

# **SPOT DATA RECEPTION AND DISTRIBUTION AGREEMENT**

## **BETWEEN :**

**Spot Image S.A.**, a Company with a share capital of 6.623.757 Euros, incorporated and organized under the laws of France, with its registered offices at 5 rue des Satellites, F-31400 TOULOUSE, FRANCE,

duly represented by Mr. Hervé BUCHWALTER, as President and Chief Executive Officer,

hereinafter referred to as “**Spot Image**”,

*on the one hand,*

## **AND :**

**THE CSIR**, a statutory body, incorporated and existing under the laws of South Africa, through its Satellite Applications Centre (SAC) established under the Scientific Research Council Act of 1988, with its registered office at PO Box 395, Pretoria, 0001, South Africa,

duly represented by Mr. Phil HENDRICKS, as .....

hereinafter referred to as the “**PARTNER**”

*on the other hand,*

(Spot Image and PARTNER being collectively referred to as “the Parties” and individually as “the Party”).

## **PREAMBLE**

Whereas the “Centre National d’Etudes Spatiales” (hereinafter referred to as “CNES”), the French Space Agency, has received the assignment of developing and operating a series of satellites for remote sensing of the Earth, known by the name of SPOT, which assignment notably includes the control of the satellites and the transmission of the data to direct receiving stations ; and

Whereas Spot Image has been granted by CNES a worldwide license for the promotion, reproduction and sale of the data received from the SPOT Satellites and is authorized under the said license to license in turn ; and

Whereas Spot Image has undertaken in the said license agreement to comply with the Resolution 41/65 adopted by the United Nations' General Assembly on December 3, 1986, and to hold SPOT Data available on a non-discriminatory basis ; and

Whereas Spot Image has received the mandate from CNES to enter into agreements to the ends of supplying the direct receiving ground stations with the said SPOT Data ; and

Whereas Spot Image has therefore undertaken to develop the use of the said data on a civil and commercial basis and, in particular, in entering into agreements to the ends of authorizing ground stations to receive the same, and in granting them sub-licenses for the reproduction and distribution of the SPOT data ; and

Whereas Spot Image desires to grant, and PARTNER desires to obtain a sub-license for the reception and extraction of SPOT Data received at the direct receiving station of PARTNER ; and

Whereas Spot Image desires to grant, and PARTNER desires to obtain a sub-license for the promotion, exhibition, reproduction and sale of SPOT Data received at the Direct Receiving Station of PARTNER (“DRS Products”), in a specific territory ; and

Whereas Spot Image desires to grant, and PARTNER desires to obtain a sub-license for the modification of such data so as to produce “DRS Derivative Works” and “DRS Value Added Products” and for the promotion, exhibition reproduction and sale of the said in a specific territory ; and

Whereas PARTNER and Spot Image entered into a “SPOT 5 Terminal Supply Contract” on May 15, 2006 whereby PARTNER is to procure from Spot Image a SPOT 5 Terminal to receive, extract, archive and process the SPOT data.

Whereas, in addition, Spot Image desires to grant, and PARTNER desires to obtain a sub-license for the distribution of SPOT Data received at the Toulouse receiving facility in France or at the Kiruna receiving facility in Sweden and produced by Spot Image (“NON-DRS Products”), in a specific territory ; and

Whereas Spot Image desires to grant, and PARTNER desires to obtain a sub-license for the modification of such data so as to produce “NON-DRS Derivative Works” and “NON-DRS Value Added Products” and for the promotion, exhibition reproduction and sale of the said in a specific territory.

Now, therefore, the Parties agree as follows :

## **ARTICLE 1 - DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the meanings set forth below :

- 1.1 Agreement** : means the present “Spot Data Reception and Distribution Agreement” including its eight (8) Appendices.
- 1.2 Archive** : means the digital DRS Data resulting from inventory of the Image Telemetry recorded on an appropriate medium and archived at the DRS, before any processing affecting such DRS Data. The Archive consists in raw image Segment files in GERALD format as a result of the Inventory function of the SPOT 5 Terminal, as defined in Appendix B.
- 1.3 Authorized Users** : means any end user located and having a billing address either in Territory A or in Territory B.
- 1.4 Catalogue** : means the system containing the complete set of all references of Scenes or image Segments received by the Toulouse receiving facility in France or the Kiruna receiving facility in Sweden, along with those communicated to Spot Image by other Spot direct receiving stations located around the world.
- 1.5 CPR** : the center of Programming system located at Spot Image, Toulouse, which computes the daily Programming of the Satellite payload.
- 1.6 Coverage Range** : means the coverage range defined in Appendix A, i.e. the parts of orbits during which the antenna of the DRS is able to receive the X band transmissions of the Satellite directly, without any relay or intermediary.
- 1.7 Derivative Works (DW)**: means either DRS DW or NON-DRS DW.
- 1.8 DRS or Direct Receiving Station** : means PARTNER’s receiving facility located at Hartebeesthoek, South Africa, where the SPOT 5 Terminal is to be installed. In case the antenna and the processing center are not located at the same place, the DRS means both antenna (dish + demodulation + archiving systems) and processing center (dedicated to image processing from the Archive).
- 1.9 DRS Data** : means SPOT Data deriving from Image Telemetry.
- 1.10 DRS Product** : means any level 0, 1A, 1B or 2 A SPOT product (as defined in the Appendix B), with either Scene or Segment size, derived from the Archive and produced by PARTNER in the DRS. When using the SPOT 5 Terminal, the DRS Products are the outputs of the production system of the SPOT 5 Terminal.
- 1.11 DRS Derivative Works (DRS DW)** : means any derivative product or information developed by PARTNER from a DRS Product, which does not contain any imagery data from the DRS Product and is irreversible and uncoupled from the source imagery data of the DRS 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 DRS Product shall never be considered as DRS DW.

- 1.12 DRS Value Added Product (DRS VAP):** means any product developed by PARTNER, which contains DRS Data, and resulting in a significant modification of the DRS Product, through technical manipulation and / or addition of other data. Notwithstanding the foregoing, by express exception, any Digital Elevation Model or Digital Terrain Model derived from a DRS Product shall always be considered as a DRS VAP.
- 1.13 Image Telemetry :** means the SPOT Data, covering any part of the Coverage Range, acquired by the Satellite following the Programming of the Satellite further to a request placed by PARTNER to Spot Image in compliance with the provisions of Article 7, and the immediate transmission of same by the Satellite as a continuous flow simultaneously on the two X-Band channels, including the auxiliary data for SPOT 4 and SPOT 5 Satellites, all as detailed in Appendix B.
- 1.14 NON-DRS Data:** means SPOT Data deriving from Satellite image telemetry other than the Image Telemetry.
- 1.15 NON-DRS Derivative Works (NON-DRS DW):** means any derivative product or information developed by PARTNER from a NON-DRS Product, which does not contain any imagery data from the NON-DRS Product and is irreversible and uncoupled from the source imagery data of the NON-DRS 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 NON-DRS Product shall never be considered as NON-DRS DW.
- 1.16 NON-DRS Product :** means any SPOT 2 (HVR), SPOT 4 (HRVIR instrument) or SPOT 5 (HRG instrument) satellite image product or service produced by Spot Image as listed in "Spot Image Price List" as per any current version provided on Spot Image web site at the following address: [www.spotimage.com/prices.htm](http://www.spotimage.com/prices.htm). Notwithstanding the foregoing, it is expressly agreed that a NON-DRS shall only be derived from SPOT Data received by the Toulouse receiving facility in France or the Kiruna receiving facility in Sweden and shall never be derived from SPOT Data received by other SPOT direct receiving stations located around the world.
- 1.17 NON-DRS Value Added Product (NON-DRS VAP):** means any product developed by PARTNER, which contains NON-DRS Data, and resulting in a significant modification of the NON-DRS Product, through technical manipulation and / or addition of other data. Notwithstanding the foregoing, by express exception, any Digital Elevation Model or Digital Terrain Model derived from a NON-DRS Product shall always be considered as a NON-DRS VAP.
- 1.18 Operational Year:** means a period of twelve (12) months beginning on April 1 of each year from the entry into effect of the Agreement, and any following subsequent twelve (12) month periods until expiration or termination of the Agreement; Operational Quarter and Operational Semester shall be construed accordingly. However, it is expressly agreed that Operational Year 1 shall be deemed to start on the date of signature of the SPOT 5 On Site Acceptance Certificate, as defined in the SPOT 5 Terminal Supply Agreement, and shall run until March 31, 2007.

- 1.19 Open Access** : means the possibility for PARTNER to ask Programming requests to Spot Image without limitations, but with no priority criteria. Spot Image will use commercially reasonable efforts to fulfill requests, subject to the Satellite's image acquisition plan, acquisition capacities and other Programming requests. With respect to possible conflict situations with other SPOT direct receiving stations, Spot Image will handle PARTNER's Programming requests on an equal footing basis. If Programming requests can not be fulfilled, Spot Image will provide such information in due time and propose alternative Programming solutions when possible.
- 1.20 Programming** : means the programming of the Satellite for the purpose of transmitting Image Telemetry to the DRS according to the image acquisition plan.
- 1.21 Quick-look** : means all or part of a sub-sampled Scene produced for the purpose of image evaluation and system performance monitoring.
- 1.22 Satellite** : means either SPOT 4 (HRVIR instrument) or SPOT 5 (HRG instrument). In addition, unless specifically mentioned otherwise, "Satellite" shall also include SPOT 2 (HVR) for its life time, which may be different from the Agreement duration, as stated in Article 3.2.
- 1.23 Scene** : means a set of DRS Data which is part of an image swath covering from 60 x 60 km to 80 x 60 km on the surface of the Earth, depending on the viewing angle.
- 1.24 Scene Attempt**: means the allocation of the Satellite resources for the purposes of acquiring DRS Data over the minimum programmable unit.
- 1.25 Segment** : means continuous DRS Data strip imaged by one instrument of the Satellite. A Segment is broken down in a collection of contiguous Scenes after inventory.
- 1.26 SIP** : the System Integrated Programming mode defined in Appendix F.
- 1.27 South African Public Entity** : any South African public entity among the South African Government Departments or South African Public Research and Academic Institutions listed in Appendix G.
- 1.28 South African Private Entity** : any Authorized User located in Territory A that is not a South African Public Entity.
- 1.29 SPOT 5 Terminal Supply Contract** : means the contract for the supply of the SPOT 5 Terminal, as signed on May 15, 2006 between PARTNER and Spot Image.
- 1.30 SPOT 5 Terminal** : means the terminal to be supplied by Spot Image to PARTNER under the SPOT 5 Terminal Supply Contract, necessary to receive, extract, archive and process the DRS Data and produce the DRS Products. The SPOT 5 Terminal shall be installed by Spot Image and operated in the DRS by PARTNER.
- 1.31 SPOT Data** : means
- (a) any signal sent by a SPOT satellite and recorded on an appropriate, reproducible medium ; or

- (b) the same when processed by any method other than a method introducing significant modification in the form of the same by the use of parameters or coefficients part of the SPOT system.

**1.32 SPOT Product** : means either a DRS Product or a NON-DRS Product.

**1.33 SPOT System** : means the three main components: the Satellites, the Spot Image's ground segment and the CNES's Control Center.

**1.34 Territory**: means both Territory A and Territory B.

**1.35 Territory A**: means the national territory of the Republic of South Africa and territories enclosed (such as Bophuthatswanan, Ciskei and Transkei), except Lesotho and Swaziland .

**1.36 Territory B**: means the national territory of the following countries: Angola, Botswana, Burundi, Comoros, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia, Zimbabwe.

**1.37 Value Added Product (VAP)** : means either a DRS VAP or a NON-DRS VAP.

## **ARTICLE 2 – PURPOSE OF THE AGREEMENT**

The purpose of the Agreement is to define the conditions under which Spot Image :

- a) will authorize PARTNER to receive Image Telemetry and use the Archive, to produce, through the SPOT 5 Terminal located at the DRS, DRS Products, DRS DW and DRS VAP and distribute the same in the Territory; and
- b) will authorize PARTNER to distribute NON-DRS Products in the Territory; and
- c) will authorize PARTNER to develop NON-DRS Derivative Works and NON-DRS VAP and distribute the said in the Territory,

in strict accordance with the provisions of Article 3.

## **ARTICLE 3 - SUB-LICENSE GRANTED BY SPOT IMAGE TO PARTNER**

### **3.1. General**

#### **3.1.1 DRS Products**

Subject to the terms and conditions of this Agreement, Spot Image hereby grants PARTNER, which accepts, a sub-license for the duration of this Agreement, for :

- a) the right for the reception of Image Telemetry by PARTNER at the DRS ; and
- b) the right to archive Image Telemetry and SPOT Data, to extract Archive and to produce DRS Products from the Archive at the DRS ; and
- c) the non-exclusive right for the promotion, exhibition, reproduction and sale of the DRS Data and DRS Products to any Authorized User; and
- d) the non-exclusive right for the modification of the DRS Data and DRS Products so as to produce DRS DW and DRS VAP and for the promotion, exhibition, reproduction and sale of the said to any Authorized User; and
- e) the right to supply Scenes or Segments to Spot Image upon the latter's request, according to the provisions of Articles 11.1.1 and 11.1.2.

### **3.1.2 NON-DRS Products**

Subject to the terms and conditions of this Agreement, Spot Image hereby grants PARTNER, which accepts, a sub-license for the duration of this Agreement, for :

- a) the right to use the NON-DRS Data and / or the NON-DRS Products internally in accordance with the Standard End User License Agreement available on Spot Image web site at the following address: [www.spotimage.com/licensing.htm](http://www.spotimage.com/licensing.htm); and
- b) the non-exclusive right to use the NON-DRS Data and / or the NON-DRS Products in order to develop and produce NON-DRS DW and NON-DRS VAP; and
- c) the non-exclusive right to sell the NON-DRS Products, NON-DRS DW and NON-DRS VAP to any Authorized User.

### **3.2 SPOT 2 Satellite status**

Spot Image states and PARTNER expressly acknowledges that SPOT 2 Satellite is already, at the time of the Agreement signature, beyond its nominal lifetime and that CNES may decide to terminate SPOT 2 Satellite technical operation at any time, within the framework of its policy for clean space, being said that such decision is totally beyond Spot Image's control.

Therefore: :

- according to SPOT 2 Satellite, any reception rights granted to PARTNER under this Agreement as listed in Article 3.1.1, shall be granted only for the time SPOT 2 Satellite keeps being operational; and
- at the time CNES makes the decision to have SPOT 2 Satellite de-orbited, SPOT 2 Satellite shall immediately become outside the scope of the Agreement according to any impacted rights among those provided in Article 3.1.(i.e. reception and distribution rights for programmed SPOT 2 Products), with no right to compensation and/or indemnity whatsoever to PARTNER.

Should this case arise, Spot Image undertakes to give all information to PARTNER in due time as soon as it receives it from CNES.

## **ARTICLE 4 - PURCHASE OF NON-DRS PRODUCTS BY PARTNER**

- 4.1** PARTNER shall request NON-DRS Products by ordering them to Spot Image through the Ordering Form available at the following address: [www.spotimage.com/ordering.htm](http://www.spotimage.com/ordering.htm). Spot Image's General Supply Conditions, as per any version actually in force during the Agreement period of validity (see current version at: [www.spotimage.com/GSC.htm](http://www.spotimage.com/GSC.htm)) shall apply to PARTNER orders in complement to the provisions of the Agreement, notwithstanding any terms and conditions to the contrary.
- 4.2** All sales of NON-DRS Products to Partner shall be Ex-Works (Incoterms I.C.C., 2000) at the prices indicated in Article 12.5, being expressly agreed that all NON- DRS Products shall be made available to PARTNER in level 0 format.
- 4.3** NON-DRS Products prices are exclusive of value-added tax (VAT), in Euros.

- 4.4 Spot Image reserves the right to discontinue or modify NON-DRS Products, and to replace them at any time to suit its production requirements or sales strategy, provided it gives PARTNER ninety (90) days' written notice of its intent to do so.
- 4.5 Spot Image reserves the right to modify NON-DRS Products prices at any time. It shall give PARTNER at least one (1) month's notice of its intent before new prices become effective.

## **ARTICLE 5 – NON-DRS PRODUCT DELIVERY**

- 5.1 Spot Image shall use commercially reasonable efforts to deliver all NON-DRS Products ordered by PARTNER by the delivery date specified on order confirmations.
- 5.2 Ordered NON-DRS Products shall be delivered to:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- 5.3 However, Spot Image will be entitled to refuse orders and suspend deliveries should PARTNER breach any provision of the Agreement.

## **ARTICLE 6 – PRODUCTION OF NON-DRS DW AND NON-DRS VAP**

- 6.1 The PARTNER may develop NON-DRS DW and NON-DRS VAP to meet the needs of the Territory market. PARTNER shall use best efforts to produce NON-DRS DW and NON-DRS VAP on best quality and in accordance with the latest state of the art.
- 6.2 The PARTNER will use best efforts to produce NON-DRS VAP in compliance with the specifications published by Spot Image from time to time.
- 6.3 To develop and produce NON-DRS VAP, the PARTNER may specifically reformat the NON-DRS Product into format or media different from those in which it is delivered to the PARTNER.

## **ARTICLE 7 – PROGRAMMING OF DRS PRODUCTS - IMAGE TELEMETRY TRANSMISSION**

- 7.1 The Programming and the transmissions of Image Telemetry will be performed through the SIP mode.

Programming is used to satisfy any specific Programming Requests corresponding to PARTNER's user request or sales, for areas within the Coverage Range, subject to the Programming rights defined in Article 8.2.

Programming Requests are managed by the SIP mode and are expressed with several parameters such as the area of interest, application requirements, Programming period. Spot Image will provide a feasibility study for each Programming Request. Spot Image reserves



the right to accept or reject a Programming Request based on the feasibility study. When accepted by Spot Image and proposed to PARTNER, PARTNER will need to confirm or reject the Programming proposal based on the feasibility study.

Unless not reasonably possible, Spot Image will use commercially reasonable efforts to provide the DRS with every programmed Image Telemetry intended to be in direct transmission over the Coverage Range according to the provisions of Article 8.2.

- 7.2** PARTNER shall have no obligation to order a minimum quantity of Image Telemetry transmission time per Operational Year, and Spot Image shall have no obligation to satisfy any Image Telemetry transmission request placed by PARTNER, but undertakes to use commercially reasonable efforts to accept said requests.  
The minimum Image Telemetry transmission time shall be fifty (50) consecutive seconds.
- 7.3** Spot Image reserves the right to cease to transmit Image Telemetry to the DRS in case of any default in payment by PARTNER or in case of Force Majeure event.

## **ARTICLE 8 – RIGHTS AND OBLIGATIONS OF PARTNER ACCORDING TO RECEPTION**

### **8.1 Direct Receiving Station**

- 8.1.1** PARTNER undertakes to operate, at its expense, the DRS located at Hartebeesthoek, South Africa, for the reception of Image Telemetry, in the Coverage Range.
- 8.1.2** PARTNER may move the DRS antenna of a maximum of one hundred (100) kilometers from its initial location, within the Territory, without Spot Image's prior consent, provided that it gives Spot Image a thirty (30) day prior written notice.
- 8.1.3** In other cases, PARTNER shall not move the said DRS without Spot Image's prior written consent.

### **8.2 Image Telemetry transmission and Programming rights**

PARTNER will be granted the following Programming rights through the System Integrated Programming (SIP):

- Open Access according to SPOT 2 Image Telemetry within the Coverage Range, subject to provisions of Article 3.2;
- Open Access according to SPOT 4 Image Telemetry within the Coverage Range; and
- Open Access according to SPOT 5 Image Telemetry within the Territory A plus Lesotho and Swaziland; and
- a quota of one hundred (100) Scene Attempts for Operational Year 1 and a quota of two hundred (200) Scene Attempts for Operational Year 2 and Operational Year 3, according to SPOT 5 Image Telemetry, within the Territory B, except Lesotho and Swaziland.

For the purposes of using the quota of the Scene Attempts granted per Operational Year defined here above, the following counting system has been agreed:

- the acquisition of a SPOT 5 Scene 5m B&W or 10m color shall be counted as 1 Scene Attempt;

- the acquisition of a SPOT 5 Scene 2,5m B&W or 5m color shall be counted as 2 Scene Attempts;
- the acquisition of a SPOT 5 Scene 2,5m color shall be counted as 3 Scene Attempts.

### **8.3 Archiving of the Image Telemetry - Catalogue updates - Archive and DRS Products storage**

**8.3.1** PARTNER undertakes to operate the SPOT 5 Terminal so as to archive all the Image Telemetry transmitted to its DRS by the Satellite, in conformity with the terms set out in Appendix B.

**8.3.2** PARTNER shall operate the SPOT 5 Terminal so as to create an inventory of all Scenes and Segments archived, in order to update the Terminal local catalogue and send Catalogue updates and Quick-Look to Spot Image in conformity with the terms set in Appendix B.

**8.3.3** PARTNER shall maintain a compatibility between the storage devices and media used for DRS Data and DRS Products in the DRS and those of Spot Image so as to ensure the exchange of any kind of DRS Data files between DRS and Spot Image.

## **ARTICLE 9 – PRODUCTION OF DRS PRODUCTS, DRS DW AND DRS VAP**

- 9.1** PARTNER shall use best efforts to produce DRS Products, DRS DW and DRS VAP on best quality and in accordance with the latest state of the art, and in any case in compliance with the Specification document in Appendix B when applicable.
- 9.2** The scope of this Agreement excludes any license for reproduction of DRS Product and DRS VAP by means of any bulk printing process, and in particular offset, with the exception of photography, except for promotional use. Such rights shall be negotiated on a case-by-case basis between the Parties.
- 9.3** PARTNER undertakes to provide Spot Image, for information purposes only, with one (1) sample of each type of DRS VAP and a description of each format it will use for products to be distributed. Spot Image agrees not to use such DRS VAP for any purpose, other than internal uses, without PARTNER's prior written consent.
- 9.4** No DRS Product and no DRS VAP shall be produced by PARTNER for its exclusive use nor for the exclusive use of any of the Authorized Users.

## **ARTICLE 10 – SALE OF PRODUCTS, DERIVATIVE WORKS and VAP**

### **10.1 Promotion and distribution of SPOT Products, DW AND VAP**

**10.1.1** PARTNER undertakes to use best efforts to promote and sell the SPOT Products, DW and VAP to the Authorized Users on an open and non-discriminatory basis and under the terms and conditions of this Agreement.

Authorized Users shall be allowed to use the SPOT Products, DW and VAP for their own internal purposes, in the Territory.

- 10.1.2** PARTNER shall, through its personnel or jointly agreed sub-distributors, in particular and at its own expenses, according to the terms of the Agreement :
- maintain regular contact with existing and potential Authorized Users; and
  - use and apply suitable sales and marketing techniques to promote and sell SPOT Products, DW and VAP, including mailing ; and
  - advertise SPOT Products, DW and VAP adequately and properly; and
  - take part in trade events, shows and exhibitions in the Territory.

Moreover, as soon as possible after this Agreement is signed, PARTNER shall use best efforts to establish the requisite organization and implement the necessary technical and human resources to ensure effective distribution of SPOT Products and to develop and manufacture VAP in the Territory. In particular, it shall provide the best possible customer support, advice, technical assistance, promotional materials, and so on.

- 10.1.3** Spot Image undertakes to provide PARTNER with some commercial assistance as the need arises, under terms and conditions to be agreed between the Parties on a case-by-case basis.

- 10.1.4** The promotion, publicity, advertising and sale of the SPOT Products shall be made under the trademark “Spot Image®” and the corresponding logo reproduced in Appendix D, or, at Spot Image's option, under any other trademark and logo notified to PARTNER by Spot Image. In this connection, Spot Image grants PARTNER the non-exclusive right, for the purposes of this Agreement, to use, free of charge, such trademark and logo.

- 10.1.5** PARTNER may appoint sub-distributors with the prior written consent of Spot Image, which consent shall not be unreasonably withheld, and under terms and conditions to be agreed on a case-by-case basis with Spot Image. Spot Image agrees to provide PARTNER with a list of potential sub-distributors, upon request from PARTNER.

- 10.2** In the event that, during a period of at least thirty (30) days, PARTNER is unable to meet the requests of the Authorized Users located in the Territory, or to comply with the Specifications of Appendix B, then the Parties shall consult to determine remedial actions to be implemented by PARTNER.

- 10.3** Whenever Spot Image receives a request from a customer for SPOT Product within the Coverage Range, Spot Image will try to satisfy said request with SPOT Data received at the DRS, based on the catalogue information supplied by PARTNER as per Article 8.3 and any other information available by consultation with PARTNER. The corresponding DRS Product shall be ordered from PARTNER as per Articles 11.1.1 and 11.1.2.

## **10.2 License to use SPOT Products and VAP**

- 10.2.1** Authorized Users are not licensed to reproduce SPOT Products.

### **10.2.2 Standard License to use SPOT Products**

Each SPOT Product will come with a Standard End-User License Agreement, as available on Spot Image's web site at the following address: [www.spotimage.com/licensing.htm](http://www.spotimage.com/licensing.htm), which shall be accepted and signed by any Authorized User before the supply of the SPOT Product by PARTNER. Such License defines the rights of use of the SPOT Product by Authorized User. PARTNER hereby agrees to cause the Authorized Users to comply with the provisions of this Standard End User License Agreement.

### **10.2.3 Multi-License to use SPOT Products**

On a case by case basis, and in any event after prior written and specific agreement from Spot Image, may be authorized to propose to an Authorized User to be granted the rights defined in the Multi-License as available on Spot Image's web site at the following address: [www.spotimage.com/licensing.htm](http://www.spotimage.com/licensing.htm). Under such Multi-License, the Authorized User is entitled to share the supplied SPOT Products with partners, subject to the following:

- each partner has its registered offices in the Territory; and
- the SPOT Product is shared between the Authorized User and each partner for the performance of a joint project; and
- PARTNER shall cause any and all partners to comply with the terms of the Multi-License; PARTNER shall be held responsible and liable thereof to Spot Image.

In consideration of the granting of such Multi-License, PARTNER shall pay to Spot Image a royalty as defined in Annex H.

Before any granting of such Multi-License, PARTNER shall request Spot Image's prior written agreement and shall provide Spot Image with the following information:

- complete information on the Authorized User and each partner which would enjoy such multi-license; and
- details on the joint project under which the SPOT Product would be shared between the Authorized User and the its partners.

Then, upon clearance of Spot Image, SAC shall have the Multi-Licence accepted and signed by any Authorized User before the supply of the SPOT Product by PARTNER. PARTNER hereby agrees to cause the Authorized Users to comply with the provisions of this Multi License Agreement.

As a matter of clarification, the Multi-License shall not apply to South African Public Entities which shall benefit from a special "Governmental License" as described in Article 10.2.3.

### **10.2.4 Governmental License for South African Public Entities**

SAC shall have each SPOT Product that is provided, transferred, sold, leased or loaned to any South African Public Entity licensed to the said under the terms and conditions of the Standard End User License Agreement as available on Spot Image's web site at the following address: [www.spotimage.com/licensing.htm](http://www.spotimage.com/licensing.htm). SAC shall have such Standard End-User Licence Agreement accepted and signed by any South African Public Entity before the supply of the SPOT Product by

PARTNER. PARTNER hereby agrees to cause the Authorized Users to comply with the provisions of this Standard End User License Agreement.

“Governmental License for South African Public Entities” means that, by special dispensation, the distribution, sale or transfer of any SPOT Product by PARTNER to several South African Public Entities shall not be subject to payment of additional royalties, except the normal fees and price (defined in Article 12.1 to 12.5) to be paid for the acquisition of DRS Product or NON-DRS Product so distributed or transferred.

#### **10.2.5 License to use VAP**

When distributing any VAP, the PARTNER shall grant the Authorized User a sub-license to use the SPOT Product incorporated in the VAP for internal purposes only. The Authorized User shall not be entitled to resell, distribute, lease or transfer in any other way the VAP.

The terms and conditions of such sub-license granted by the PARTNER to the Authorized User shall not be less protective of Spot Image rights with regards to the SPOT Product incorporated in the VAP, than the provisions and restrictions of the Standard End-User Licence Agreement referred to in Article 10.2.2.

The PARTNER agrees to cause the Authorized Users to comply with the provisions and restrictions provided in the above-mentioned sub-license.

### **10.3 Terms governing SPOT Products and VAP sales**

**10.3.1** PARTNER may not sell SPOT Products and/or VAP on line (over the Internet or over a dedicated link) without prior written consent from Spot Image.

However, PARTNER shall be entitled to promote the SPOT Products and VAP on line (over the Internet or over a dedicated link) in accordance with the following: PARTNER may post an extract, maximum size 1024 x 1024 pixels, of a SPOT Products or a VAP on an internet site, in a JPEG format, with the following credit conspicuously displayed: “includes material © CNES \_\_\_\_ (year of production), Distribution Spot Image S.A., France, all rights reserved” written in full. Such posting shall be used for promotion purposes only, and may in no event allow downloading of the extract posted, nor be used to distribute, sell, assign, dispose of, lease, sublicense or transfer such extract.

Prior to any posting, the PARTNER shall inform Spot Image, specifying the URL address used by PARTNER at: [sales@spotimage.com](mailto:sales@spotimage.com).

**10.3.2** The NON-DRS Products shall be supplied to PARTNER on a non-discriminatory basis; no NON-DRS Product shall be supplied to PARTNER for its exclusive use. PARTNER may not supply SPOT Products and/or VAP for the exclusive use of any of its Authorized Users.

**10.3.3** PARTNER shall not sell SPOT Products and/or VAP, directly or indirectly, outside the Territory.

It also undertakes :

- not to sell to Authorized Users located in the Territory A whose intention it can reasonably suppose is to purchase SPOT Products and/or VAP and then resell them outside the Territory A; and
- not to sell to Authorized Users located in the Territory B whose intention it can reasonably suppose is to purchase SPOT Products and/or VAP and then resell them outside the Territory B.

PARTNER shall not, and shall not permit any Authorized User to, sell any DW to Canada.

#### **10.4 PARTNER's pricing**

PARTNER may use Spot Image Price List to define the prices of the SPOT Products.

However, PARTNER shall remain free to set its own prices for SPOT Products, DW and VAP sold to the Authorized Users. It shall nevertheless price SPOT Products, DW and VAP competitively and provide Spot Image with pricing details.

#### **10.5 Business plan**

Within three (3) months of signing the Agreement, PARTNER shall draw up and submit a business plan to Spot Image detailing its sales projections for SPOT Products, DW and VAP in the Territory.

PARTNER's business plan shall include, in particular, its assessment of growth prospects and competition in its markets, growth prospects for the period, the impact of projected growth on SPOT Products, DW and VAP revenues, and its marketing plan for the Territory.

The business plan shall detail:

- the number of Authorized Users in PARTNER's customer database; and
- a quarterly projection of sales per and per type of SPOT Product, DW and VAP; and
- human resources (customer service and sales) PARTNER will devote to SPOT Products, DW and VAP's sales and marketing; and
- sales and marketing activities, including:
  - services proposed; and
  - identification of Authorized Users' needs in terms of new SPOT Products, DW and VAP;
  - marketing actions in the field, mailings, publications, seminars, and so on.

#### **10.6 Reporting requirements - Information**

##### **10.6.1 Quarterly report**

PARTNER shall keep Spot Image regularly informed of its activity in relation to this Agreement, through a written quarterly report, including in particular:

- the complete list of first extracted Scenes during the last calendar quarter, the type of each such copy, its sale price and extraction fees due to Spot Image;
- the number of additional copies of each DRS Products made during the last calendar quarter, the type of each such copy, and its sale price.
- the number of copies of VAP made during the last quarter and royalties due to Spot Image, including all necessary details.

The first quarterly report of each calendar year will, in addition, include an overall of figures for the past calendar year.

The quarterly report shall also mention the main technical facts and events linked to the use of main functions and procedures of the SPOT 5 Terminal, which occurred over the past quarter.

Each quarterly report shall be received by Spot Image no later than the last day of the first month following the past calendar quarter.

#### **10.6.2 Other information**

In addition, PARTNER will provide Spot Image with the following information, if the case arises:

- information relating to all legal claims from users pertaining to PARTNER's activities in relation to any SPOT Product, DW and VAP, or to this Agreement; and
- information relating to any change in the status, the organization or management of PARTNER's personnel which will have a material effect on this Agreement; and
- any other useful information on PARTNER's activities in relation to this Agreement;

provided that the provision of such information is reasonable and directly relevant to Spot Image.

### **10.7 Annual Meetings**

**10.7.1** PARTNER undertakes to participate to all annual meetings known by the name of "Spot Image DRS meetings", organized by Spot Image for the members of the Spot Image direct receiving ground stations network, in France or in the country of a member station. The average duration of such meeting is four (4) days.

**10.7.2** PARTNER agrees to give, within the context of each Spot Image DRS meeting, a lecture on all its scientific, promotional and operational activities under this Agreement for the past Operational Year, to the representatives of the other member stations.

**10.7.3** All expenses in connection with the setting up of such meetings will be borne by Spot Image while all expenses relating to the participation of PARTNER (travel, wages of PARTNER's representatives, insurance, hotel, accommodation, etc.) will be borne by PARTNER.

**10.7.4** It is agreed that PARTNER accepts sole responsibility for members of its staff traveling to or from, or participating to such meetings. Spot Image shall not, in any circumstance, be held liable for any injury or damages suffered by PARTNER's personnel in the course of such meetings.

## **ARTICLE 11 – RIGHTS AND OBLIGATIONS OF SPOT IMAGE**

## **11.1 Right and obligations of Spot Image according to reception**

### **11.1.1 Reception at the DRS for Spot Image needs**

Spot Image shall have the right to request reception of Image Telemetry at the DRS for Spot Image's needs and PARTNER shall receive and record the same free of charge for Spot Image, unless reasonably impossible.

In return, PARTNER will receive such Image Telemetry free of charge, and will be authorized to use all such Image Telemetry for the purpose of the sub-licenses granted under Article 3.1.

### **11.1.2 Extraction of Archive and Production of DRS Products for Spot Image needs**

PARTNER shall, upon request from Spot Image, deliver to Spot Image (a) Segment in GERALD format extracted from the Archive and formatted with exchange formats agreed and certified by Spot Image, in compliance with Appendix B and /or (b) DRS Product in a Scene size format, within delivery times agreed between the Parties, and payable by Spot Image under prices defined below.

Such prices shall be payable by Spot Image as defined in Appendix C.

#### **11.1.2.1 Segment**

For each Segment in Gerald format extracted from the Archive and delivered to Spot Image, Spot Image will pay to PARTNER an Ex-Works price (ICC Incoterms, 2000) to be agreed upon between the Parties.

#### **11.1.2.2 Level 0 DRS Products**

For each Level 0 DRS Product (Scene size) delivered to Spot Image, Spot Image will pay to PARTNER an Ex-Works price (ICC Incoterms, 2000) of:

- one hundred Euros (100 €) taxes excluded per SPOT 2 or SPOT 4 Scene 10m B&W or 20 m color; and
- two hundred Euros (200 €) taxes excluded per SPOT 5 Scene at 5 m B&W or 10 m color resolution; and
- four hundred Euros (400€) taxes excluded per set of two SPOT 5 Scenes for the processing of SPOT 5 Supermode (2.5 m B&W) Products.

The proposed Ex-Works price can be adapted upon mutual agreement by both Parties if a high growth in demand occurs.

### **11.1.3 Operational and technical assistance**

Spot Image endeavors to provide PARTNER with reasonable operational and technical assistance, and the support of experts if needed, upon the latter's request, under terms and conditions to be agreed between the Parties on a case-by-case basis.

## **11.2 Right and obligations of Spot Image according to distribution**



### **11.2.1 Support from Spot Image**

The Spot Image Sales Manager for the area covering the Territory will actively support the PARTNER's sales and marketing activities.

S/he will be the PARTNER's point of contact and support its activities as so defined in this Agreement.

The Spot Image Sales Manager will meet the PARTNER at least once an Operational Year to review sales of SPOT Products and VAPs to the Authorized Users and, where necessary, to discuss ways to improve SPOT Products and VAP sales.

If the PARTNER so requests, Spot Image shall provide free support limited to supplying information and advice, for example advice on choosing NON-DRS Products, performing Catalogue searches for the PARTNER, advice on using SPOT Products, and so on.

The PARTNER will be listed on Spot Image's website.

The PARTNER shall install on its premises, at its own expense, a system for accessing the Catalogue remotely. Spot Image will allow the PARTNER to access the Catalogue free via this system. The PARTNER will pay its own communication charges.

### **11.2.2 Documentation**

If the PARTNER so requests, Spot Image will supply copies of its brochures and promotional materials free of charge, in English. Spot Image will determine the number of copies it will provide.

Should the PARTNER wish to modify or translate documentation supplied by Spot Image, it shall submit such documents to Spot Image to obtain written consent before printing or using them.

The Parties agree that Spot Image shall remain the owner of documents and promotional materials it supplies, it being understood that the PARTNER is entitled to use them for business purposes under the terms of this Agreement.

### **11.2.3 Training**

The Parties agree that the PARTNER may ask Spot Image to organize training on how to present and use SPOT Products for engineers, technicians and customer services representatives working for the PARTNER. Spot Image will decide when training takes place and how it is organized (price, location, number and duration of sessions, dates, number of trainees, etc.), and will define course content.

The PARTNER will bear all costs incurred by and in connection with training (training sessions, travel, accommodation, insurance, remuneration, etc.).

The PARTNER's personnel must be proficient in the English language and sufficiently qualified to follow the training program.

The Parties agree that the PARTNER bears sole responsibility for its personnel during travel and training. Spot Image shall not in any way be held liable if the PARTNER's personnel is involved in an accident, or suffers an injury or damages during a training program.

## **ARTICLE 12 – PARTNER'S FINANCIAL OBLIGATIONS**

**12.1** In consideration of the right to receive Image Telemetry and of the sub-licenses granted as per Article 3.1, PARTNER agrees to pay Spot Image all the prices, fees and royalties defined in this Article 12, in accordance with the terms of payment set forth in Appendix C.

**12.2** All prices, fees and royalties quoted in this Article 12 are exclusive of taxes, if any, and payable in Euros.

### **12.3 Prices payable for Image Telemetry Transmission rights**

The price, per Operational Year, of the Image Telemetry fee in consideration of the right of access to the SPOT 4 and SPOT 5 Satellites Image Telemetry according to Article 8.2, is one million five hundred thousand Euros (1.500.000 €).

However considering the special duration of Operational Year 1 (see Article 1.18), it is expressly agreed that the price of Image Telemetry fee for Operational Year 1 shall be seven hundred and fifty thousands Euros (750.000 €).

Access to SPOT 2 Satellite Image Telemetry is granted on a free of charge basis, in consideration of provisions of Article 3.2.

### **12.4 Extraction Fees**

**12.4.1** No extraction fees shall be payable by PARTNER to Spot Image for extraction of Scene for own internal research purposes. Nevertheless the Scenes extracted for such purpose shall be also reported in the Quarterly report as defined in Article 10.6.1.

**12.4.2** For the purpose of this sub-Article 12.4, it is agreed that all extractions of Scenes and sale, loan or transfer of copies of DRS Products and / or DRS VAP to Spot Image shall not be taken into account, provided such Scenes and copies are made from DRS Data received by PARTNER at Spot Image's request, in accordance with the above sub-Article 11.1.1.

**12.4.2** No extraction fee shall be payable Spot Image by PARTNER for DRS Products sales to South African Public Entities.

#### **12.4.3 Extraction Fees for sales of DRS Products in the Territory A**

An extraction fee shall be paid to Spot Image by PARTNER on each extraction of a Scene required for a DRS Product sale or transfer, even free of charge, to a South African Private Entity.

This extraction fee shall be as follows:

- one hundred Euros (100 €) exclusive of taxes per SPOT 2 or SPOT 4 Scene 10m B&W or 20m color; and
- two hundred Euros (200 €) exclusive of taxes per SPOT 5 Scene at 5 m B&W or 10 m color resolution; and
- four hundred Euros (400 €) exclusive of taxes per set of two SPOT 5 Scenes for the processing of SPOT 5 Supermode (2.5 m B&W) Products.

When a Segment is extracted, the extraction fee payable shall be calculated pro-rata the number of Scenes included on such Segment.

#### **12.4.4 Extraction Fees for sales of DRS Products in the Territory B**

An extraction fee shall be paid to Spot Image by PARTNER on each extraction of a Scene required for a DRS Product sale or transfer, even free of charge, to an Authorized User located in Territory B. This extraction fee shall be as follows:

- one hundred Euros (100 €) exclusive of taxes per SPOT 2 or SPOT 4 Scene 10m B&W or 20m color; and
- seventy per cent (70 %) of the corresponding price on Spot Image International Price List (as available on Spot Image web site at the following address: [www.spotimage.com/prices.htm](http://www.spotimage.com/prices.htm), exclusive of taxes, per SPOT 5 Scene.

### **12.5 Price of NON-DRS Products**

**12.5.1** The price due to Spot Image for NON-DRS Products to be sold by PARTNER to Authorized Users located in Territory A shall be as follows:

- three hundred Euros (300 €) exclusive of taxes per SPOT 2 or SPOT 4 NON-DRS Product 10m B&W or 20 m color; and
- six hundred Euros (600 €) exclusive of taxes per SPOT 5 NON-DRS Product at 5 m B&W or 10 m color resolution; and
- one thousand and two hundred Euros (1 200 €) exclusive of taxes per set of two SPOT 5 NON-DRS Product for the processing of SPOT 5 Supermode (2.5 m B&W) NON-DRS Products.

**12.5.2** The price due to Spot Image for NON-DRS Products to be sold by PARTNER to Authorized Users located in Territory B shall be as follows:

- three hundred Euros (300.€) exclusive of taxes per SPOT 2 or SPOT 4 NON-DRS Product 10m B&W or 20 m color; and
- seventy per cent (70 %) of the corresponding price on Spot Image International Price List (as available on Spot Image web site at the following address: [www.spotimage.com/prices.htm](http://www.spotimage.com/prices.htm), exclusive of taxes, per SPOT 5 NON-DRS Product.

### **12.6 Royalties**

- 12.6.1** Royalties applicable to Multi-License are provided in Appendix H.1.
- 12.6.2** No Royalties shall be payable by PARTNER according to the “Governmental License for South African Public Entities”, as defined in Article 10.2.3.
- 12.6.3** PARTNER may sell one copy of any VAP derived from a SPOT Product without paying additional royalties.
- 12.6.4** Subject to the provisions of Article 12.6.3, for any SPOT Product used by the PARTNER under the Agreement and (i) incorporated into several VAP or (ii) incorporated into a single VAP, the latter then being copied and resold, the PARTNER shall pay royalties to Spot Image, from the second sale of a VAP, at the rate of:
- thirty percent (30 %), forty percent (40%), or other (as defined in accordance with Appendix H.2), of the purchase price exclusive of VAT of the NON-DRS Product, depending on the number of VAP sold, distributed, leased or transferred in any other way;
  - thirty percent (30 %), forty percent (40%), or other (as defined in accordance with Appendix H.2), of the applicable extraction fees exclusive of VAT of the DRS Product, depending on the number of VAP sold, distributed, leased or transferred in any other way;
- 12.6.5** LICENSEE may sell the DERIVATIVE WORKS derived from SPOT Products to any Authorized Customer, in as many copies as necessary, without paying additional royalties.

## **12.7 Quarterly report and invoicing of extraction fees and royalties**

According to Article 10.6.1, PARTNER shall send Spot Image a written report indicating for the calendar quarter that has expired the amount of extraction fees and royalties due to Spot Image, including all necessary details.

On the basis of this report, Spot Image will send PARTNER an invoice to be settled as provided for in Appendix C.

Should PARTNER not supply the above information, or fail to provide any additional information requested by Spot Image within a reasonable time defined by Spot Image in its request, the PARTNER will be deemed to have failed to fulfill its obligations and shall be subject to the provisions of Article 20.1 above.

## **ARTICLE 13 – AUDIT**

- 13.1** Spot Image will be entitled to audit or have audited at its own cost, once per Operational Year, within working hours of the DRS and with a reasonable prior written notice, the implementation by PARTNER of the provisions of the Agreement. The auditing house, if any, shall be appointed by Spot Image among international houses of recognized standing.
- 13.2** Should checks reveal that PARTNER has not met a payment to Spot Image, the amount shall fall due immediately plus interest accrued since the due date, at the rate of prime rate (“taux de base bancaire”) in force at the date due increased by five (5) points.

**13.3** Spot Image's right to require an audit under the terms of this Article 13 shall remain effective for one (1) year after the Agreement is terminated or expires.

**13.4** The provisions of this Article 13 are without prejudice to the rights bestowed on Spot Image by this Agreement or by law.

#### **ARTICLE 14 – DURATION**

**14.1** This Agreement shall only come into force upon its signature by both Parties.

**14.2** This Agreement shall remain valid from the date of its coming into force, for 3 Operational Years (i.e. until March 31, 2009). This Agreement may then be expressly renewed for successive periods of one (1) year or more upon mutual written agreement by both Parties, formalized before ninety (90) days before expiration of this Agreement. This Agreement may not be implicitly renewed.

**14.3** At the expiration or termination of the Agreement, for whatever reason, PARTNER shall immediately send to Spot Image free of charge, all the SPOT Data received from the coming into force of the Agreement, stored in the Archive in accordance with the provisions of Article 5.3 of the Agreement. Spot Image shall pay to PARTNER the cost of the media used for such purpose and the shipping cost.

**14.4** The provisions of Articles 12, 13, 14, 16, 17, 18, 22 and 23 shall remain valid upon expiration or termination of the Agreement.

#### **ARTICLE 15 - LEGAL STATUS OF PARTNER**

PARTNER will produce and distribute the DRS Products and the PPP in its own name and for its own account ; it is agreed that this Agreement does not constitute PARTNER as the agent or legal representative of Spot Image.

#### **ARTICLE 16 – INTELLECTUAL PROPERTY RIGHTS - COPYRIGHT**

**16.1** PARTNER acknowledges the copyrightable character of the SPOT Data and of any DRS Products under the terms of the Agreement, the law and under any and all relevant international conventions. It also acknowledges, and declares to accept, CNES's exclusive ownership on the copyright and intellectual property rights on the Image Telemetry, the SPOT Data and on the DRS Products.

**16.2** PARTNER undertakes to print, or keep printed, the following copyright notice on all SPOT Products and all VAP, in such a way that CNES's copyright be plain to all :

- for DRS Products:

“ © CNES 200.. (year of reception of the Image Telemetry from the Satellite  
appearing on the copy delivered by Spot Image ),  
reproduced by PARTNER under license from Spot Image”;

- for NON-DRS :

“ © CNES 200.. (year appearing on the NON-DRS Product delivered by Spot Image ), distribution Spot Image”.

PARTNER shall be authorized to add to the above copyright notice the following additional notice on each DRS VAP :

“© PARTNER 200.. (year of production of the added value on the SPOT Data by PARTNER)”.

- 16.3** PARTNER recognizes the exclusive title of Spot Image and CNES to the SPOT Data and to the SPOT Products. It recognizes the right of Spot Image to protection against unauthorized extraction or reuse of the SPOT Data and the SPOT Products, in whole or in part as described in articles L 341-1 to L 343-4 of the French Code of Intellectual Property Law, as amended by the statute of 1 July 1998.
- 16.4** PARTNER acknowledges that it is of a vital importance for Spot Image and its licensor CNES that their intellectual property rights on the SPOT Data and / or the SPOT Products, and the rights granted to PARTNER under the sub-license as defined under Article 3.1, remain protected and are in no event infringed ; should such a case occur, Spot Image would be entitled to claim for damages in order that CNES' and Spot Image's complete loss or damage of whatever nature would be fully indemnified.
- 16.5** PARTNER will promptly notify in writing Spot Image of any copyright infringement or acts of unfair competition relating to SPOT Data or SPOT Products, which becomes known to it during the term of this Agreement.
- 16.6** In case legal proceedings are instituted by Spot Image and/or CNES in this connection, PARTNER undertakes to fully cooperate in the prosecution.

## **ARTICLE 17 - USE OF TRADEMARK, TRADENAME AND LOGO**

- 17.1** PARTNER hereby acknowledges that the trade name and trademark “Spot Image®”, and also the associated logo, are the sole and exclusive property of Spot Image, and that PARTNER shall neither have nor acquire any right to, or interest in the same, other than as expressly stated in here above Article 10.1.4 and 17.2.
- 17.2** The exhibition of mere SPOT Products in colloquia and symposia shall be made under the trademark “Spot Image®” and the corresponding logo reproduced in Appendix D. In this connection, Spot Image grants PARTNER the non exclusive right, for the purposes of exhibition in such colloquia and symposia, to use, free of charge, such trademark and logo.

## **ARTICLE 18 – WARRANTY - LIABILITY**

### **18.1 Warranty**

For a period of three months after delivery, Spot Image warrants to the PARTNER that the NON-DRS PRODUCTS supplied by Spot Image and purchased by the PARTNER are free

from defects of workmanship and material and are of the area ordered. However, Spot Image's responsibility and liability are limited to the replacement of the concerned defective NON-DRS Product, subject to acceptance of such by Spot Image.

Spot Image gives no further warranty and expressly excludes the same whether express, implied, statutory, or otherwise, especially as to quality or fitness of the SPOT Data and/or SPOT Products for any particular purpose.

Spot Image specifically disclaims any warranty and any liability with respect to any DRS Data and / or DRS Products and / or DRS VAP's lack of fitness for any particular purpose, from the use of, or inability to use, any DRS Data and / or DRS Products and / or DRS VAP non conforming to Appendix B.

## **18.2 Liability**

SPOT IMAGE SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL INDIRECT, CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER, TOGETHER WITH ANY DAMAGES TO PROPERTY.

Spot Image shall not be liable to the PARTNER or to any other person for any loss or damage whatsoever and howsoever caused arising directly or indirectly in connection with the performance of the Agreement other than imposed by the law applicable to this Agreement.

Spot Image specifically disclaims any liability for any direct or indirect damages, with respect to property or personal injury damages, and for any consequential and / or incidental damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, cost of substitute goods, facilities or services ; shut-down or slow-down costs, or for any other types of economic loss, and for claims of Authorized Users or any third party for any such damages.

Spot Image's financial liability, and in particular that arising out of this Agreement, shall not exceed fifty percent (50%) of amounts exclusive of VAT paid in settlement of a SPOT Product ordered and delivered for which a claim has been received.

The PARTNER waives all claims against Spot Image to compensate for the pecuniary consequences of damages to third parties arising directly or indirectly out of the execution of the Agreement.

## **ARTICLE 19 - FORCE MAJEURE – FAILURE OF A SATELLITE**

**19.1** Any non-performance, bad performance, or delay in performance, by Spot Image or PARTNER, or both, of any obligation under this Agreement shall be excused, without liability, if and to the extent such non-performance or delay is caused by a Force Majeure event.

A Force Majeure event shall be any event beyond the reasonable control of the concerned Party, such as, but not limited to, French government (including any Public Agency) or

U.N. decision requesting suspension of the transmission of Image Telemetry, war, hostilities, act of the public enemy, civil commotion, sabotage, fire, flood, explosion, epidemics, quarantine restrictions, disturbance in supplies from normally reliable sources (including but not limited to electricity, water, fuel and the like), strike, lockout, and includes a partial or total failure of the SPOT 4 Satellite or SPOT 5 Satellite in operation, and/or a partial or total failure or breakdown of the SPOT System. Partial failure being defined as a failure which does not substantially affect the capacity and performance of the SPOT System.

- 19.2** The period of non-performance or delay due to a Force Majeure event, together with such period as may be necessary for the restoration of any damage caused during the period of the Force Majeure event, shall be added to the time allowed under this Agreement for the performance of such obligation, and for the performance of any obligation or the exercise of any right dependent thereon.
- 19.3** The Party claiming suspension of the obligation which it is prevented to perform, on account of Force Majeure event, shall promptly notify the other Party in writing of the occurrence and details thereof.
- 19.4** During the time of existence of a Force Majeure event the Parties shall use commercially reasonable efforts to solve the problem, and to minimize the consequences of the Force Majeure event. In particular, Spot Image shall use commercially reasonable efforts, taking into consideration, however, its other obligations, to provide PARTNER with access to available resources from the remaining SPOT Satellite then in operation.
- 19.5** In case of a temporary partial or total failure of the SPOT 4 Satellite, Spot Image shall switch the Programming requests placed under the SPOT 4 Satellite to the SPOT 5 Satellite, when technically possible. In case of a permanent total failure of the SPOT 4 Satellite, the further Programming requests from PARTNER shall then only relate to the SPOT 5 Satellite, when technically possible. In no case will the partial or total failure of the SPOT 4 Satellite constitute the basis of a claim for remedy or indemnity of any kind from PARTNER, or of termination of this Agreement.
- 19.6** Without prejudice to the foregoing, in the case of a permanent total failure of the SPOT 5 Satellite, the Parties agree to renegotiate, in good faith, the terms of this Agreement to take account of the effects of the failure of the SPOT 5 Satellite. The Parties agree that such renegotiation may result in the termination of this Agreement.
- 19.7** Should a Force Majeure event last for a period exceeding three (3) months, and prevents the Agreement to be performed, either Party shall be entitled to ask for termination of the Agreement subject to a one (1) month notice in writing, without any right to compensation or indemnity. However, in case of failure of either the SPOT 4 Satellite or the SPOT 5 Satellite, the provisions of Articles 19.5 and 19.6 shall apply and, in such case, no Party shall be entitled to terminate the Agreement, except in case of mutual agreement in writing.

## **ARTICLE 20 - TERMINATION**

- 20.1** This Agreement may be terminated at any time by either Party, upon a ninety (90) day prior written notice sent by registered mail mentioning its intention to terminate the Agreement, in the event of non fulfillment by the other Party of any of its essential obligations under



this Agreement, provided that such non fulfillment is not cured, before the effective date of termination defined in the notice served.

- 20.2** Spot Image shall have the right to terminate this Agreement immediately, giving notice by registered mail of such termination if PARTNER breaches any of its obligations under Articles 12, 16, 17 and 22, without prejudice of any other rights of indemnification it may have.

## **ARTICLE 21 - DUTIES AND TAXES**

- 21.1** PARTNER agrees to pay all taxes, duties and other exceptional taxes which may be applied to PARTNER in respect to its income and payments pertaining to it.

- 21.2** Both Parties hereby agree that PARTNER shall bear the withholding taxes on the fees payable by PARTNER, levied by the South African Authorities in accordance with the Avoidance of the Double Taxation Agreement rulings between the Republic of South Africa and the Republic of France at the time of remittance.  
If such taxes are deducted from the amounts payable to Spot Image for payment to the Government of the Republic of South Africa, PARTNER shall promptly provide Spot Image with the necessary tax certificates (in particular the photostatic copy of the official vouchers of the Government of the Republic of South Africa) to allow Spot Image to recover the same from the French tax Authorities.  
In case the Avoidance of the Double Taxation Agreement between the Republic of South Africa and the Republic of France would terminate or more generally would not apply, PARTNER shall bear the withholding taxes levied by the Authorities of the Republic of South Africa.

## **ARTICLE 22 - CONFIDENTIALITY**

PARTNER agrees to consider all information, including the SPOT Data, it receives under the Agreement, of whatever nature, on whatever medium, as confidential and to prevent the disclosure and/or dissemination in any form or by any means to third parties unless authorized under this Agreement or Spot Image gives its agreement by prior written instrument.

PARTNER undertakes for itself, its personnel and agents, not to disclose neither the content of this Agreement nor technical, commercial and/or financial information concerning Spot Image of which it may have had knowledge during this Agreement.

PARTNER agrees to abide by this obligation of secrecy with respect to its personnel and the eventual subcontractors liable to intervene on its behalf under the Agreement.

PARTNER agrees that it shall not use any information its receives under this Agreement, including the SPOT Data, for any other purpose than that deemed necessary for the performance of the Agreement and agrees to restrict the disclosure of information to its personnel and to the subcontractors directly implicated in the Agreement.

The present Article shall survive the expiry or possible termination of this Agreement, for a period of five (5) years thereafter.

## **ARTICLE 23 - GOVERNING LAW - JURISDICTION**

All disputes arising out of or in connection with this Agreement including any question regarding its existence, validity, or termination shall be settled by an amicable effort by the Parties. An attempt to arrive at a settlement shall be deemed to have failed as soon as a Party so notifies the other Party in writing.

If an attempt at settlement has failed, the dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris, France by three arbitrators appointed in accordance with the said Rules.

The place of the arbitration shall be Paris, France. The procedural law of this place shall apply where the Rules are silent. The language of the arbitration shall be English.

All disputes shall be settled in accordance with the provisions of this Agreement and all other agreements regarding its performance, otherwise in accordance with the substantive law in force in France without reference to other laws. The application of the United Nations Convention on Contract for the International Sale of Goods of April 11, 1980 shall be excluded.

## **ARTICLE 24 - AMENDMENTS AND UPDATINGS**

**24.1** Any amendment or modification of the Agreement becomes definitive only after agreement signed by the duly qualified representatives of each of the two Parties.

**24.2** Notwithstanding the above sub-Article 24.1, Appendix B may be updated by Spot Image in accordance with the procedure set for this purpose in the said Appendix B.

## **ARTICLE 25 - FINAL DISPOSALS**

**25.1** The operation of any Satellite and the transmission of Image Telemetry are subject to the laws and regulations then in force in France and may be subject to the terms of a French Government operating license. Spot Image and PARTNER hereby accept that they shall be required to comply with all of such provisions of such laws and regulations.

**25.2** PARTNER shall, if necessary, take the appropriate steps to make this Agreement to be duly enforceable in the Territory. In particular, it will, if requested, undertake to register at its own expenses the Agreement legalized.

**25.3** This Agreement, including its 8 Appendices and all documents attached by express reference or referred to, shall constitute the complete and exclusive statement of the terms of the Agreement between the Parties. Oral statements and understandings are not valid or binding on the Parties.

**25.4** Any notice provided for herein shall be given by letter sent to the other Party at the address mentioned in Appendix E or at any other address notified by the latter. In case of urgency, facsimile communications shall be permitted and deemed to have been validly served, provided that they are immediately confirmed by letter.

**25.5** Neither this Agreement in whole or in part, nor the rights or obligations hereunder shall be assigned without the prior written consent of Spot Image.

**25.6** This Agreement supersedes and nullifies any former contract or arrangement between the Parties related to the reception of Image Telemetry and / or distribution of SPOT Products, DW and VAP.

In witness thereof, both Parties duly represented have signed the present Agreement, this \_\_\_\_ day of \_\_\_\_\_, 200\_.

Made in two originals, in Toulouse,

**For Spot Image S.A.**

**For PARTNER**

**Hervé BUCHWALTER**  
**President and CEO**

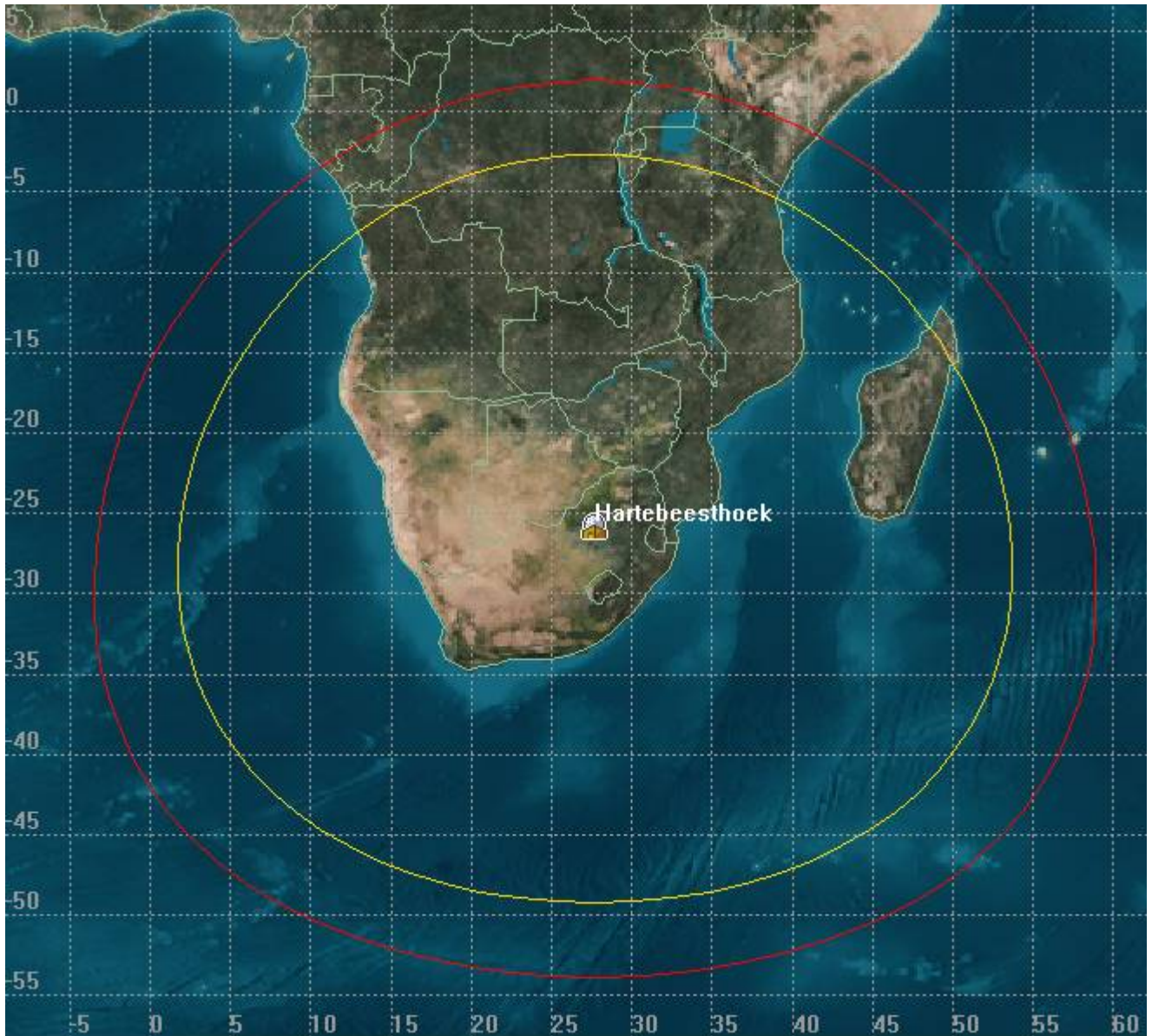
**Phil HENDRICKS**  
**Managing Director**

**Company stamp:**

**Company stamp:**

## APPENDIX A

### COVERAGE RANGE (0° in red et 5° in yellow)



# **APPENDIX B**

## **TECHNICAL APPENDIX**

### **B.1 - DOCUMENTATION TO PROVIDED TO PARTNER**

1. Title: Interface specification between SPOT IMAGE and DRS  
Reference: S5-IF-E/7-10-SI  
Date: 2002/03/15, Edition: 1, Revision: 1
2. Title: Interface Control Document between the SPOT 5 terminal and the internal catalogue  
Reference: S5-CI-E7/CH-10-SI 1.0  
Date: 2002/1/15, Edition: 1, Revision: 0
3. Title: Definition and format specification of basic SPOT 5 products  
Reference : S5-ST-E7-01-SI  
Date: 2002/03/26, Edition: 1, Revision : 0
4. Title: SPOT Archive GERALD format specification  
Reference : CNES C447-ST-73-103-CN  
Date: 2002/03/07, Edition: 2, Revision: 10
5. Title: DIMAP 1.0  
Reference : SPOT IMAGE  
Date: September 2001
6. Title: The spot Scene standard digital product format  
Reference: S-ST-73-01-SI  
Date : 1997/11/17, Edition : 1, Revision : 2

### **B.2 - COMPULSORY REQUIREMENTS**

**B.2.1** All interface procedures between the Spot Image and PARTNER will be as per the specifications in the documents referenced in section B1 above.

### **B.3 - PROCEDURES FOR CHANGES**

**B.3.1** Any and all documents referred to in section B1 above may at all times be amended :

- i) either further to a meeting of the Groupe des Opérateurs de Stations SPOT (GOSS) ;
- ii) or by CNES or Spot Image when requested in order to ensure the necessary service continuity of the SPOT system;

iii) or by evolution or modifications of the documents on the SPOT 5 Terminal by the SPOT 5 Terminal manufacturer or by Spot Image.

**B.3.2** Whenever an applicable document is amended, it will be notified in writing by Spot Image to PARTNER.

# **APPENDIX C**

## **TERMS OF PAYMENT**

### **SECTION I - Terms of payment governing all payments due by PARTNER :**

#### **I.1 - General Points**

**I.1.1** PARTNER agrees that any and all payments due to Spot Image as per this Agreement will be made by swift transfer in EUROS into the following account:

**Bank :** NATEXIS TOULOUSE

**Address :** 48, Allées François Verdier, BP 293, 31005 TOULOUSE Cedex

**Bank code :** 30007      **- Branch office :** 53061

**Account no.** 04653447000      **- RIB no.** 25

**Swift:** .....

**I.1.2** Late payment by PARTNER to Spot Image shall bear interest at the NATEXIS' prime rate ("taux de base bancaire") in force at the date due increased by three (3) points, from the date due until paid.

**I.1.3** PARTNER shall not deduct any amount payable by Spot Image for preprocessed DRS Data ordered by Spot Image, from any amount invoiced to PARTNER in accordance with this Appendix.

#### **I.2 - Image Telemetry fee**

Payments for Image Telemetry transmission shall be made in four quarterly advance installments. The invoices shall be issued forty five(45) days prior to every Operational Quarter and paid on the first day of the Operational Quarter.

#### **I.3 - Extraction Fees and Royalties**

Payments of royalties and extraction fees shall be made on a quarterly basis, within forty five (45) days from date of invoice by Spot Image. Such invoices will be based upon the figures given by PARTNER through the quarterly report defined in Article 10.6.1 of this Agreement.

#### **I.4 - Price payable for NON-DRS Products**

Payments for NON-DRS Products shall be made, after each delivery, within forty five (45) days from date of invoice by Spot Image.

**SECTION II - Terms of payment governing all payments due by Spot Image**

**II.1** Spot Image agrees that any and all payments due to PARTNER as per this Agreement will be made by swift transfer in EURO into the following account :

**Bank:** .....

**Address:**.....

**Bank code:** ..... - **Branch office** .....

**Account no.** ..... - **RIB no.** .....

**Swift:** .....

**II.2** Late payments by Spot Image to PARTNER shall bear interest at the NATEXIS' prime rate ("taux de base bancaire") in force at the date due increased by three (3) points, from the date due until paid.

**II.3** Payments for orders for SPOT Data processed at level 0, placed by Spot Image shall be made on a quarterly basis, within forty five(45) days from date of invoice by PARTNER.



# **APPENDIX D**

## **LOGO**

The "Spot Image" Logo is reproduced hereunder:



# **APPENDIX E**

## **ADDRESSES**

### **1 - Spot Image's address:**

5 rue des Satellites  
B.P. 14359  
F-31030 TOULOUSE CEDEX 4  
FRANCE

### **2 - PARTNER's address:**

# **APPENDIX F**

## **SYSTEM INTEGRATED PROGRAMMING (SIP) MODE**

This is a temporary procedure, waiting for the implementation of a web based tool named "PRM" which will allow PARTNER to place programming requests directly in the CPR (Center for Programming) and to follow their progress.

### **Dialogue between Spot Image and PARTNER through SIP mode :**

Through the SIP mode, PARTNER defines its needs in terms of "Programming Requests". It consists in a description of your precise client requirements:

#### **1- Programming Request (P.R):**

- Specification of the area to be acquired: *Name, coordinates of the precise client area*
- Spectral Mode: *B&W or color*
- Resolution :
  - Ex : SPOT 5 5m B&W or 5m color*
  - SPOT 5 THR 2.5m B&W or THX 2.5m color*
- Programming period expected
- Viewing Angle range
- B/H ratio for a lateral stereo acquisition
- Preprocessing level: *1A, 1B, 2A, 2B, Ortho (levels 2B and ortho-images implies specific programming constraints)*
- Service Type: *Archive, Standard Service or Priority Service*
- The theme of your application:
  - *Agriculture*
  - *Planning, land use/landcover*
  - *Cadastral mapping*
  - *Cartography & topography*
  - *Monitoring & surveillance*
  - *Environment*
  - *Coastal and ocean studies*
  - *Geology, mineral and oil exploration*
  - *Natural hazard and pollution monitoring*
  - *Natural reserve management and planning*
  - *Water resources*
  - *Flight simulation*
  - *Forestry*
  - *Telecommunications*
  - *Urban planning*
  - *Other Theme*
- Cloud cover accepted
  - less than 10% on the client's area of interest.*

## **2- Feasibility study:**

When we receive your P.R, it is analysed with regard to:

- Climatic conditions
- Application specific needs
- Satellite resources
- Satellite conflicts with others demands

This step is called “*feasibility study*”.

The goal of this feasibility study is to determine if a request is feasible or not, i.e. if the request can be accepted in the satellite long term plan (18 months). If the request is not feasible, the programmer at Spot Image will propose some changes in order to increase the chances of success.

Depending on the precise application of your client, it could be the viewing angle range, the programming period, the spectral mode...

## **3- Programming Proposal:**

Once the feasibility study is achieved, Spot Image sends to PARTNER a programming proposal which details all the programming parameters set up in order to satisfy your client's needs.

## **4- Proposal Agreement:**

After receiving your programming proposal, you must return it. This will constitute your agreement for satellite programming, accordingly with the proposed parameters.

On a standard base, the satellite activation will not begin before the proposal has been received.

At this step, you are in position to dialogue with your final client, and with Spot Image, to find a programming solution which will satisfy both parts.

## **5- Satellite Activation:**

Once your agreement has been received, the satellite resources are activated for satisfying your P.R.

## **6- Image Validation:**

As soon as an acquisition is updated in the catalog, the Spot Image programmer validate it or not in terms of cloud cover, haze, location, programming windows, image saturation, technical quality....

## **7- Image Notification:**

As soon as a good acquisition is registered, the station is informed, the satellite programming over the corresponding Scene is stopped, and the satellite resources are transferred to others Scenes to be acquired.

Note : Some of these steps (feasibility study, programming proposal, etc...) may be skipped in the case of an urgent request.

# **APPENDIX G**

## **LIST OF THE SOUTH AFRICAN GOVERNMENT ENTITIES**

1. Agriculture
2. Arts and Culture
3. Communications
4. Correctional Services
5. Defence
6. Education
7. Environmental Affairs and Tourism
8. Foreign Affairs
9. Government Communications (GCIS)
10. Health
11. Home Affairs
12. Housing
13. Independent Complaints Directorate
14. Justice and Constitutional Development
15. Labour
16. Land Affairs
17. Minerals and Energy
18. National Intelligence Agency
19. National Treasury
20. Provincial and Local Government
21. Public Enterprises
22. Public Service and Administration
23. Public Service Commission
24. Public Works
25. Science and Technology
26. Secretariat for Safety and Security
27. SA Management Development Institute
28. SA Police Service
29. SA Revenue Service
30. SA Secret Service
31. Social Development
32. Sport and Recreation South Africa
33. Statistics South Africa
34. The Presidency
35. Trade and Industry
36. Transport
37. Water Affairs and Forestry

# **LIST OF THE SOUTH AFRICAN PUBLIC RESEARCH AND ACADEMIC INSTITUTIONS**

**SANRIC** (South African National Research Information Consortium) = 7 Science Councils

The Science Councils of South Africa each fulfil a unique and valuable part in Science and Technology development in South Africa.

- [Agricultural Research Council](#) ARC  
Promoting agriculture and related sectors through research, technology development and technology transfer.
- [Council for Geoscience](#) CGO  
Geological, geophysical and palaeontological research supplying geological information to the Government and the public.
- [Council for Mineral Technology](#) Mintek  
Enabling the minerals industry to operate more effectively, by developing and making available the most appropriate and cost-effective technology.
- [Human Sciences Research Council](#) HSRC  
Facilitating problem solving and enhancing decision making through research excellence in the human sciences.
- [Medical Research Council](#) MRC  
Improves the nation's health status and quality of life through relevant and excellent health research aimed at promoting equity and development.
- [National Research Foundation](#) NRF  
South Africa's premier agent for investing in knowledge and innovation across all disciplines of the natural sciences and engineering, as well as social sciences and humanities.
- [South African Bureau of Standards](#) SABS  
Responsible for the development and publication of standards for products and services.  
Africa institute

Education/Academic

**CHEC** represents four tertiary education institutions in the Western Cape of South Africa:

[University of Cape Town](#),  
[University of Stellenbosch](#),  
[University of the Western Cape](#) and  
[Cape Peninsula University of Technology](#).

**Foundation of Tertiary Institutions of the Northern Metropolis**

- ✓ Medunsa
- ✓ Rau
- ✓ Tech Wits
- ✓ NW University
- ✓ TUT

- ✓ UP
- ✓ UNISA
- ✓ University of the North
- ✓ Vaal university of Tech
- ✓ University of Venda
- ✓ University of Witwatersrand
- ✓ University of Pretoria

**Eastern Seaboard Association of Tertiary Institutions The esATI member institutions are:**

Durban Institute of Technology;  
 Mangosuthu Technikon;  
 Technikon SA;  
 UNISA (University of South Africa);  
 University of Durban-Westville (UDW);  
 University of Natal;  
 University of Zululand

**Eastern Cape Higher Education Association (ECHEA) ECHEA represents all ten the Higher Education Institutions**

- ✓ UPE;
- ✓ Fort Hare;
- ✓ P E Technikon;
- ✓ Border Technikon;
- ✓ UNISA;
- ✓ Technikon SA;
- ✓ Vista;
- ✓ Rhodes;
- ✓ EC Technikon;
- ✓ UNITRA

# **APPENDIX H**

## **ROYALTIES**

### **1. ROYALTIES FOR MULTI-LICENSE**

| <b>Number of Users</b> | <b>Royalty</b>            |
|------------------------|---------------------------|
| 2 - 3                  | + 30%*                    |
| 4 - 10                 | + 40%*                    |
| > 10                   | Please contact Spot Image |

### **2. ROYALTIES FOR VAP SALES**

| <b>Number of sales or transfers of the VAP</b> | <b>Royalty</b>            |
|--|---------------------------|
| 2 - 3  | + 30%*                    |
| 4 - 10   | + 40%*                    |
| > 10   | Please contact Spot Image |

\* for DRS Products: + 30% or +40% of the applicable extraction fees (see Article 12.4)  
and for NON-DRS Products: + 30% or +40% of the purchase price (see Article 12.5)