



## Giraffe – END USER LICENCE AGREEMENT

### 1 Acceptance

- (a) Giraffe Technology Pty Ltd ACN 627 711 979 (**we or us**) own the cloud-based software platform, including all instructions in hard copy or electronic form and any update, modification or release of any part of that software (**Platform**) which is accessible at giraffe.build (**Site**). The Platform serves as a base for you to buy and use applications that deal with spatial information and data layers (**Apps**).
- (b) These terms and conditions (**Terms**):
  - (1) set out the terms and conditions upon which we agree to grant you a right to use the Platform as a service, as described on the Site (**PaaS Services**) and provide any other services as set out in these Terms (together with the PaaS Services, the **Services**); and
  - (2) are binding on you from the date (**Effective Date**) on which we provide you with an account to enable you to access and use the Services (**Account**) until the date on which your Account is terminated in accordance with these Terms (**Term**).
- (c) Please read these Terms carefully and immediately terminate your Account if you do not agree to them.
- (d) By creating an Account and/or accessing and/or using the Services, you:
  - (1) warrant to us that you have reviewed these Terms, including our Privacy Policy, available on the Site, (with your parent or legal guardian if you are under 18 years of age);
  - (2) warrant to us that you have the legal capacity to enter into a legally binding agreement or (if you are under 18 years of age) you have your parent's or legal guardian's permission to access and use the Services and they have agreed to these Terms on your behalf;
  - (3) warrant to us that you have the authority to act on behalf of any person or entity for whom you are using the Services, and you are deemed to have agreed to these Terms on behalf of any entity for whom you use the Services;
  - (4) warrant to us that you have all hardware, software and services which are necessary to access and use the Services; and
  - (5) agree to use the Services in accordance with these Terms.

### 2 Registration and Account

- (a) You will be required to create an Account with us on behalf of you and/or your organisation in order to access and use the Services. You must ensure that any personal information and information about your organisation you give us when creating an Account is accurate and up-to-date. All personal information that you give to us will be treated in accordance with our Privacy Policy.
- (b) When you create an Account, you will choose a username and password. It is your responsibility to keep your Account details confidential. You are liable for all content posted and all activity on your Account, including purchases made using your Account details and content posted by others who have logins or accounts associated with your Account (such as accounts within your organisation), and you must immediately notify us of any unauthorised use of your Account.
- (c) Once you have created an Account and provided you have permission to do so, you may add members of your organisation and/or external consultants to provide them with access to your Account as authorised users.
- (d) At our sole discretion, we may refuse to allow any person to create an Account.

### 3 Collection Notice

- (a) We collect personal information about you in order to enable you to access and use the Site, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our Privacy Policy.

- (b) We will only disclose information to third parties where required to provide the Services to you, and to creators of Apps with your consent, or as required by law. If you do not provide this consent we may not be able to provide the Services to you.
- (c) Our Privacy Policy contains further information about: (i) how we store and use your personal information; (ii) how you can access and seek correction of your personal information; (iii) how you can make a privacy-related complaint; and (iv) our complaint handling process. By providing personal information to us, you consent to us collecting, holding, using and disclosing your personal information in accordance with our Privacy Policy.
- (d) Notwithstanding anything to the contrary in these Terms or elsewhere, we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymized format (**Analytics**). You agree that we may make such Analytics publicly available, provided that it: (i) does not contain identifying information; and (ii) is not compiled using a sample size small enough to make the underlying data identifiable. We and/or our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all intellectual property rights in the foregoing.

#### 4 PaaS Licence

- (a) In consideration for payment of the fees, as set out on the Site (**Fees**), for your chosen monthly, quarterly or annual plan which provides for certain service features and a number of authorised users, as set out in your Account (**Plan**), we grant you a non-exclusive, non-transferable, non-sublicensable (except as otherwise permitted under these Terms), personal and revocable licence to access and use the PaaS Services for the Term (**PaaS Licence**).
- (b) You agree that:
  - (1) the PaaS Licence permits you to use the PaaS Services in accordance with the PaaS Services' normal operating procedures;
  - (2) the PaaS Licence permits you to access and use the PaaS Services in accordance with the number and type of authorised users, as set out in your Account or otherwise agreed by us;
  - (3) if the number of authorised users is exceeded we may charge a fee for each additional authorised user as specified on the Site; and
  - (4) we reserve the right at any time and from time to time to: (i) refuse any request in relation to the PaaS Services that we deem inappropriate, unreasonable, illegal or otherwise non-compliant with these Terms; and/or (ii) modify or discontinue, temporarily or permanently, access to the PaaS Services (or any part thereof) with; and (iii) change or remove features of the PaaS Services provided that, where there is any material alteration to the PaaS Services in accordance with this clause, we will provide you with 20 business days' notice.
- (c) We may contact you to warn you that you have exceeded the included features or other limits of your Plan.

#### 5 Restrictions

- (a) You acknowledge and agree that these Terms incorporate by reference the terms of any acceptable use policy as set out on the Site or as provided to you from time to time.
- (b) You must not (and must ensure the authorised users do not) access or use the PaaS Services except as permitted by the PaaS Licence and you must not do, omit to do, or authorise any act that would or might invalidate or be inconsistent with our intellectual property rights in the PaaS Services or Platform. Without limiting the foregoing provisions, you must not and must not permit any other person to:
  - (1) resell, assign, transfer, distribute or provide others with access to the PaaS Services;
  - (2) "frame", "mirror" or serve any of the PaaS Services on any web server or other computer server over the Internet or any other network (for the avoidance of doubt, this does not include the output of the PaaS Services);

- (3) copy, alter, modify, create derivative works from, reproduce to a third party, reverse assemble, reverse engineer, reverse compile or enhance the PaaS Services or Platform;
- (4) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the PaaS Services or Platform;
- (5) use the PaaS Services in any way which is in breach of any applicable local, state, federal and international laws and regulations (**Laws**) or which infringes any person's rights, including intellectual property rights;
- (6) use the PaaS Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (7) use the PaaS Services in any way that damages, interferes with or interrupts the supply of the PaaS Services;
- (8) introduce malicious programs into our hardware and software or our hardware, software and services which are integrated and operate together, including our networks (**Systems**), including viruses, worms, trojan horses and e-mail bombs;
- (9) reveal your Account password to others or allow others to use your Account (other than authorised users);
- (10) use the PaaS Services to make fraudulent offers of goods or services;
- (11) use the PaaS Services to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (12) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the PaaS Services;
- (13) send any unsolicited email messages through or to users of the PaaS Services in breach of the *Spam Act 2003* (Cth) or to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the PaaS Services in breach of any person's privacy (such as by way of identity theft or "phishing");
- (14) use the PaaS Services to circumvent user authentication or security of any of your networks, accounts or hosts or those of your customers or suppliers; or
- (15) solicit or entice away, any person or organisation that was our actual or prospective, client, employee, contractor, representative, agent, or developer during the Term.

## 6 Support Services

- (a) During the Term, we will provide you with the online helpdesk support services set out on the Site (**Support Services**), provided that (i) you notify us in accordance with any applicable systems and processes set out on the Site and (ii) where required, you assist us in investigating and ascertaining the cause of the fault and provide us with access to all necessary information relevant to the fault (including what you or your personnel have done in relation to the fault).
- (b) We reserve the right to refuse any request for or in relation to Support Services that we deem inappropriate, unreasonable, illegal or otherwise non-compliant with these Terms.
- (c) Support Services will be provided to you on a non-exclusive basis.

## 7 Your Data

- (a) **Licence:** Solely to the extent required to provide the Services, you grant us a license to use the information, documents and other data you, your personnel or any authorised users provide to us or upload to the PaaS Services or which we otherwise access in providing the Services (**Data**):
  - (1) to supply the Services (including enabling you, your personnel and authorised users to access and use the PaaS Services); and

- (2) for diagnostic purposes.
- (b) **General:** You must, at all times, ensure the integrity of your Data and that your use of your Data is compliant with all Laws. You represent and warrant that: (i) you have obtained all necessary rights, releases and permissions to provide all your Data to us and to grant the rights granted to us in these Terms; and (ii) your Data and its transfer to and use by us as authorised by you under these Terms does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorised in these Terms is not inconsistent with the terms of any applicable privacy policies. We assume no responsibility or liability for your Data, and you shall be solely responsible for your Data and the consequences of using, disclosing, storing or transmitting it.
- (c) **Removals:** We have no obligation to monitor any content uploaded to the PaaS Services. Nonetheless, if we deem such action necessary for any reason, we may (without limiting our other rights) remove your Data from the PaaS Services. We have no liability to you for removing your Data from the PaaS Services.

## 8 Your Responsibilities and Obligations

You must, at your expense:

- (a) provide us with all materials and all reasonable assistance and cooperation in order for us to supply the Services in an efficient and timely manner, including obtaining from authorised users any consents necessary to allow you and your personnel to engage in the activities described in these Terms and to allow us to provide the Services;
- (b) ensure that only your personnel and authorised users access and use the PaaS Services and such use and access is in accordance with the terms and conditions of the PaaS Licence;
- (c) ensure all information provided to us is kept up-to-date and the email address you provide is valid and regularly checked; and
- (d) make any changes to your computing environment, such as system upgrades, that may be required to support the delivery and operation of any Services.

## 9 Marketplace

- (a) The Site provides a marketplace for you to buy and use Apps (the **Marketplace**).
- (b) If you wish to buy an App, you must select and purchase the App in accordance with the instructions set out on the Site, including paying the specified price for that App (the **Price**).
- (c) You understand that the Marketplace provides an introductory platform only, and that our responsibilities are limited to facilitating the user functionality and availability of the Site and the Platform. We are not a reseller of Apps.
- (d) We are not a party to any agreement entered into between a buyer and seller, and have no control over the conduct of buyers, sellers and any other users of the App.
- (e) We accept no liability for any aspect of the interaction between you and the seller of the App (the **Seller**), including but not limited to the description and functionality of the Apps offered for sale.
- (f) The Seller may impose certain terms and conditions in relation to your purchase and use of the App, as set out on the Site. You agree to comply with those terms and conditions.
- (g) We set out a number of payment methods on the Site. You may use any of these payment methods to complete a transaction on the Marketplace.
- (h) Any cancellation, exchange or refund of Apps is strictly a matter between you and the Seller, subject to the terms of any refund policy set out on the site by us.

## 10 Promotional Discount Codes

We may from time to time issue promotional discount codes for certain Apps or for the PaaS Licence. To claim the discount, you must enter the promotional discount code at the time of purchase through the Marketplace or the Site (as applicable). The conditions of use relating to promotional discount codes will be specified on the Site at the time they are issued.

## 11 Payment

- (a) You must pay us the Fee for your Plan and any other amount payable to us under these Terms, without set off or delay, via Stripe, credit card or any other payment method set out on the Site.
- (b) The Fee for your Plan is payable in advance of the next billing cycle for your Plan and any additional charges will be billed in arrears at the end of the Plan cycle (unless otherwise agreed).
- (c) You are responsible for reviewing the pricing schedule, features and limits associated with your Plan, which are available on the Site. The Fee for your Plan is based on the number of authorised users in the month before the commencement of the next Plan billing cycle.
- (d) You will be notified (immediately and again after two days) if you exceed the current authorised user allowance for your Plan.
- (e) If there is a variation to your Plan or PaaS Licence during the Term, we will include the fees due and payable for the variation performed in invoice(s) subsequent to the performance of the variation.
- (f) The Fee is non-refundable. To the maximum extent permitted by law, there will be no refunds or credits for any unused Plan (or part thereof), Plan downgrade or unused Accounts. Downgrading your Plan may result in the loss of content, features or capacity of your Account. We do not accept any liability for any losses or damages that may arise in such cases.
- (g) We may offer you a free or trial Account with limited features (such as providing you access to and use of certain Apps, but not allowing you to save any work completed on those Apps) designed to allow you to evaluate the Services and make sure it is right for you before signing up for a paid Plan. Any free trial period can change at any time without notice. We have the right to terminate any free trial Account if you are found to be misusing the Services.
- (h) If you upgrade or downgrade your Plan, the credit card linked to your Account will automatically be charged the Fee for your new Plan in advance of your next Plan billing cycle. Please ensure that this credit card has sufficient funds to pay the Fee. If your credit card expires and you do not cancel your Account, you will remain responsible for paying the Fee for the Plan, which will accrue to your Account until we receive a cancellation notice.
- (i) All Fees include GST. You are responsible for all taxes, levies or duties imposed by taxing authorities in your own country, and you shall be responsible for payment of them. We have no responsibility to them on your behalf.
- (j) The Fee is subject to change upon 30 days' notice from us to you and will apply to the next Plan billing cycle. Such notice may be provided at any time by posting the changes on our Site, via email or via a notification to your Account. If you do not agree to the Fee change, you may cancel your Account in accordance with clause 14(a).
- (k) If any payment is not made in accordance with our payment terms, we may (at our absolute discretion):
  - (1) immediately cease providing the Services to you and recover as a debt due and immediately payable from you our additional costs of doing so;
  - (2) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the due date of payment;
  - (3) engage debt collection services and/or commence legal proceedings in relation to any unpaid amounts; and/or
  - (4) report you to independent credit data agencies.

## 12 Intellectual Property Rights

- (a) All intellectual property (including copyright) developed, adapted, modified or created by us or our personnel (including in connection with these Terms, the Platform and the Services) will at all times vest, or remain vested, in us.
- (b) You must not, without our prior written consent:
  - (1) copy or use, in whole or in part, any of our intellectual property;

- (2) breach the intellectual property rights of any third party in using the PaaS Services;
  - (3) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our intellectual property to any third party; or
  - (4) breach any intellectual property rights connected with the Site, the Platform or the Services, including (without limitation) altering or modifying any of our intellectual property; causing any of our intellectual property to be framed or embedded in another website; or creating derivative works from any of our intellectual property.
- (c) This clause 12 will survive termination of your Account.

### 13 Indemnity and liability

- (a) Despite anything to the contrary, to the maximum extent permitted by the law:
- (1) our maximum aggregate liability arising from or in connection with these Terms (including the Services or the subject matter of these Terms) will be limited to a total of \$100,000; and
  - (2) we will not be liable for any indirect or consequential loss or damage and any loss of profit (including anticipated profit, whether direct, indirect, anticipated or otherwise), loss of revenue or expected saving, loss of business, loss or reduction of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data, regardless of whether any or all of these things are considered to be indirect or consequential losses or damages,
- whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- (b) Despite anything to the contrary, to the maximum extent permitted by the law, we have no liability, and you release and discharge us from all liability, arising from or in connection with any:
- (1) any damage, injury or loss to any person or property;
  - (2) failure or delay in providing the Services;
  - (3) unavailability, outage or interruption to the Services or your Systems; or
  - (4) breach of these Terms or any Laws,
- where caused or contributed to by any:
- (5) functionality or failure of the Apps;
  - (6) event or circumstance beyond our reasonable control;
  - (7) a fault, defect, error or omission in your computing environment or Data; or
  - (8) act or omission of you, your related parties, personnel or a third-party service provider,
- and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Services.
- (c) Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to our provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in these Terms attempts to exclude, restrict or modify your Statutory Rights. Any and all other warranties or conditions which are not guaranteed by Statutory Rights are expressly excluded and disclaimed where permitted, except to the extent such warranties and conditions are fully expressed in these Terms.
- (d) You acknowledge and agree that:
- (1) we are not responsible for the actions of the Seller, and have no control over the functionality of the App;
  - (2) if you have a dispute in relation to any particular App, you will raise such dispute directly with the Seller of the App;
  - (3) you are responsible for all users using the Services, including your personnel and any authorised users;
  - (4) subject to any obligations, warranties and the like afforded under the Agreement you use the Services and any associated programs and files at your own risk;



- (5) we may use third-party service providers to host the Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without liability or entitling you to any refund, credit, or other compensation;
- (6) the Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third-party products, facilities or services;
- (7) we do not guarantee that any file or program available for download and/or execution from or via the Services is free from viruses or other conditions which could damage or interfere with Data, hardware or software with which it might be used;
- (8) any collation, conversion and analysis of Data performed as part of the Services (whether by the Services or otherwise) is likely to be subject to human input and machine errors, omissions, delays and losses, including any loss of Data; we are not liable for any such errors, omissions, delays or losses; and you are responsible for adopting reasonable measures to limit the impact of such omissions, delays losses and errors;
- (9) we are not responsible for any corruption or loss of any Data if such corruption or loss is due to an act or omission by you, your personnel, your related bodies corporate or any authorised users;
- (10) we are not responsible for the integrity or existence of any Data on the computing environment, network or any device controlled by you or your personnel; and
- (11) we may pursue any available equitable or other remedy against you if you breach any provision of these Terms.

(e) This clause 13 will survive termination of the Account.

## 14 Termination

- (a) You may only terminate your Account by using the Account removal functionality on the Platform, creating the appropriate support ticket within the help desk section of the Site, or by emailing our support staff. No refunds will be given upon termination in accordance with this clause 14(a).
- (b) We will contact you before the end of your Plan period to confirm renewal of license unless you terminate your Account in accordance with clause 14(a).

## 15 General

- (a) **Subcontracting:** We may engage subcontractors to perform the Services on our behalf.
- (b) **Force Majeure:** If a party (**Affected Party**) is unable to perform any of its obligations under these Terms due to an event or circumstance beyond its reasonable control (**Force Majeure**) and it gives the other party prompt written notice of such, the Affected Party's obligations shall be suspended to the extent necessary. The Affected Party must use reasonable efforts to limit the impact of the event on its performance and must continue to perform its obligations in full as soon as the Force Majeure ceases.
- (c) **Disputes:** Neither party may commence court proceedings relating to any dispute arising from, or in connection with, these Terms without first meeting with a senior representative of the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).
- (d) **Notices:** Any notice given under these Terms must be in writing and addressed to us at the details set out below or to you at the details provided when setting up your Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of email.
- (e) **Waiver:** Any failure or delay by a party in exercising a power or right (either wholly or partly) in relation to these Terms does not operate as a waiver or prevent a party from exercising that power or right or any other power or right. A waiver must be in writing.
- (f) **Relationship of parties:** These Terms are not intended to create a partnership, joint venture or agency relationship between the parties.

- (g) **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions.
- (h) **Assignment:** You must not assign any rights or obligations under these Terms, whether in whole or in part, without our prior written consent.
- (i) **Entire agreement:** These Terms contain the entire understanding and agreement between you and us in respect of their subject matter.
- (j) **Amendment:** You agree that we may, at any time and at our sole discretion, vary these Terms by publishing varied terms on the Site. Such variation will take effect at the commencement of your next Plan billing cycle and you agree to be bound by them. Prior to the commencement of each Plan billing cycle, we recommend you carefully read the terms that are in effect at that time to ensure you understand them.
- (k) **Governing law:** These Terms are governed by the laws of New South Wales, Australia. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in New South Wales, Australia and any courts entitled to hear appeals from those courts and waive any rights to object to proceedings being brought in those courts. The Services may be accessed in Australia and overseas. We make no representation that the Services complies with the laws (including intellectual property laws) of any country outside of Australia. If you access the Services from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place you access the Services.

**For any questions, please contact us at:**

Giraffe Technology Pty Ltd ACN 627 711 979

Email: [info@giraffe.build](mailto:info@giraffe.build)

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