

## **InfiPoints END USER LICENSE AGREEMENT (EULA)**

This End User License Agreement (this "Agreement") is a legal agreement made between you and Elysium. This Agreement contains the terms and conditions that must be complied with if you wish to install and use the InfiPoints software application ("InfiPoints"), one of the software products of Elysium Co. Ltd ("Elysium"). This Agreement sets forth the terms under which you may install and use InfiPoints, and you must agree to its terms before continuing with your installation of InfiPoints.

### **IMPORTANT:**

**PLEASE READ ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT CAREFULLY BEFORE CLICKING ON "I ACCEPT" BELOW. BY CLICKING "I ACCEPT" BELOW AND INSTALLING AND PROCEEDING TO USE InfiPoints, YOU ARE ACKNOWLEDGING YOUR ACCEPTANCE OF ALL OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE InfiPoints. PLEASE CLICK "CANCEL" BELOW, AND YOU WILL EXIT OUT OF THE InfiPoints INSTALLATION PROCESS. ELYSIUM IS WILLING TO PERMIT YOU TO USE InfiPoints ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT.**

InfiPoints that you are about to install was developed by Elysium, a Japanese Corporation, to process, model, and analyze point cloud data captured by 3D laser scanners and other devices. Based on the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you agree as follows:

### **1. Definitions**

Computer System means the computer hardware equipment at the location designated as the "Site" on which Customer has elected to install and/or execute Licensed Program(s). A site is restricted to a one-half mile (800 meter) radius unless otherwise assigned on the License Software Designation Agreement.

### **2. License Grant**

#### **2-1. License Grant**

Elysium hereby grants to you a nonexclusive, non-assignable, non-sublicensable license, for your internal use only for the term of this Agreement, to install and use a single object code copy of InfiPoints on designated Computer System, together with any user's guides, specifications and other related documentation provided to you or made available online (collectively, the "Documentation"), subject to the terms and conditions of this Agreement.

#### **2-2. Restrictions**

To the maximum extent permitted by law, you may not: (i) modify, reverse engineer, decompile, disassemble or attempt to derive the source code of InfiPoints; (ii) rent, lease, loan, sell, sublicense, distribute, transmit or otherwise transfer InfiPoints to any third party; (iii) make any copy of or otherwise reproduce InfiPoints or any portion thereof, except for those copies necessarily made by the personal computer that is running InfiPoints; or, (iv) use InfiPoints to provide an on-line service or benchmark testing.

### **3. Ownership**

Elysium retains all rights to InfiPoints and the Documentation not specifically granted herein. Elysium owns InfiPoints and the Documentation and all copyright and other intellectual property rights therein, and this Agreement transfers to you neither title to nor any proprietary or intellectual property rights in or to InfiPoints, any updates or derivative works thereto, or the Documentation, or any copyrights, patent rights, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein. InfiPoints and the Documentation are protected by Japanese laws and international treaty provisions. YOU MAY NOT USE, COPY OR MODIFY InfiPoints, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT.

### **4. Your Obligations**

You will be solely responsible for the following: (i) providing all hardware, software, and communications capabilities required for use of InfiPoints; (ii) generating (or otherwise obtaining) and supplying all original source data for use with InfiPoints; (iii) obtaining all licenses and permissions necessary for use of any and all CAD programs (and any associated original source data) that you will use in connection with your use of InfiPoints; and (iv) at all times using InfiPoints in accordance with the Documentation and any other written instructions provided to you by Elysium.

### **5. Indemnification**

You will indemnify, defend, and hold Elysium harmless from and against any and all claims arising from, in connection with, or related in any way, directly or indirectly, to: (i) your use of InfiPoints, the Documentation, or any other materials furnished under this Agreement; (ii) your use or other disposition of products made by use of InfiPoints, the Documentation, or any other materials furnished under this Agreement; (iii) your use of any CAD program or related computer software or hardware; or (iv) your breach of any of the terms of this Agreement.

#### **6. Term and Termination**

The rights granted herein provide you the right to use this specific version of InfiPoints on a perpetual basis. The Maintenance agreement for an initial term of 12 months (the "Initial Term"), beginning on the first day of the calendar month following the first installation of InfiPoints, is basically added when you install InfiPoints for the first time. After expiration of the Initial Term, the rights granted to you by the Maintenance agreement may be renewed by you for successive twelve-month periods as follows:

(a) At least ninety (90) days prior to the expiration of the Initial Term or of any renewal term, you may send to the Reseller that provided you InfiPoints or Elysium notice of your intent to renew the Maintenance and the Reseller or Elysium will then send to you an invoice for an Annual Maintenance Fee. Payment will be due on such invoice within thirty (30) days after the invoice date. Provided that you are current on all other payment obligations to the Reseller or Elysium, upon receipt of your timely paid Annual Maintenance Fee, Elysium will permit your continued use of the upgrade of InfiPoints.

(b) You understand and agree that if you permit the Maintenance agreement to expire, you cannot access any subsequent InfiPoints version releases.

You may terminate the license and this Agreement at any time by ceasing all use of InfiPoints and deleting all InfiPoints files (including all copies) from your Computer System. This license will also terminate automatically upon your failure to comply with any of the terms of this Agreement. Upon termination of this Agreement, you agree to promptly destroy all printed copies and delete all electronic copies of any documentation that you have downloaded, printed, or created relating to InfiPoints, and to ensure that no copies of any InfiPoints screens, data, or other content remain archived or otherwise stored on your computers. Notwithstanding termination, the provisions of Sections 3, 6, 7, 8, and 9, as well as any other provisions that, by their nature, are intended to survive termination, will survive and continue to apply. If you install InfiPoints for the trial use, security features contained in InfiPoints will prevent InfiPoints from operating upon expiration of the current term. InfiPoints CONTAINS A DISABLING CODE THAT WILL DISABLE InfiPoints AND RENDER IT UNUSABLE UPON EXPIRATION OF THE PREDETERMINED TERM UNLESS A PASSWORD FILE PROVIDED BY ELYSIUM IS PROVIDED TO THE SOFTWARE. THE PASSWORD FILE WILL BE PROVIDED TO YOU UPON ELYSIUM'S RECEIPT OF YOUR PURCHASE ORDER.

#### **7. Limitation of Liability**

You are not entitled to receive damages from Elysium for any cause relating to this Agreement, to your use of InfiPoints, to any services provided by Elysium hereunder, or to any services provided by any third party in connection with your use of InfiPoints. In addition, in no event will you be entitled to obtain any injunctive relief or otherwise enjoin, restrain, or otherwise interfere with Elysium or with the distribution, operation, development, or performance of InfiPoints or any related products.

IN NO EVENT SHALL ELYSIUM BE LIABLE TO YOU FOR ANY DAMAGES WHATSOEVER ARISING OUT OF YOUR USE OR INABILITY TO USE InfiPoints. IN NO EVENT SHALL ELYSIUM BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR LOST BUSINESS OPPORTUNITIES, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. AS SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

#### **8. Limited Warranty and Disclaimer**

Elysium hereby represents and warrants that InfiPoints will, at the time you purchase InfiPoints and for a period of thirty (30) days thereafter, substantially conform to the Documentation in effect upon the date of such purchase when given normal, proper and intended usage in compliance with Elysium's instructions. In the event of a nonconformance during such period, you agree to promptly report such nonconformance along with all information required by Elysium. Elysium will investigate and remedy any such reported nonconformance in accordance and use commercially reasonable efforts to remedy such nonconformance. If Elysium is unable to remedy such nonconformance within ninety (90) days after the date Elysium has received all relevant information with respect to such nonconformance from you, your sole remedy under this

Agreement is to return InfiPoints, delete all copies and all Documentation from your systems and receive a refund of the price you paid.

THE FOREGOING IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED BY ELYSIUM FOR InfiPoints AND ELYSIUM EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES ON InfiPoints, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE, OR A COURSE OF DEALINGS BETWEEN THE PARTIES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ELYSIUM WILL HAVE NO LIABILITY ARISING OUT OF OR IN ANY WAY RELATED TO YOUR USE OF InfiPoints OR THE DOCUMENTATION. ELYSIUM DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN InfiPoints WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF InfiPoints WILL BE UNINTERRUPTED OR ERROR FREE.

## **9. General Provisions**

### **(a) Governing Law**

This Agreement shall be governed by and construed under the laws of Ireland if the Software is licensed for use in Israel, Egypt, Switzerland, Norway, South Africa, or the European Union, the laws of Japan if the Software is licensed for use in Japan, the laws of Singapore if the Software is licensed for use in Singapore, People's Republic of China, Republic of China, India, or Korea, and the laws of the state of Michigan if the Software is licensed for use in the United States of America, Canada, Mexico, South America or anywhere else worldwide not provided for in this section.

### **(b) Force Majeure**

If the performance of Elysium under this Agreement is prevented, hindered, or otherwise made impractical by reason of flood, strike, war, acts of government, or any other casualty or cause beyond the control of Elysium, then Elysium will be excused from its performance to the extent and so long as it is prevented, hindered, or delayed by such event(s).

### **(c) Severability**

In the event that any one or more of the provisions contained in this Agreement should, for any reason, be held to be invalid, illegal, or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement.

### **(d) No Assignment**

You may not assign this Agreement or any of the rights granted by Elysium hereunder, in whole or in part, without the prior written consent of Elysium, and any attempt to do so shall be void. This Agreement will be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

### **(e) U.S. Government Licensee**

InfiPoints and Documentation are "Commercial Item(s)," as that term is defined at 48 C.F.R. Section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. Sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

### **(f) Export Control**

You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the Export Trade Control Order of Japan and the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, you represent and warrant that you are not a citizen of, or located within, an embargoed or otherwise restricted nation (including without limitation Iran, Syria, Sudan, Libya, Cuba and North Korea) and that you are not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software are granted on condition that such rights are forfeited if you fail to comply with the terms of this Agreement.

### **(g) Acknowledgement and Exclusivity**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND ELYSIUM, AND THAT IT SUPERCEDES ANY PROPOSAL, PRIOR AGREEMENT OR UNDERSTANDING, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND ELYSIUM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THIS

AGREEMENT MAY NOT BE CHANGED, ALTERED, OR MODIFIED EXCEPT BY A WRITING SIGNED BY THE PARTIES.

For further information, please contact: ELYSIUM Co., Ltd. Marketing Group <[marketing@elysium.co.jp](mailto:marketing@elysium.co.jp)>