

THIS DATA LICENCE AGREEMENT (Agreement) is entered into between **Aerometrex Ltd** (ABN: 94 153 103 925), and the customer who executes an order (Customer) for a licence to the Products whether via a formal order form, or through our web portal (**Order Form**). By downloading and using the Products you agree to the terms of this Agreement.

1. PRODUCTS

Our Products shall mean Lidar, 2D imagery, 3D mesh, other photogrammetry products, and their related derivatives, enhancements, upgrades and modifications that are created and included from time to time including but not limited to data derived from AI and machine learning techniques, that may be made part of this Agreement upon mutual written agreement of the parties.

2. LICENCE.

- a) We will grant to you, the Customer using the Products, a limited, non-exclusive, non-transferable, non-sublicensable right to download and use the Products for the sole use within your business and for internal business purposes only, provided that you comply with the use restrictions and allowance limitations and parameters outlined in the Order and this Agreement. The Customer accepts the terms and conditions of this Agreement and accepts full responsibility for performance by its employees, contractors and agents (collectively, "Customer Representatives") of obligations under this Agreement.
- b) You are permitted to use the Products for internal business purposes only. The Products will be supplied to you via the method detailed in this agreement or the order form. Any remote access to the Products and use of the Products as a Service Provider are prohibited unless otherwise authorised by Aerometrex. Additional terms of authorised use are as set forth in this Agreement or the order form and may include limitations on the authorised access to the Products and use of the Data.
- c) You may make a reasonable number of copies of the Products and any accompanying documentation (**Documentation**) for internal business purposes, back up or disaster recovery purposes. If you make copies of Documentation you must reproduce all copyright, trademark, trade secret and other proprietary notices in such copies.
- d) You may permit employees, to use the Products on your behalf provided that they only use the Products for projects being performed by such persons or entities for your benefit and on your behalf, and for no other purposes. You will use all reasonable endeavours to ensure that such persons and entities do not use Products (or any data extracted therefrom) for their own purposes or for the purposes of any third party.
- e) Use by Contractors and Consultants (**Contractor**): You may allow a Contractor to exercise your rights under this Agreement provided that:
 - (i) You only provide the Contractor with extracts of the Products for projects being performed by such Contractors for your benefit only, and for no other purposes.
 - (ii) the Contractor only uses the Products for your internal corporate purposes.
 - (iii) You take all reasonable actions to ensure that the Contractor complies with the terms of this licence
- f) the Contractor undertakes to destroy or return to you the Products and any and all copies of the Products which are within the contractor's possession, custody or control when the contractor no longer needs to use the Products for you.
- g) *No third-party access.* Unless otherwise provided in this Agreement, you must not make the Products available to any third party.
- h) You may incorporate data extracted from the Products in documents (e.g. project deliverables, reports, maps, brochures and other printed or Digital material) for any purpose as long as these documents are not offered for resale to third parties or otherwise distributed to third parties for monetary value. To avoid doubt, you may use such data extracted from the Products in perpetuity after the expiry of any licence to the Products, provided that such use remains in accordance with the terms and conditions contained herein.

3. INTELLECTUAL PROPERTY RIGHTS.

- a) You agree and acknowledge that we own all Intellectual Property Rights and other proprietary interests that are embodied in, or practiced by, the Products.
 - b) We acknowledge that through the use and access of the Products you may create new Intellectual Property Rights. The creations, including without limitation, images, APIs, GIS/CAD software packages and any suggestions, ideas, enhancement requests, feedback, recommendations, derivative data or other information made or provided by you or any other party through the use or in connection with the Licence, shall be owned by us but we hereby give you an unrestricted, unlimited, non-exclusive, worldwide licence to use these creations as set out in this clause 2b) solely for business purposes and during the term that your licence to the Products apply.
 - c) For the avoidance of doubt, you agree that you will not Commercialise (a process whereby you resell, repackage, bundle or use the products provided by us that creates revenues for you) the Products or creations derived from the Data or Products.
 - d) You acknowledge us as the provider of Products: A provision of the Products is that any product, dataset or derivative works that you use, copy, modify or distribute must expressly acknowledge us and our rights, in a reasonably prominent manner (by displaying of the Aerometrex logo or other appropriate attribution as provided by us from time to time), as the source and Intellectual Property Rights owner of the Products (as updated from time to time).
 - e) "Intellectual Property Rights" means the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including:
 - (i) the rights to copy, publicly perform, public display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter;
 - (ii) the right to exclude another from using, making, having made, selling, offering to sell, and importing patented subject matter and from practicing patented methods,
 - (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, endorsement, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognised by applicable law.
 - f) *Restrictions.* You agree to not, (and not permit any of your representatives, employees, contractors or other persons or entities that you provide a copy of the Products to):
 - (i) resell, sublicense, distribute or otherwise supply the Products to any third party or use the Products outside the scope of the licence granted herein;
 - (ii) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Products;
 - (iii) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Products for any purpose without our express written consent;
 - g) Each party will indemnify, defend and hold harmless the other party against any damages, losses, claims or judgments suffered by the other party arising out of any violation of this Clause 3 or any claims by a third party of a breach of any Intellectual Property Rights of such third party.
- ## 4. CHARGES, PAYMENT AND TAXES
- a) *Charges.* In exchange for us granting you the licences granted under this Agreement and Order Form, you will pay all amounts detailed in an Order Form (whether online or otherwise) or subsequent invoice, without offsets or deductions, no later than the date on which they are due.
 - b) *Payment Terms.* For all Products purchased through our website, all fees and charges are payable upfront prior to being able to download the Products. For any orders that are payable on invoice, our Invoices will be due and payable within fourteen (14) days from the date of invoice

and will be paid in AUD by credit card, direct deposit, wire transfer or another method as we may mutually agree from time to time.

c) *Late Payment.* Any invoiced amount not paid by the due date will bear a late payment charge at the rate of one and a half percent (1.5%) per month (or such lower amount as may be permitted by law) until paid. Payment schedules, amounts, and other related payment terms will be as set forth on the Order Form. If we undertake collection efforts due to non-payment in accordance with this Agreement, you will be responsible for all reasonable costs of collection, including any legal fees.

d) *Taxes.* The fees payable as detailed in the Order Form shall exclude the applicable GST or other tax for any sales transaction with you. If any authority imposes a duty, tax or similar levy on us, you agree to pay, or to promptly reimburse us for, all such amounts in a manner prescribed under law.

e) *Pricing after Expiry of Term.* We reserve the right to review all pricing at the end of each fixed licence term. We give no assurances that pricing from previous agreements, orders or renewals will remain unchanged but will reasonably substantiate and negotiate in good faith with you all pricing upon renewal.

5. TERM AND TERMINATION.

a) *Term of this Agreement.* This Agreement commences on the date that you first sign up to this Agreement and continues perpetually unless terminated earlier pursuant to this Agreement (**Term**).

b) *Termination for Cause.* Either party may terminate this Agreement, for cause:

- (i) on 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period (or immediately if the material breach is not capable of being remedied); or
- (ii) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or an assignment for the benefit of creditors.

In addition, we may terminate this Agreement Term upon written notice in the event of;

- (i) you fail to pay any amounts due hereunder, and such failure continues more than 14 days after our written notice thereof; or
- (ii) you infringe upon our Intellectual Property Rights, including without limitation through exploitation of the Products and access and use rights granted. You are solely responsible for your actions and the actions of your users of the Products.

c) *Destruction of Data.* Upon the expiration or termination of this Agreement (as applicable) you agree (and ensure that any contractor, employee, agent or other third party permitted to use the Products or Data owned by us) to cease using the Products and take all reasonable steps to destroy, delete and or return all Data owned by us and the Products to the fullest extent allowable by law, provided that there is no suits or action taken against you that would prevent you from doing so.

6. WARRANTIES.

a) *Mutual Warranty.* Each party represents, warrants and covenants that:

- (i) it has the full power and authority to enter into and to perform its obligations under this Agreement and Order Form, without the need for any consents, approvals or immunities not yet obtained; and
- (ii) its acceptance of and performance under this Agreement or Order Form will not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust.

b) *Limited Warranties and Remedies.* To the extent that you have purchased the applicable Products We warrant that the Products will be substantially in compliance with the applicable Documentation for a period of 12 months from the date that the Order Form is signed, provided that they are used at all times in accordance with the applicable Documentation and have not been modified or added to other than by us or as authorised by us in writing. If during the applicable warranty period, the Products do not perform as warranted, we will undertake, at our sole option and your exclusive remedy for breach of this warranty, to correct any such non-conformance. If we determine that we are unable to correct or remedy or replace the non-conformity in a commercially reasonable way within a reasonable time of receipt of written notice from you detailing the warranty claim, then the Order will be cancelled for the affected Products and we will refund any unused prepaid fees for the affected Products.

c) *Products Limitation.* You acknowledge that factors such as changes by you to your profile and use case, corrupted, incomplete and/or interrupted data received by us from your site(s) and applications, may have a material impact on the accuracy, reliability and/or timeliness of Products results, and we will not be responsible for any such factors beyond our reasonable control. You will comply with any reasonable instructions and/or specifications provided by us for the relevant Products. You will not alter the original data source of the Products and must comply with any applicable laws that relate to collecting and/or transmitting personally identifiable information.

d) *Warranty Disclaimer.* Except for the express warranties specified above in this clause 6, we disclaim all other warranties whether written, oral, express, implied, or statutory including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. We do not warrant that:

- (i) the use of any Products will operate in combination with any other hardware, software, system or data;
- (ii) the Products or any information obtained through Products will meet client's requirements or expectations;
- (iii) any stored data will be accurate or reliable; or
- (iv) access to the Products will be uninterrupted, error-free or that errors or defects therein will be corrected.

Our offerings may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications and infrastructure limitations and scheduled and unscheduled downtime. We are not responsible for any delays, delivery failures, or other damages resulting from such problems.

7. DISCLAIMERS AND LIMITS ON LIABILITY

a) Except as provided in section 3 (intellectual property rights) of this agreement and for any liability that cannot be excluded by law, our aggregate liability (including our affiliates and third party licensors), and your exclusive remedy, for damages arising out of or related to this agreement, whether in contract, tort (including negligence), product liability, or otherwise, exceed the Products fees paid by you for the Products giving rise to the claim, and in no event will our aggregate liability exceed the total fees you paid to us under this agreement during the 12 months immediately prior to the event giving rise to such liability.

b) Except for liability that cannot be excluded by law, in no event will either party be liable for:

- (i) incidental, indirect, special, punitive, exemplary or consequential damages; or any damages for lost data, business interruption, lost profits, lost revenue or lost business, arising out of or in connection with this agreement; or
- (ii) loss of or damage to your data from any cause, including without limitation loss of use, revenues, profits or savings, business interruption, even if we knew or should have known of the possibility of such damages.
- (iii) the cost of procurement of substitute data, goods or services.

c) The Products are sourced from many sources. Whilst all care is taken in the compilation of the Products, we are unable to warrant the accuracy or completeness of the information provided and you should take your own steps to ensure that those parts of the Products used by you are correct before any reliance is placed on them.

d) Nothing in this Agreement shall exclude or restrict either party's liability for:

- (i) death or personal injury;
- (ii) fraud; or
- (iii) any other cause of action which cannot be limited or excluded under any applicable law.

8. INDEMNITY

You agree to indemnify us and our directors, officers, employees, agents and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses and costs (including reasonable legal fees and costs) arising from or out of:

- a) Your actual or alleged breach of any provisions of this Agreement;
- b) Your use of the Products for any purpose; and
- c) Your use of, or any third party's use of, or inability to use, any variation or derivative of the Products, including without limitation, any output from such variation or derivatives.

9. MISCELLANEOUS

a) *Independent Contractors.* Each of the parties are independent contractors with respect to the subject matter of this Agreement. Nothing contained herein shall constitute this arrangement to be a joint venture or a partnership between you and us. Neither party has any authority to enter into agreements of any kind on behalf of the other party. Each party will be solely responsible for and will hold the other harmless from any and all claims for employment-related or similar taxes, fees, or costs, including but not limited to withholding, income tax and workers' compensation.

b) *Force Majeure.* Neither party will be held liable or accountable for any default or delay in the performance of its obligations hereunder (except for failure to pay amounts due) if and to the extent that such default or delay arises out of causes beyond its reasonable control, including without limitation acts of God, acts of war, acts of terrorism, pandemics, earthquakes, fires, cable cuts, power outages, catastrophic network element failures, floods, terrorism, riots, civil disorders, rebellions, strikes, lockouts and labour disputes.

c) *Audit Rights.* During the term of this Agreement and for two years thereafter, we have the right, but not the obligation to carry out an audit of the use of the Products to make sure that you have used the Products within the limitations, restrictions and allowances set out in this Agreement and the application Order Form. Where you have exceeded such use rights by more than 10%, we may pass on the cost of the audit, as well as adjust the fees so as to make good the exceeding usage at our standard pricing (or such pricing that we have agreed).

d) *Waiver.* No term or provision of this Agreement will be deemed waived and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach or default by the other party, whether express or implied, shall constitute consent to, waiver of, or excuse for any different or subsequent breach or default or shall be construed as a continuing waiver of such right or a waiver of any other provision hereunder.

e) *Third Party Providers.* We may engage third party providers to provide the Products. You agree to comply with all requirements and restrictions that these third party providers may impose on you directly, or indirectly by imposition on us, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. You acknowledge that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by these third party providers. Our liability is reduced to the extent that loss or damage of any kind is caused, or contributed to, by these third party providers. You further acknowledge that, by entering into the Agreement, you agree to comply with the respective terms and conditions of these third party providers. Whilst we do our best to make sure that our third party providers remain fair, reasonable and unchanged during the Agreement Term, unfortunately this is largely out of our control and such terms of supply may change from time to time during the Agreement Term, but we will notify you with as much notice as possible of such changes to third party provider terms.

f) *Partial Invalidity.* If any one or more of the provisions of this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and both parties shall negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision that is consistent with the original intent of the parties.

g) *Amendment.* Except as otherwise provided in this Agreement, this Agreement may only be amended by mutual agreement in writing. Any extension or waiver by any party of any provision of this Agreement will be valid only if made by mutual written agreement.

h) *Survival.* Termination of this Agreement shall not affect either party's accrued rights or obligations under this Agreement as they exist at the time of termination, or any rights or obligations that either expressly or by implication continue after this Agreement has and any outstanding payment obligations.

i) *Assignment.* In order to ensure we know who we are doing business with, we do not permit you to assign or otherwise transfer this Agreement or any rights or obligations hereunder without our prior written consent, but we will always act reasonably when assessing any assignment or transfer request you make. We may assign this Agreement to an affiliate or other entity without your consent, but we will notify you of such change and ensure that any such change will not adversely impact your rights and obligations under this Agreement. Subject to the foregoing, this Agreement will be binding upon, enforceable by and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of the foregoing shall be void.

j) *Marketing Materials and Communications.* You agree that we may utilise your name, trade names, trademarks or service marks (**Marks**) and make accurate informational references to you in-connection with your performance of the Agreement which may involve us including you in regulatory announcements. We will promptly cease the use of any Mark owned by you in connection with the performance of this Agreement and any Order upon receipt of notice from you to discontinue such use.

k) *Notices.* Unless otherwise specified, any notice or other communication required or permitted to be given hereunder shall be given in writing and delivered in person, sent by certified mail with the required pre-paid postage and return receipt requested, or delivered by a recognised courier service, shipment charges pre-paid, properly addressed to the individual signing or accepting the terms of this Agreement on behalf of the applicable party at its address specified in the opening paragraph of the Agreement and shall be deemed effective upon receipt. In accordance with Clause 9o) & q) of this Agreement, If an email address is registered as the main point of contact through a site order or is contained within an Order Form then we will use email delivery for Notices.

l) *Headings.* The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.

m) *No Third-Party Beneficiaries.* Except as specifically stated in this Agreement, this Agreement is not intended to be for the benefit of any third party, is not enforceable by any third party, and will not confer on any third party any remedy, claim, right of action or other right.

n) *Amendments.* We reserve the right to unilaterally amend this Agreement in our sole discretion to comply (to our sole satisfaction) with any law, rule or regulation that affect us or our products and services offerings. Any such amendment will be effective immediately. However, despite any other provision of this Agreement, if we are required to make such unilateral amendment, you will have the right to review and negotiate only the amended terms of this Agreement by written notice to us within fourteen (14) days of your receipt of notice of such amendment or you may terminate the Agreement. Termination will not affect any of your obligation incurred prior to our receipt of notice of termination.

o) *Communications.* Visiting our website, sending us emails, and completing online forms constitute electronic communications. You consent to receiving electronic communications, and you agree that all agreements, notices, disclosures, and other communications we provide to you electronically, via email and on the Site, satisfy any legal requirement that such communication be in writing.

p) *Signatures and Acceptance.* You hereby agree to the use of electronic signatures, contracts, orders, and other records, and to electronic delivery of notices, policies, and records of transactions initiated or completed by us or via the site.

q) *Electronic delivery.* You agree for us to use the email address provided within this agreement, as the main communication portal for receiving notices, policies, and records of transactions initiated or completed by us through email or via our website.

r) *Governing Law.* This Agreement shall be governed by the laws of South Australia and the parties submit to the Courts of South Australia to hear any matters relating to this Agreement or Order Form.

s) *Entire Agreement.* This Agreement, together with any Orders, schedules, exhibits, addenda, or other understandings between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.