

ERDAS ECW/JP2 Server Read-Only Redistributable SDK License Agreement

IMPORTANT—READ CAREFULLY: This ERDAS ECW/JP2 SDK Server Read-Only Redistributable License Agreement ("License Agreement") is a legal agreement between You (either an individual or a single legal entity) and Intergraph Corporation d/b/a the Security, Government & Infrastructure division of Intergraph ("Intergraph"), for the SDK delivered with this License Agreement. By installing, copying, downloading, accessing or otherwise using the SDK, You agree to be bound by the terms of this License Agreement, which shall take precedence over any other document and shall govern Your use of the SDK. If You do not agree to the terms of this License Agreement, do not install or use the SDK. You agree that this License Agreement is enforceable against You the same as any written, negotiated contract signed by You. If You do not agree to the terms of this License Agreement, You are not authorized to, and You shall not, download, install or use the SDK

1. DEFINITIONS

- 1.1. "CPU Core" means a physical processor on a computer server that can respond to and execute the basic instructions that drive the computer. A Central Processing Unit (CPU) may have one or more cores, and a given server may have multiple CPU sockets that may each contain multiple cores.
- 1.2. "Decode" means to view files compressed either using ECW technology or JPEG2000 technology.
- 1.3. "Desktop Application" means desktop software products that You develop and that permit an end-user to Decode (among other functionality You develop), and that are intended to be used as self-contained programs for displaying and processing imagery on the same computing device.
- 1.4. "ECW" stands for Enhanced Compressed Wavelet.
- 1.5. "ECWP" is the Enhanced Compressed Wavelet Protocol, by which ECW and JPEG2000 files residing on a Server may be streamed to a Server Application and Decoded.
- 1.6. "Encode" means to compress data using ECW technology or to otherwise compress using the SDK.
- 1.7. "Library" means file of computing functions, compiled, linked, and saved separately from the processes that use them, intended for use by programmers in connection with their development of applications that use the library.
- 1.8. "SDK" means the Software Development Kit, that is, the set of software development tools designed to facilitate development of Server Applications using the SDK technologies currently marketed and licensed by Intergraph as ECW/JP2 Server Read-Only Redistributable SDK, version 5.0 or higher, consisting of libraries and supporting documents designed to enable You to write software that enables You as the end-user to Decode files but not to Encode files. Among other things, the SDK enables reading ECWP streams and enables decompression of files having an *.ecw and *.jp2 extension. The SDK includes the computer software, object code copy and all contents of the files, disks, CD-ROMs or other media with which this License Agreement is provided, including any templates, printed materials, and online or electronic documentation, all copies, and any modified versions, enhancements, fixes, patches, updates, and upgrades of the SDK, if any, licensed to You by Intergraph, unless a particular modified version, enhancement, fix, patch, update, or upgrade is accompanied by a different license agreement, in which case that license shall apply in accordance with its terms. No source code is included with the SDK.
- 1.9. "Server" means a computing device in a network that is used to provide services (such as access to files or shared peripherals or any other computing function) to other computing devices in the network.
- 1.10. "Server Application" means software products that You develop or maintain and are capable of running on a Server to provide an image decoding or processing capability.
- 1.11. "Virtualized CPU Core" means a CPU Core deployed within a virtual machine environment where the Server CPU Core count does not reflect the physical CPU count on the host Server. The number of CPU Cores present on the virtual machine shall reflect the number of CPU Cores that must be licensed with the SDK.

2. LICENSE TO CREATE SERVER APPLICATIONS; PROHIBITED DEVELOPMENT; APPLICABILITY TO UPGRADES; NO SUPPORT OBLIGATION

- 2.1. Subject to Your ongoing compliance with all of the terms of this License Agreement, You are hereby granted a limited, nonexclusive, non-transferable license of the SDK to create, use and distribute a Server Application that Decodes files of any size but does not Encode. You assume full responsibility

for the implementation of the SDK to achieve Your intended results, and for the installation, use and results obtained from the SDK.

- 2.2. For avoidance of doubt, this License Agreement does not permit You to (a) distribute Desktop Applications that include the SDK; b) serve ECWP streams from your Server Application or; (c) distribute files that are not included in the “redistributable” directory of the SDK.
- 2.3. This License Agreement does not entitle You to, and Intergraph undertakes no obligation to provide, maintenance, support, modified versions, enhancements, fixes, patches, updates, and upgrades to the SDK. Any support, maintenance or similar services that Intergraph makes available would be provided under a separate agreement.
- 2.4. You may make one copy of the SDK media in machine readable or printed form and solely for backup purposes. Intergraph retains ownership of all created copies. You may not transfer the rights to a backup copy unless you transfer all rights in the SDK and license as provided for in Section 2.5.
- 2.5. You may transfer the SDK and license within Your company (intra-company transfer), subject to the Intergraph Security, Government & Infrastructure Software Transfer Policy (“SG&I Software Transfer Policy”) and the terms of this License Agreement. The SG&I Software Transfer Policy is available from Intergraph upon request. If You transfer the SDK, You must at the same time either transfer all copies, modifications, or merged portions, in whatever form, to the same party, or You must destroy those not transferred

3. OBLIGATIONS AND RESTRICTIONS

- 3.1. No Reverse Engineering or Source Code Distribution. Components of the SDK used in Server Applications may be distributed for use in Your organization only in object code or executable form. You shall not decompile, disassemble or otherwise reverse-engineer the SDK in an attempt to discover its source code, or distribute any source code of the SDK. Likewise, You must inform Your organizational end-users of the prohibition from reverse-engineering the SDK.
- 3.2. License Requirements for Server Applications Created Using the SDK. You shall distribute each of Your Server Applications to end-users pursuant to a conspicuous, legally enforceable end-user license that provides Intergraph with substantially the same protections as set forth in Appendix A hereto. You agree to take all necessary steps to ensure the legal enforceability of the end-user license, including, as appropriate: (i) offering a refund of at least a portion of the purchase price of Your Server Applications to end-users who disagree with the terms of the end-user license including the terms set forth in Appendix A; or (ii) preventing downloading of Server Applications without acceptance of the end-user license. You also agree to take adequate steps to prevent unauthorized use of the SDK or its derivatives by end users who decline the end-user license offer, such as by disabling access to Your Server Application or preventing access to features made possible by the SDK, including Encoding or Decoding in Your Server Application.
- 3.3. Intergraph Proprietary Rights Notice. You must include the following statement of ownership/copyright notice in the “About” box for each of Your Server Applications, or any other similar location where You place proprietary rights notices pertaining to third party software incorporated in the Server Application:
“This application supports the ECW data format and ECWP compression protocols. Portions of this computer program are Copyright 2007-2013 Intergraph Corporation. All rights reserved. Creating compressed files using ECW technology is protected by one or more of U.S. Patent No. 6,201,897, No. 6,442,298 and No. 6,633,688.”
- 3.4. Prohibition of other actions not explicitly permitted. You are not licensed to, and You agree to refrain from, any use, copying, or distribution of the SDK, or the creation of derivative works thereof, not explicitly permitted under this License Agreement and will pass on this prohibition to Your End Users.
- 3.5. Restriction on Publishing. You may not, and you may not authorize anyone else to, publish the SDK for others to copy or use.
- 3.6. No Use of Component Parts. You may not, and you may not authorize anyone else to, re-use the component parts of the SDK, including the Licensing Mechanism, with a different software product from the one You are licensed to use. The SDK is licensed as a single product.
- 3.7. Circumvention of Licensing Mechanism. You may not, and You may not authorize anyone else to, circumvent any license mechanism in the SDK or the licensing policy.

- 3.8. Territorial Restriction. You may not, and You may not authorize anyone else to, use the SDK outside the country in which it is licensed without the prior written consent of Intergraph.
- 3.9. High Risk Use. The SDK is not one hundred percent (100%) fault-tolerant. The SDK is not designed or intended for use in any situation where failure or fault of any kind of the SDK could lead to death or serious bodily injury of any person, or to severe physical, property or environmental damage (“High Risk Use”). You are not licensed to use the SDK in, or in conjunction with, any High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: operation of aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices. You hereby agree not to use the SDK in, or in connection with, any High Risk Use.
- 3.10. Hold Harmless. You shall hold harmless Intergraph from and against any claims or lawsuits which arise or result from Your use of the SDK, and/or the use or distribution of any Server Applications, whether authorized under this License Agreement or not.

4. TERM AND TERMINATION

- 4.1. Term. The term of this License Agreement commences when you install or use the SDK, and will extend until terminated. You may terminate this License Agreement at any time by permanently destroying the SDK together with all copies, modifications and merged portions in any form. Intergraph may also immediately terminate this License Agreement if You fail to comply with the terms and conditions of this License Agreement, or if You fail to pay the appropriate license fees. You agree upon the termination of this License Agreement to cease using and to permanently destroy the SDK.
- 4.2. Termination for Breach. If You materially breach this License Agreement and fail to cure that breach to Intergraph’s satisfaction within thirty (30) days after receiving written notice of the breach, Intergraph shall have the right to terminate this License Agreement any time after the end of such period. Termination shall be without prejudice to Intergraph’s right to seek other redress, such as damages or injunctive relief, for breach of this License Agreement.
- 4.3. Survival Provisions. Notwithstanding termination of this License Agreement, Intergraph shall enjoy freedom from liability under Section 8; and Your liabilities for past breaches and Your hold harmless obligations under Section 3.10 shall also survive.
- 4.4. Obligations Upon Termination. Upon termination of this License Agreement, all licenses shall terminate and You must return to Intergraph or destroy all copies of the SDK (and any copies, modifications and merged portions of the SDK in any form, and all of the component parts of the SDK) that are in Your possession, custody, or control.

5. INTELLECTUAL PROPERTY.

- 5.1 Ownership.
 - 5.1.1 Software. SDKS ARE PROPRIETARY PRODUCTS OF INTERGRAPH AND ADDITIONAL THIRD PARTIES, AND ARE PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL TREATIES. TITLE TO SDKS AND ALL COPIES, MODIFICATIONS AND MERGED PORTIONS OF A SDKS SHALL AT ALL TIMES REMAIN WITH INTERGRAPH AND SUCH THIRD PARTIES. SDKs are licensed, not sold pursuant to this License Agreement. Intergraph and additional third parties retain all right, title and interest in and to all SDKs, including, but not limited to, all Intellectual Property rights in and to each SDK. All rights not expressly granted to You by this License Agreement or other applicable third party software license agreement or terms and conditions are reserved by Intergraph and such third parties.
 - 5.1.2 Intellectual Property. You acknowledge and agree that Intergraph and third party manufacturers, as applicable, own all rights in and to Intergraph’s and the applicable third party manufacturer’s trade names, and no right or license is granted to You pursuant to this License Agreement to use such trade names. You also acknowledge and agree that Intergraph and third party manufacturers, as applicable, own all right, title and interest in and to all intellectual property relating to and for the SDK, including, without limitation, patents, trademarks, copyrights, inventions (whether registerable or not), trade secrets, concepts, ideas, methods, techniques, formulae, algorithms, logic designs, screen displays, schematics, and source and object code computer programs (collectively, “Intellectual Property”). If You bring a patent claim against Intergraph or any third party manufacturer over patents You claim are

being infringed by the SDK, Your patent license from Intergraph and any applicable third party manufacturer(s) for the SDK automatically ends.

5.2 Intellectual Property Infringement.

5.2.1 Remedy by Intergraph. In the event the SDK is, in Intergraph's opinion, likely to or becomes the subject of a claim of infringement of any duly issued U.S. Intellectual Property, Intergraph may, at its sole option and expense (a) procure for You the right to continue using the SDK; (b) modify the SDK to make it non-infringing, but functionally the same; (c) replace the SDK with an SDK which is non-infringing, but functionally the same; or (d) provide a prorated refund to You of the actual amount You paid Intergraph for the SDK.

5.2.2 Indemnification by You. In the event any proceeding (suit, claim, or action) is based (in whole or in part) on modifications, enhancements or additions made by You or any person or entity on Your behalf, or Your use of the SDK in combination with other products not furnished by Intergraph, You agree to hold harmless and defend, at your sole cost and expense, all of Intergraph's right, title and interest in and to the SDK, as well as Intergraph's goodwill and reputation both in good faith and at a standard as if the claim is made against You. You shall reimburse Intergraph any defense expenses inclusive of reasonable attorneys' fees expended by Intergraph in defense of said claim, and pay any judgment rendered against Intergraph. You shall make such defense by counsel of Your choosing and Intergraph shall reasonably cooperate with said counsel at Your sole cost and expense. You shall have sole control of said defense, but You shall allow Intergraph to reasonably participate in its own defense and You shall reasonably cooperate with Intergraph with respect to the settlement of any claim. Notwithstanding the foregoing, Intergraph may at any time decide to take over any defense of Intergraph at Intergraph's cost and expense and You shall render full cooperation and assistance to transfer such defense to Intergraph and with respect to such defense.

5.3 **DISCLAIMER OF INTELLECTUAL PROPERTY WARRANTIES AND LIMITATION OF LIABILITY. THE INTELLECTUAL PROPERTY LIMITED WARRANTIES SET FORTH IN THIS LICENSE AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT AND THESE INTELLECTUAL PROPERTY LIMITED WARRANTIES ALONG WITH THE STATED REMEDIES REPRESENT THE FULL AND TOTAL WARRANTY OBLIGATION AND LIABILITY OF INTERGRAPH WITH REGARD TO INTELLECTUAL PROPERTY INFRINGEMENT. THE INTELLECTUAL PROPERTY LIMITED WARRANTIES PROVIDE YOU WITH SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. IF ANY PART OF THIS DISCLAIMER OF EXPRESS OR IMPLIED WARRANTIES OR LIMITATION OF LIABILITY IS RULED INVALID, THEN INTERGRAPH DISCLAIMS EXPRESS OR IMPLIED WARRANTIES AND LIMITS ITS LIABILITY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. IF A GREATER WARRANTY OR LIABILITY IS MANDATED PURSUANT TO THE LAW HELD APPLICABLE TO THIS AGREEMENT, THEN INTERGRAPH WARRANTS THE SDK AND PROVIDES LIABILITY TO THE MINIMUM EXTENT REQUIRED BY SAID LAW.**

6. LIMITED WARRANTIES.

6.1 Intergraph warrants to You for a period of thirty (30) days from the date of shipment that the SDK delivery media will be free of defects in material and workmanship, provided the SDK is used under normal conditions and in strict accordance with the terms and conditions of this License Agreement. You agree to promptly notify Intergraph of any unauthorized use, repair or modification, or misuse of the SDK, as well as any suspected defect in the SDK delivery media.

6.2 Intergraph warrants that it has the right to grant you this license.

6.3 **THE ABOVE LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND REPRESENT THE FULL WARRANTY OBLIGATION OF INTERGRAPH. THE LIMITED WARRANTIES PROVIDE YOU WITH SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. IF THIS WARRANTY SECTION DOES NOT ADHERE TO LOCAL LAWS, THEN THE MINIMUM WARRANTY TERM PRESCRIBED BY THE LAWS OF YOUR JURISDICTION SHALL APPLY.**

7. WARRANTY DISCLAIMERS.

ALL WARRANTIES PROVIDED PURSUANT TO THIS LICENSE AGREEMENT ARE VOID IF FAILURE OF A WARRANTED ITEM RESULTS DIRECTLY, OR INDIRECTLY, FROM AN UNAUTHORIZED USE OR MISUSE OF A WARRANTED ITEM, INCLUDING, WITHOUT LIMITATION, USE OF A WARRANTED ITEM UNDER ABNORMAL OPERATING CONDITIONS OR UNAUTHORIZED MODIFICATION OR REPAIR OF A WARRANTED ITEM OR FAILURE TO ROUTINELY MAINTAIN A WARRANTED ITEM. EXCEPT AS SPECIFICALLY SET FORTH IN THIS LICENSE AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTERGRAPH AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATING TO THE SDK, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HIGH RISK USE AND NON-INFRINGEMENT. INTERGRAPH DOES NOT WARRANT THAT THE SDK WILL MEET YOUR REQUIREMENTS, AND UNDER NO CIRCUMSTANCES DOES INTERGRAPH WARRANT THAT THE SDK WILL OPERATE UNINTERRUPTED OR ERROR FREE. THE SDK IS PROVIDED "AS IS" AND YOU BEAR THE SOLE RISK OF USING THE SDK. IF ANY PART OF THIS DISCLAIMER OF EXPRESS OR IMPLIED WARRANTIES IS RULED INVALID, THEN INTERGRAPH DISCLAIMS EXPRESS OR IMPLIED WARRANTIES TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. IF A GREATER WARRANTY OR LIABILITY IS MANDATED PURSUANT TO THE LAW HELD APPLICABLE TO THIS AGREEMENT, THEN INTERGRAPH WARRANTS THE SDK AND PROVIDES LIABILITY TO THE MINIMUM EXTENT REQUIRED BY SAID LAW.

8. LIMITATION OF LIABILITY.

8.1 YOU ASSUME FULL AND COMPLETE LIABILITY FOR YOUR USE OF THE SDK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INTERGRAPH OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE OR PRODUCTION, LOSS OF REVENUE OR PROFIT, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, BUSINESS INTERRUPTION, CLAIMS OF THIRD PARTIES OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT AND/OR THE USE OF OR INABILITY TO USE THE SDK, EVEN IF INTERGRAPH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. INTERGRAPH'S ENTIRE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO INTERGRAPH FOR THE SDK AT THE TIME THE INITIAL EVENT GIVING RISE TO THE CLAIM OCCURS. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NO CLAIM, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THIS LICENSE AGREEMENT MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR FOLLOWING THE INITIAL EVENT GIVING RISE TO THE CAUSE OF ACTION. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF ANY PART OF THIS SECTION IS HELD INVALID, THEN INTERGRAPH LIMITS ITS LIABILITY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

8.1 In the event the SDK does not substantially comply with the limited warranties set forth in this License Agreement, Intergraph's entire liability and Your exclusive remedy shall be, in Intergraph's sole and absolute discretion, either (i) the modification, repair or replacement of the SDK; or (ii) a prorated refund to You of the actual amount You paid Intergraph for the SDK for the period of time that the SDK did not substantially conform to the limited warranties set forth in this License Agreement.

8.2 Intergraph is acting on behalf of its suppliers for the sole purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this License Agreement, but in no other respects and for no other purpose.

9. AUDIT.

Intergraph shall have the right, during Your normal business hours, to audit Your use of the SDK and Your compliance with the provisions of this License Agreement. Intergraph will provide You with thirty (30) days prior written notice of an audit. The right of audit shall be limited to twice per calendar year. Prior to the start of an audit, Intergraph's personnel will sign a reasonable non-disclosure agreement. During the audit, You shall allow Intergraph's personnel to be provided reasonable access to both Your records and personnel. The cost of

the audit shall be paid by Intergraph unless the results of the audit indicate that You have underpaid fees to Intergraph, in which case, You agree to promptly pay Intergraph any differences in such fees associated with your use that exceeds the license rights granted to you by the License Agreement, and You further agree to bear all costs associated with the audit.

10. RESTRICTIONS.

- 10.1 United States Government Restricted Rights. If the SDK is licensed, purchased, or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Section 10.1 also applies.
- 10.1.1 For civilian agencies: The SDK was developed at private expense and is “restricted computer software” submitted with restricted rights in accordance with the Federal Acquisition Regulations (“FAR”) 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).
- 10.1.2 For units of the Department of Defense: The SDK was developed at private expense and is “commercial computer software” submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations (“DFARS”) DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).
- 10.1.3 Notice: This SDK is “commercial computer software” as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes “technical data” as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this “commercial computer software” shall be in strict accordance with the manufacturer’s standard commercial license, which is attached to and incorporated into the governing Government contract. Intergraph and any applicable third party software manufacturer(s) are the manufacturer. This SDK is unpublished and all rights are reserved under the Copyright Laws of the United States.
- 10.2. Export Restriction.
- 10.2.1. The Software, including any technical data related to the Software, is subject to the export control laws and regulations of the United States. Diversion contrary to United States law is prohibited. The Software, including any technical data related to the Software and any derivatives of the Software, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:
- 10.2.2. To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries.
- 10.2.3. To any person or entity listed on any United States government denial list, including, but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists, the United States Department of Treasury Specially Designated Nationals List, and the United States Department of State Debarred List (http://export.gov/ecr/eg_main_023148.asp).
- 10.2.4. To any entity if You know, or have reason to know, the end use is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses.
- 10.2.5. To any entity if You know, or have reason to know, that an illegal reshipment will take place.
- 10.2.6. You agree to hold harmless and indemnify Intergraph for any causes of actions, claims, costs, expenses and/or damages resulting to Intergraph from a breach by you or any User of the export restrictions set forth in this Agreement. Any questions regarding export or re-export of the Software should be addressed to Intergraph’s Export Compliance Department at 19 Interpro Road, Madison, Alabama, United States 35758 or at exportcompliance@intergraph.com.
- 10.3 Non-disclosure. You understand that Intergraph possesses information and data, including, without limitation, Intellectual Property, that was developed, created or discovered by Intergraph, or which has become known to or has been conveyed to Intergraph, which has commercial value in Intergraph’s day-to-day business (“Confidential Information”). Intergraph considers such Confidential Information to be proprietary and confidential. You agree to treat and maintain as proprietary and confidential Intergraph’s Confidential Information and any information or data provided by Intergraph, in whatever form, as You would treat Your own proprietary and confidential information and data, but in any event,

no less than with reasonable care, and to comply with all license requirements, copyright, patent, trademark and trade secret laws as they may pertain to any of Intergraph's Confidential Information or other information or data provided by Intergraph

11. BETA SOFTWARE

If the SDK You received with this License Agreement is pre-commercial release or beta software ("Beta Software"), then the following additional terms apply. To the extent that any provision in this section is in conflict with any other terms or conditions in this License Agreement, this section shall supersede such other terms and conditions with respect to the Beta Software, but only to the extent necessary to resolve the conflict. You shall hold all information concerning Beta Software and Your use and evaluation of such information and the Beta Software (collectively, "Beta Software Information") in confidence and with the same degree of care You use to keep Your own similar information confidential, but in no event shall You use less than a reasonable degree of care; and You shall not, without the prior written consent of Intergraph, disclose such Beta Software Information to any person or entity for any reason at any time; *provided, however*, it is understood that You may disclose any Beta Software Information to those of Your representatives who actually need such information for the purpose of participating in the proposed evaluation and testing ("Beta Testing") of the Beta Software, on the condition that, prior to such disclosure, such representative has been made aware of the terms of this License Agreement. **You shall not use any Beta Software Information for any reason or purpose other than as necessary for Beta Testing. You agree to make no other use of the Beta Software Information or to incorporate any Beta Software Information into any work or product. You acknowledge that the Beta Software is a pre-release, beta version, does not represent final product from Intergraph, and may contain bugs, errors and other problems that could cause system or other failures and data loss. THE BETA SOFTWARE IS PROVIDED TO YOU "AS-IS", AND INTERGRAPH DISCLAIMS ALL WARRANTY AND LIABILITY OBLIGATIONS TO YOU OF ANY KIND. You may use the Beta Software only for evaluation and testing and not for general production use. You acknowledge that Intergraph has not promised or guaranteed to you that Beta Software or any portion thereof will be announced or made available to anyone in the future, Intergraph has no express or implied obligation to You to announce or introduce the Beta Software and that Intergraph may not introduce a product similar to or compatible with the Beta Software. Accordingly, You acknowledge that any research or development that You perform regarding the Beta Software or any product associated with the Beta Software is done entirely at Your own risk.** During the term of this License Agreement, if requested by Intergraph, You will provide feedback to Intergraph regarding Beta Testing, including error or bug reports. Upon receipt of a later unreleased version of Beta Software or release by Intergraph of a publicly released commercial version of the SDK, You agree to return or permanently destroy all earlier Beta Software received from Intergraph. You agree that You will return or destroy all unreleased versions of the Beta Software within thirty (30) days of the completion of Beta Testing when such date is earlier than the date for Intergraph's first commercial shipment of the publicly released commercial software.

12. MISCELLANEOUS

- 12.1. Governing Law; Venue and Jurisdiction. This License Agreement shall for all purposes be construed and enforced under and in accordance with the Laws of the State of Alabama and shall have been deemed to have been accepted in Madison, Alabama, United States. You and Intergraph agree that any legal action or proceeding arising, directly or indirectly, out of or relating to this License Agreement shall be instituted in the Circuit Court for Madison County, Alabama, United States or the United States District Court for the Northern District of Alabama, Northeastern Division. You and Intergraph agree to submit to the jurisdiction of and agree that venue is proper in these courts for any such legal action or proceedings. This License Agreement shall not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 12.2. WAIVER OF JURY TRIAL. INTERGRAPH AND YOU EACH HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY FOR ANY LEGAL PROCEEDING ARISING, DIRECTLY OR INDIRECTLY, OUT OF OR RELATING TO THIS EULA. BOTH INTERGRAPH AND YOU (I) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (II)

ACKNOWLEDGE THAT BOTH INTERGRAPH AND YOU HAVE BEEN INDUCED TO ENTER INTO THIS LICENSE AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS WAIVER OF JURY TRIAL.

- 12.3. Injunctive Relief; Cumulative Remedies. In addition to the termination right set forth above, You acknowledge that Intergraph will be irreparably harmed if You breach this License Agreement or infringe or otherwise violate the intellectual property rights of Intergraph, that damages or other remedies at law would be inadequate, and that Intergraph shall be entitled to equitable relief, including temporary restraining orders and preliminary and permanent injunctive relief against any such breach or violation, without any requirement of bond or other security.
- 12.4. Attorneys' Fees and Costs. In the event of any legal proceeding arising out of or relating to this License Agreement, the prevailing party in such action shall be entitled to an award of its reasonable attorneys' fees and costs for all such legal proceedings, including for trial and all levels of appeal.
- 12.5. Governing Language. The controlling language of this License Agreement is English. If you received a translation of this License Agreement into another language, it has been provided for your convenience only.
- 12.6. Entire Agreement. This License Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussion(s) between them. No modification of or amendment to this License Agreement, nor any waiver of any rights under this License Agreement, will be effective unless set forth in writing signed by officers of both parties hereto.
- 12.7. Notices. Any notice to Intergraph required or permitted by this License Agreement shall be in writing and either delivered by hand or sent by prepaid, registered or certified mail, return receipt requested, or by nationally recognized overnight courier service, addressed to Intergraph Corporation, attention: SG&I Senior Divisional Counsel, 19 Interpro Road, Madison, AL 35758, USA.
- 12.8. Assignment and Binding Effect. You may not transfer or assign Your rights or obligations under this License Agreement without the prior written consent of Intergraph. This License Agreement will be binding upon and inure to the benefit of the parties hereto, and to Intergraph's successors and assigns and Your permitted successor and assigns, if any.
- 12.9. Partial Invalidity. If any provision of this License Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect.
- 12.10. No Waiver. No waiver of any term or condition of this License Agreement will be valid or binding on either party unless the same will have been mutually assented to in writing by an officer of both parties. Intergraph's decision at any time to refrain from enforcing any of the provisions of the License Agreement, or the failure to require at any time performance by You of any of the provisions of this License Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of an effort by Intergraph to enforce each and every such provision thereafter.
- 12.11. Interpretation. Headings are provided for convenience but are not part of this License Agreement. Words in the plural have the same meaning as words in the singular, except multiplied. Defined conjugate verbs have the same meaning as the defined derivative, modified as appropriate in context. (For example, Decoding has similar meaning to the defined term Decode.)

APPENDIX A

Required EULA Terms for ERDAS ECW/JP2 Server Read-Only Redistributable SDK Server Applications

You shall distribute the ERDAS ECW/JP2 Server Read-Only Redistributable SDK Server Application (“Server Application”) to end users with an End User License Agreement (“EULA”) in a manner that forms a contract binding the end user to the EULA terms under applicable law. You shall provide clear notice to end users before or at the time of delivery of the Server Application that the Server Application contains technology owned by Intergraph. You may include in the EULA additional notices or other provisions, so long as they are no less protective of Intergraph than the terms set forth below.

The EULA shall contain the following terms or legally equivalent terms, where “You” and “Your” refers to your end user:

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