do not occur (for example, if the parties fail to agree on a renewal fee) then the Initial Term will not be extended unless otherwise agreed by Kakadu Company and your Commercial License will expire at the end of the Initial Term.

#### 4.4 Consequences of termination or expiry

- (a) Subject to clause 4.4(b), upon termination or expiry of this Agreement or the License Term, you (and any subcontractor of yours) must cease use of the Software and Applications for any purpose, destroy any copies and components of the Software and provide written certification to Kakadu Company that you have complied with your obligations under this clause 4.4(a).
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 4.2 prior to the date the Agreement or License Term is terminated or expires.

#### 4.5 Fees

- (a) Unless otherwise specified in the Order Form, the License Fee for each year of the Initial Term is the single payment as specified in the Order Form, due on or before the Commencement Date and then each year on the anniversary of the Commencement Date.
- (b) Any renewal fee will be agreed between the parties, having regard to the information you provide to Kakadu Company under clause 4.3(b)(ii).

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## 5 Cultural License

### 5.1 Applicability

- (a) The Cultural License is the new name for the following previously named licenses:
  - (i) "SDK Public Service License"; and



- (ii) “SDK Library License”.
- (b) The Cultural License is intended for not for profit organisations and organisations that wish to use the Software for not for profit projects that are solely for the public good, as determined by Kakadu Company in its sole discretion.

## 5.2 Grant of License

- (a) Kakadu Company grants you during the License Term a non-exclusive, non-transferable, worldwide and revocable license to install and use the Software and to use the Software to develop Applications, only for your not for profit activities that are solely for the public good, provided that:
  - (i) any use of the Software is confined to non-commercial purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications);
  - (ii) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
  - (iii) you comply with any special conditions as specified in the Order Form.
- (b) You may only distribute Applications to a third party if:
  - (i) any charges, fees, rental and/or other payment sort by you for the provision of an Application to the third party is done so on a cost-recovery basis only; and
  - (ii) any such distribution does not result in any direct or indirect financial return to you or any other third party.
- (c) Kakadu Company authorises you to sublicense to your subcontractors the rights referred to in clause 5.2(a) solely for your benefit, provided that:
  - (i) the subcontractor’s use of the Software is limited to your direct beneficial purposes only;
  - (ii) you remain responsible for ensuring that any such subcontractor complies with the terms of this Agreement as they relate to the use of the Software (on the same basis as applied to you, subject to the limitations described in this clause 5.2(c));
  - (iii) the subcontractor’s use of the Software does not exceed your rights to use the Software under this Agreement; and
  - (iv) you remain liable for all acts and omissions of your subcontractors.
- (d) During the License Term, Kakadu Company will provide you with updates and upgrades to the Software as they generally become available from time to time.

### 5.3 License Term

- (a) The License Term will commence on the Commencement Date and will continue for 3 years, unless the license or Agreement is terminated earlier in accordance with this Agreement (the **Initial Term**).
- (b) The Initial Term may be extended for further periods of 12 months each (**Extended Term**) if:
  - (i) you provide Kakadu Company with at least 30 days written notice before the end of the then current License Term;
  - (ii) you provide Kakadu Company any information in relation to your organisation and your use of the Software, as reasonably requested by Kakadu Company; and
  - (iii) the parties agree a renewal fee payable for the Extended Term, and you pay that renewal fee within 30 days of the end of the then current License Term.
- (c) If any of the events described in clause 5.3(b) do not occur (for example, if the parties fail to agree on a renewal fee) then the Initial Term will not be extended unless otherwise agreed by Kakadu Company and your Cultural License will expire at the end of the Initial Term.

### 5.4 Consequences of termination or expiry

- (a) Subject to clause 5.4(b), upon termination or expiry of this Agreement or the License Term, you (and any subcontractor of yours) must cease use of the Software and Applications for any purpose, destroy any copies of the Software and provide written certification to Kakadu Company that you have complied with your obligations under this clause 5.4(a).
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 5.2 prior to the date the Agreement or License Term is terminated or expires.

### 5.5 Fees

- (a) Unless otherwise specified in the Order Form, the License Fee for each year of the Initial Term is the single payment as specified in the Order Form, due on or before the Commencement Date and then each year on the anniversary of the Commencement Date.
- (b) Any renewal fee will be agreed between the parties having regard to the information you provide to Kakadu Company under clause 5.3(b)(ii).

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## 6 Kakadu HT License

### 6.1 Applicability

- (a) The Kakadu HT License is only available to you for so long as you hold a current Commercial License. If your Commercial License ends, then your Kakadu HT License will also automatically end at the same time.

- (b) The Kakadu HT License is only intended for commercial organisations, individuals and entities using the Software for commercial purposes.

## 6.2 Grant of License

- (a) Kakadu Company grants you during the License Term a non-exclusive, non-transferable, worldwide and revocable license to install and use the Software and to use the Software to develop Applications for your internal business and commercial purposes, provided that:
  - (i) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
  - (ii) you comply with any special conditions as specified in the Order Form.
- (b) Kakadu Company authorises you to sublicense to your subcontractors the rights referred to in clause 6.2(a) solely for your benefit, provided that:
  - (i) the subcontractor's use of the Software is limited to your direct beneficial purposes only;
  - (ii) you remain responsible for ensuring that any such subcontractor complies with the terms of this Agreement as they relate to the use of the Software (on the same basis as applied to you, subject to the limitations described in this clause 6.2(b));
  - (iii) the subcontractor's use of the Software does not exceed your rights to use the Software under this Agreement; and
  - (iv) you remain liable for all acts and omissions of your subcontractors.
- (c) During the License Term, Kakadu Company will provide you with updates and upgrades to the Software as they generally become available from time to time.

## 6.3 License Term

- (a) The License Term will commence on the Commencement Date and will continue for three years, unless the license or Agreement is terminated earlier in accordance with this Agreement (the **Initial Term**).
- (b) The Initial Term may be extended for further periods of 12 months each (**Extended Term**) if:
  - (i) you provide Kakadu Company with at least 30 days' written notice before the end of the then current License Term;
  - (ii) you provide Kakadu Company any information in relation to your organisation and your use of the Software, as reasonably requested by Kakadu Company; and
  - (iii) the parties agree to a renewal fee that will apply to the Extended Term, and you pay that renewal fee within 30 days of the end of the then current License Term.

- (c) If any of the events described in clause 6.3(b) do not occur (for example, if the parties fail to agree on a renewal fee) then the Initial Term will not be extended, unless otherwise agreed by Kakadu Company, and your Commercial License will expire at the end of the Initial Term.

#### **6.4 Consequences of termination or expiry**

- (a) Subject to clause 6.4(b), upon termination or expiry of this Agreement or the License Term, you (and any subcontractor of yours) must cease use of the Software and Applications for any purpose, destroy any copies and components of the Software and provide written certification to Kakadu Company that you have complied with your obligations under this clause 6.4(a).
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 6.2 prior to the date the Agreement or License Term is terminated or expires.

#### **6.5 Fees**

- (a) Unless otherwise specified in the Order Form, the License Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.
- (b) Any renewal fee will be agreed between the parties, having regard to the information you provide to Kakadu Company under clause 6.3(b)(ii).

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## **7 Kakadu HT Cultural License**

### **7.1 Applicability**

- (a) The Kakadu HT Cultural License is only available to you for so long as you hold a current Cultural License. If your Cultural License ends, then your Kakadu HT Cultural License will also automatically end at the same time.
- (b) The Kakadu HT Cultural License is intended for not for profit organisations and organisations that wish to use the Software for not for profit projects that are solely for the public good, as determined by Kakadu Company in its sole discretion.

### **7.2 Grant of License**

- (a) Subject to clause 7.1(a), Kakadu Company grants you during the License Term a non-exclusive, non-transferable, worldwide and revocable license to install and use the Software and to use the Software to develop Applications, only for your not for profit activities that are solely for the public good, provided that:
  - (i) any use of the Software is confined to non-commercial purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications);
  - (ii) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
  - (iii) you comply with any special conditions as specified in the Order Form.

- (b) you may only distribute Applications to a third party if:
  - (i) any charges, fees, rental and/or other payment sort by you for the provision of an Application to the third party is done so on a cost-recovery basis only; and
  - (ii) any such distribution does not result in any direct or indirect financial return to you or any other third party.
- (c) Kakadu Company authorises you to sublicense to your subcontractors the rights referred to in clause 7.2(a) solely for your benefit, provided that:
  - (i) the subcontractor's use of the Software is limited to your direct beneficial purposes only;
  - (ii) you remain responsible for ensuring that any such subcontractor complies with the terms of this Agreement as they relate to the use of the Software (on the same basis as applied to you, subject to the limitations described in this clause 7.2(c));
  - (iii) the subcontractor's use of the Software does not exceed your rights to use the Software under this Agreement; and
  - (iv) you remain liable for all acts and omissions of your subcontractors.
- (d) During the License Term, Kakadu Company will provide you with updates and upgrades to the Software as they generally become available from time to time.

### 7.3 License Term

- (a) The License Term will commence on the Commencement Date and will continue for 3 years, unless the license or Agreement is terminated earlier in accordance with this Agreement (the **Initial Term**).
- (b) The Initial Term may be extended for further periods of 12 months each (**Extended Term**) if:
  - (i) you provide Kakadu Company with at least 30 days' written notice before the end of the then current License Term;
  - (ii) you provide Kakadu Company any information in relation to your organisation and your use of the Software, as reasonably requested by Kakadu Company; and
  - (iii) the parties agree a renewal fee payable for the Extended Term, and you pay that renewal fee within 30 days of the end of the then current License Term.
- (c) If any of the events described in clause 7.3(b) do not occur (for example, if the parties fail to agree on a renewal fee) then the Initial Term will not be extended unless otherwise agreed by Kakadu Company and your Kakadu HT Cultural License will expire at the end of the Initial Term.

#### **7.4 Consequences of termination or expiry**

- (a) Subject to clause 7.4(b), upon termination or expiry of this Agreement or the License Term, you (and any subcontractor of yours) must cease use of the Software and Applications for any purpose, destroy any copies of the Software and provide written certification to Kakadu Company that you have complied with your obligations under this clause 7.4(a).
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 7.2 prior to the date the Agreement or License Term is terminated or expires.

#### **7.5 Fees**

- (a) Unless otherwise specified in the Order Form, the License Fee for each year of the Initial Term is the single payment as specified in the Order Form, due on or before the Commencement Date and then each year on the anniversary of the Commencement Date.
- (b) Any renewal fee will be agreed between the parties having regard to the information you provide to Kakadu Company under clause 7.3(b)(ii).

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## **8 Speedpack License**

### **8.1 Applicability**

- (a) The Speedpack License is only available to you for so long as you hold a current Commercial License or Cultural License. If your Commercial License or Cultural License ends, then your Speedpack License will also automatically end at the same time.

### **8.2 Grant of License**

- (a) Subject to clause 8.1(a), Kakadu Company grants you during the License Term a non-exclusive, non-transferable, worldwide and revocable license to install and use the Software and to use the Software to develop Applications for your internal business and commercial purposes, provided that:
  - (i) you currently hold either a Cultural License or a Commercial License with Kakadu Company;
  - (ii) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only; and
  - (iii) you comply with any special conditions as specified in the Order Form.
- (b) Kakadu Company authorises you to sublicense to your subcontractors the rights referred to in clause 8.2(a) solely for your benefit, provided that:
  - (i) the subcontractor's use of the Software is limited to your direct beneficial purposes only;

- (ii) you remain responsible for ensuring that any such subcontractor complies with the terms of this Agreement as they relate to the use of the Software (on the same basis as applied to you, subject to the limitations described in this clause 8.2(b);
  - (iii) the subcontractor's use of the Software does not increase your rights under this Agreement; and
  - (iv) you remain liable for all acts and omissions of your subcontractors.
- (c) During the License Term, Kakadu Company will provide you with updates and upgrades to the Software as they generally become available from time to time.

### 8.3 License Term

- (a) The License Term will commence on the Commencement Date and will continue for three years, unless the license or Agreement is terminated earlier in accordance with this Agreement (the **Initial Term**).
- (b) The Initial Term may be extended for further periods of 12 months each (**Extended Term**) if:
  - (i) you provide Kakadu Company with at least 30 days' written notice before the end of the then current License Term;
  - (ii) you provide Kakadu Company any information in relation to your organisation and your use of the Software, as reasonably requested by Kakadu Company; and
  - (iii) the parties agree to a renewal fee that will apply to the Extended Term, and you pay that renewal fee within 30 days of the end of the then current License Term.
- (c) If any of the events described in clause 8.3(b) do not occur (for example, if the parties fail to agree on a renewal fee) then the Initial Term will not be extended unless otherwise agreed by Kakadu Company and your Commercial License will expire at the end of the Initial Term.

### 8.4 Consequences of termination or expiry

- (a) Subject to clause 8.4(b), upon termination or expiry of this Agreement or the License Term, you (and any subcontractor of yours) must cease use of the Software and Applications for any purpose, destroy any copies and components of the Software and provide written certification to Kakadu Company that you have complied with your obligations under this clause 8.4(a).
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 8.2 prior to the date the Agreement or License Term is terminated or expires.

### 8.5 Fees

- (a) Unless otherwise specified in the Order Form, the License Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.

- (b) Any renewal fee will be agreed between the parties, having regard to the information you provide to Kakadu Company under clause 8.3(b)(ii).

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## 9 Speedpack Evaluation License

### 9.1 Applicability

- (a) The Speedpack Evaluation License is only intended for an individual or organisation who currently holds either a Cultural License or a Commercial License with Kakadu Company. If your Cultural License or Commercial License, then your Speedpack Evaluation License will also automatically end at the same time.
- (b) The Speedpack Evaluation License is intended for an individual or organisation wishing to evaluate the Software with a view of procuring a Speedpack License.

### 9.2 Grant of License

- (a) Kakadu Company grants you during the License Term a non-exclusive, non-transferable, worldwide and revocable license to install and use the Software and to use the Software to develop Applications, for evaluation purposes only, provided that:
  - (i) you currently hold either a Cultural License or a Commercial License with Kakadu Company;
  - (ii) any use of the Software is confined to your internal use and non-commercial purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications);
  - (iii) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only;
  - (iv) any Applications developed by you or otherwise enabled by your use of the Software may not be used to conduct business or distributed to any third party. Any such distribution may require the purchase of an alternative license as separately agreed between the parties; and
  - (v) you comply with any special conditions as specified in the Order Form.
- (b) Unless the parties agree otherwise, you will not be entitled to any updates or upgrades to the Software.

### 9.3 License Term

The License Term will commence on the Commencement Date, and the Speedpack Evaluation License will terminate on the earlier of:

- (a) 6 months from the Commencement Date; and
- (b) the date this Agreement is terminated under clause 12.



#### 9.4 Consequences of termination or expiry

Unless you have entered into Speedpack License during the License Term, upon termination or expiry of the Agreement or the License Term, you must cease all use of the Software and Applications for any purpose, destroy any copies and components of the Software, Applications and derivative works of the Software and provide written certification to Kakadu Company that you have complied with your obligations under this clause 9.4.

#### 9.5 Fees

Unless otherwise specified in the Order Form, the License Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.

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## 10 Single Named User License

### 10.1 Applicability

- (a) The Single Named User License includes the Kakadu HT License.
- (b) The Single Named User License is intended for use by an individual in his or her personal capacity, for the sole purpose of the named individual's own academic or research purposes.

### 10.2 Grant of License

- (a) Kakadu Company grants you during the License Term a non-exclusive, non-transferable, worldwide, perpetual and revocable license to install and use the Software and to use the Software to develop Applications provided that:
  - (i) any perpetual license does not limit Kakadu Company's termination rights under clause 12(b);
  - (ii) only the named individual specified in the Order Form is entitled to use the Software;
  - (iii) any use of the Software is confined to your own personal, academic or research purposes (which, without limitation, must not include the commercial exploitation of the Software or any Applications);
  - (iv) any copying, altering, modifying, adapting, translating and creating of derivative works of the Software must be limited to the purpose of creating Applications only;
  - (v) any Applications developed by you or otherwise enabled by your use of the Software may only be distributed to a third party if required for your own academic or research purposes and provided any such distribution does not result in any direct or indirect financial return to you or any third party; and
  - (vi) you comply with any special conditions as specified in the Order Form.
- (b) From time to time during the License Term, Kakadu Company may, in its sole discretion, provide any updates or upgrades to the Software to you at no additional

charge. Any additional terms (such as price) that will apply to the updates or upgrades will be separately agreed between the parties.

### **10.3 License Term**

The License Term will commence on the Commencement Date and, subject to clause 10.2(a)(i) and any termination provisions in this Agreement, the term of the Single Named User License is perpetual.

### **10.4 Consequences of termination**

- (a) Subject to clause 10.4(b), upon termination of this Agreement or the License Term, you must cease all use of the Software and Applications for any purpose, destroy any copies and components of the Software, Applications and derivative works of the Software and provide written certification to Kakadu Company that you have complied with your obligations under this clause 10.4(a).
- (b) You are not required to destroy any Applications distributed by you pursuant to clause 10.2(a)(v) prior to the date the Agreement or License Term is terminated.

### **10.5 Fees**

Unless otherwise specified in the Order Form, the License Fee is the single payment as specified in the Order Form, due on or before the Commencement Date.

## Part C General Terms of All License Types

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### 11 Acknowledgement

- (a) By installing or using the Software, you will be deemed to have:
    - (i) read and fully understood the terms of this Agreement;
    - (ii) agreed to be bound by the terms of this Agreement; and
    - (iii) understood that this Agreement is a legal agreement between you and Kakadu Company and can be enforced accordingly.
  - (b) You acknowledge that, notwithstanding Kakadu Company providing you any updates or upgrades to the Software pursuant to clauses 4.2(c), 5.2(d), 6.2(c), 7.2(d), 8.2(c) or 10.2(b), Kakadu Company is under no obligation to provide you with any support or maintenance services, advice or training in relation to the Software under this Agreement.
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### 12 Term and termination

- (a) This Agreement will continue until the end of the applicable License Term or the date this Agreement is terminated in accordance with the terms of this Agreement (whichever occurs first).
  - (b) Without limiting any other termination right set out in this Agreement (including under Part B), Kakadu Company may terminate this Agreement effective immediately by giving written notice to you, if:
    - (i) you breach a material provision of this Agreement and such breach is not remedied within 30 days from when you receive a notice of such breach;
    - (ii) you breach a provision of this Agreement where that breach is not capable of remedy (at Kakadu Company's sole discretion); or
    - (iii) you fail to pay any amount due under this Agreement within 30 days of receiving notice from Kakadu Company that such payment has not been paid.
  - (c) For clarity, a breach of a material provision of this Agreement includes (without limitation) a breach of any clause under Part A, clause 13 or clause 14.
  - (d) For the avoidance of doubt, any license granted under this Agreement, including a perpetual license, will not survive termination of this Agreement.
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### 13 Use of the Software

#### 13.1 Restrictions

Except to the extent expressly permitted under Part A of this Agreement (as Part A applies to you) or in your Order Form:

- (a) you must not reverse engineer, decompile or disassemble the Software or any part of the Software, other than as expressly permitted under this Agreement;

- (b) you must not sub-license, transfer or assign any License Types or rights granted to you under this Agreement to any other person or entity;
- (c) you must not permit a third party to use the Software or disclose or provide the Software to a third party directly or indirectly;
- (d) you must not copy, modify, enhance or adapt the Software;
- (e) not use particular Software, if you are not licensed to use that Software, even if Kakadu Company has provided you with a copy of that Software; and
- (f) you must not use or permit the use of the Software to provide any form of bureau service or similar activities.

### 13.2 Protecting the Software

You must:

- (a) protect the Software from misuse, damage, destruction or any unauthorised use;
- (b) supervise and control the use of the Software in accordance with the terms of this Agreement;
- (c) hold the Software in strict confidence at all times;
- (d) ensure that all Applications and Software retain all copyright and propriety notices from the Software; and
- (e) if requested by Kakadu Company, issue a notice in a form approved by Kakadu Company to all authorised users of the Software advising them of your obligations under this Agreement and requiring those authorised users to take any steps necessary to enable you to comply with those obligations.

### 13.3 Export Control

Notwithstanding any grant of a worldwide license to you under this Agreement, you must:

- (a) comply with any applicable laws (including export control laws) that are in force from time to time, and any local export control laws in the jurisdiction in which your Software is used (including in any Applications);
- (b) ensure that the Software is not used in a way that directly or indirectly results in you or Kakadu Company being in breach of any laws (including export control laws) that are in force from time to time; and
- (c) not be, nor be associated with:
  - (i) an OFAC (Office of Foreign Assets Control) sanctioned country as specified by the US Department of the Treasury; or
  - (ii) a sanctioned country as specified by the United Nations Security Council sanctions regimes.

### 13.4 Third Party Licensees

You may distribute a copy of the Software to a third party that:

- (a) already holds a license for an equivalent or lower version of the Software licensed under this Agreement; and
  - (b) provides you with documentary evidence of clause 13.4(a).
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## 14 Request for information

- (a) From time to time during the License Term at Kakadu Company's reasonable request, you must provide to Kakadu Company information relating to your use of the Software and your organisation (if applicable). Such information may include (if applicable):
    - (i) information relating to your organisation (such as the number of employees, turnover, changes in nature of organisation's activities etc);
    - (ii) information regarding your intended and existing use of the Software, including as to Applications developed or otherwise derived from the Software (including number of users of the Software and Applications); and
    - (iii) information to verify that the Software is being used in accordance with this Agreement and the License Type granted to you is appropriate.
  - (b) You must ensure that the information provided to Kakadu Company as contemplated by clause 14(a) above, is at the time it is provided to Kakadu Company, accurate and not misleading.
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## 15 Payment terms

### 15.1 Fees

- (a) Subject to clause 15.1(c), you must pay to Kakadu Company the License Fee.
- (b) A payment which is required to be made under this Agreement must be in cash or by bank cheque or in other immediately available funds and in United States Dollars, unless otherwise specified in the Order Form.
- (c) Kakadu Company may not provide any invoices to you for the amounts you pay under this Agreement unless you specifically request Kakadu Company to do so.
- (d) The License Fee and method and timing of payment of such fees will be specified in the Order Form.

### 15.2 Taxes

- (a) Subject to clauses 15.2(b) and 15.2(c), you must pay all Taxes in connection with the grant of license under this Agreement.
- (b) Where GST is imposed on a taxable supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.
- (c) If one party is required to indemnify or reimburse another party (**Payee**) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the Payee for GST

purposes) is entitled to an input tax credit, but will be increased in accordance with clause 15.2(b) if the amount payable is consideration for a taxable supply.

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## 16 Warranties

### 16.1 No warranty

To the extent permitted by law, Kakadu Company does not warrant (and excludes any warranty or other term) that:

- (a) the Software is free from defects or errors or that all Software defects will be corrected;
- (b) performance of the Software will be uninterrupted;
- (c) the Software will meet your requirements or be fit for any particular purpose;
- (d) the functions contained in the Software will operate in combinations you select; or
- (e) the results obtained from the Software will be in accordance your expectations.

### 16.2 Mutual representations and warranties

Each party warrants and represents to the other that as at the Commencement Date:

- (a) it has full power and capacity to enter into and perform its obligations under this Agreement;
- (b) all necessary action has been taken to authorise its execution, delivery and performance of this Agreement in accordance with its terms;
- (c) this Agreement constitutes its legal, valid and binding obligations and this Agreement is enforceable in accordance with its terms; and
- (d) the execution, delivery and performance of this Agreement by the party does not and will not violate, breach, or result in the contravention of:
  - (i) any law, resolution or authorisation; or
  - (ii) if applicable, its constitution.

### 16.3 No reliance

You warrant that you have not relied on any representation made by Kakadu Company, its employees, agents or contractors which is not expressly stated in this Agreement.

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## 17 Limitation of liability

- (a) All express or implied guarantees, warranties, representations, or other terms and conditions relating to this Agreement or its subject matter, not contained in this Agreement, are excluded from this Agreement to the maximum extent permitted by law.
- (b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any

legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.

- (c) If any guarantee, warranty, term or condition is implied or imposed in relation to this Agreement under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a **Non-Excludable Provision**), and Kakadu Company is able to limit your remedy for a breach of the Non-Excludable Provision, then the liability of Kakadu Company for breach of the Non-Excludable Provision is limited to one or more of the following at Kakadu Company's option in the case of the Software:
  - (i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - (ii) in the case of services, the resupply of services, or the payment of the cost of having the services resupplied.
- (d) Subject to Kakadu Company's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, the maximum aggregate liability of Kakadu Company for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the License Fees paid by you in the 12 months immediately preceding the cause of action giving rise to the claim under this Agreement. In calculating Kakadu Company's aggregate liability under this clause 17(d), the parties must include any amounts paid or the value of the Software replaced, repaired or supplied by Kakadu Company for a breach of any Non-Excludable Provision, and must deduct any amounts paid in respect of any claims occurring in that 12-month period.
- (e) Subject to Kakadu Company's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Kakadu Company is not liable for, and no measure of damages will, under any circumstances, include:
  - (i) special, indirect, consequential, incidental or punitive damages; or
  - (ii) damages for loss of profits, revenue, goodwill, anticipated savings or loss or corruption of data,

whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

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## 18 Miscellaneous Terms

### 18.1 Ownership of Intellectual Property Rights

Kakadu Company retains ownership of all Intellectual Property Rights in the Software, and no rights are granted to you in the Software other than as set out in this Agreement.

## 18.2 Publicity

You must not use the name, trade names or trademarks of Kakadu Company, Kakadu, or any affiliates of Kakadu Company in any advertising, promotional literature or any other material, whether in written, electronic, or other form, distributed to any third party, except in the format prescribed and approved by Kakadu Company, and then solely for purposes of identifying the Software.

## 18.3 Entire Agreement

- (a) This Agreement comprises the entire agreement between the parties in relation to its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- (b) No variation of this Agreement is effective unless made in writing and signed by each party.

## 18.4 Assignment, novation and other dealings

You may not assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of Kakadu Company.

## 18.5 Governing law

This Agreement is governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.

## 18.6 Third party rights

Each party who executes this Agreement does so solely in its own legal capacity and not as agent or trustee for or a partner of any other person, and only those persons who execute this Agreement have a right or benefit under it.

## 18.7 Relationship of the parties

Except as expressly provided in this Agreement, nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust, and neither party has authority to bind the other party.

## 18.8 Waiver

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

## 18.9 Interpretation and Dictionary

In this Agreement, unless otherwise stated:

**Agreement** means the provisions and documents as set out in clause 1.



**Application** means compiled code generated using the Software or part thereof.

**Commencement Date** means the date the Software has been Delivered to you.

**Compiled Code** means any complied code distributed by Kakadu Company with the Software.

**Deliver** means to make available the Software to you by electronic means (such as via download, electronic mail or otherwise over the internet) or by way of a tangible media version (such as a CD or DVD) (at our discretion).

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth of Australia).

**Intellectual Property Rights** means all industrial and intellectual property rights of whatever nature anywhere in the world conferred under statute, common law or equity and includes rights in respect of or in connection with copyright, inventions (including patents), trade marks, service marks, business names, trade names, domain names, design rights, confidential information, trade secrets and know-how and similar industrial, commercial and intellectual property rights, whether or not registered or registrable, and includes the right to apply for or renew the registration of such rights.

**License Fee** means:

- (a) for the Evaluation License, the license fee described in clause 3.5, in your Order Form and as otherwise agreed by the parties in writing;
- (b) for the Commercial License, the license fee and any renewal fee described in clause 4.5, your Order Form and as otherwise agreed by the parties in writing;
- (c) for the Cultural License, the license fee and any renewal fee described in clause 5.5, your Order Form and as otherwise agreed by the parties in writing;
- (d) for the Kakadu HT License, the license fee and any renewal fee described in clause 6.5, your Order Form and as otherwise agreed by the parties in writing;
- (e) for the Kakadu HT Cultural License, the license fee and any renewal fee described in clause 7.5, your Order Form and as otherwise agreed by the parties in writing;
- (f) for the Speedpack License, the license fee and any renewal fee described in clause 8.5, your Order Form and as otherwise agreed by the parties in writing;
- (g) for the Speedpack Evaluation License, the license fee described in clause 9.5, in your Order Form and as otherwise agreed by the parties in writing; or
- (h) for the Single Named User License, the license fee described in clause 10.5, in your Order Form and as otherwise agreed by the parties in writing.

**License Term** means:

- (a) for the Evaluation License, the license term specified in clause 3.3;
- (b) for the Commercial License, the Initial Term and any Extended Term(s) specified in clause 4.3;

- (c) for the Cultural License, the Initial Term and any Extended Term(s) specified in clause 5.3;
- (d) for the Kakadu HT License, the Initial Term and any Extended Term(s) specified in clause 6.3.
- (e) for the Kakadu HT Cultural License, the Initial Term and any Extended Term(s) specified in clause 7.3;
- (f) for the Speedpack License, the Initial Term and any Extended Term(s) specified in clause 8.3;
- (g) for the Speedpack Evaluation License, the license term specified in clause 9.3; or
- (h) for the Single Named User License, the license term specified in clause 10.3.

**License Type** has the meaning given to it in clause 2.

**Order Form** means the (electronic or hard copy) Kakadu Company order form issued to you and used to order the Software. The Order Form will set out, amongst other things, the License Type and License Fee applicable to you.

**Software** means the Kakadu software source code as specified in the Order Form (including any intermediate compiled form of the source code, such as dynamically or statically linked libraries, which allow the functionality of the source code to be reproduced in Applications). If Kakadu Company provides you with any updates or upgrades to the Kakadu source code under clauses 4.2(c), 5.2(d), 6.2(c), 7.2(d), 8.2(c) or 10.2(b), then 'Software' includes such updates and upgrades (unless otherwise agreed between the parties in respect of clause 10.2(b)).

**Taxes** means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.

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## Appendix A      Changes since 1 September 2019

This is a high level summary of the major changes to these terms since 1 September 2019. **This summary is for information purposes only and is not intended to override the terms of this Agreement.**

- (a) Kakadu HTJ2K has been renamed as “Kakadu HT” in order to distinguish between the software licence and the underlying HTJ2K standard.
- (b) The SDK Evaluation licence is renamed as the “Evaluation License”, and includes the Kakadu HT Evaluation License.
- (c) The SDK Public Service License is renamed as the “Cultural License”.
- (d) The addition of the Kakadu HT Cultural License.
- (e) The SDK Commercial License is renamed as the “Commercial License”.
- (f) The HTJ2K Commercial license is renamed as the “Kakadu HT License”, which now requires you to also hold a Commercial License contemporaneously.
- (g) The Speedpack Commercial License is renamed as the “Speedpack License”, which now requires you to hold a Commercial or Cultural License contemporaneously.
- (h) The SDK Single Named User Licence is renamed to be the “Single Named User Licence”.
- (i) Clarification that the Single Name User License includes Kakadu HT.