



## Terms and Conditions

JAN22

# Terms and Conditions ('Conditions')

## 1. Application

- 1.1 These Conditions apply to:
  - 1.1.1 the use of the Platform by the Customer;
  - 1.1.2 the use of the Platform by each Authorised Person; and
  - 1.1.3 all Products and Deliverables supplied by SHA to the Customer or an Authorised Person through the Platform.
- 1.2 By accessing the Platform, the Customer and each Authorised Person agrees to be bound by these Conditions. If the Customer or any Authorised Person does not agree to be bound by these Conditions, they must not access the Platform and must not use the Products.
- 1.3 No other terms and conditions or other documents are relevant unless expressly acknowledged or referred to in, or attached to, these Conditions.
- 1.4 If any special conditions are specified in any attachment to these Conditions or in a Product Schedule, they form part of these Conditions and prevail over the balance of these Conditions to the extent of any inconsistency.

## 2. Licence to use the Platform

- 2.1 SHA grants to the Customer and each of their Authorised Persons a limited, non-exclusive, non-transferable and non-sublicensable right to access and use the Platform:
  - 2.1.1 for the Permitted Use;
  - 2.1.2 for the Licence Period; and
  - 2.1.3 on the terms set out in these Conditions.
- 2.2 SHA may revoke the licence granted in **clause 2.1** at any time at its sole discretion.

## 3. Access to the Platform

- 3.1 The Customer and each Authorised Person must create a User Account in order to access the Platform.
- 3.2 Only the Customer is permitted to access and utilise the Platform through the Customer's User Account.
- 3.3 Only the particular Authorised Person is permitted to access and utilise the Platform through that Authorised Person's User Account.
- 3.4 The Customer and each Authorised Person must:
  - 3.4.1 keep the Access Details confidential and ensure that the Access Details are not disclosed to, or used by, any other person; and

- 3.4.2 promptly notify SHA if it becomes aware, or has reason to suspect, that any of the Access Details have been disclosed to, or used by, any other person.

## 4. Payment

- 4.1 The Customer must pay the prices specified in the Platform for the Subscription Services and any other products or deliverables to be supplied by SHA over the Platform.
- 4.2 Unless otherwise agreed to by SHA in writing, payment must be paid at the time of subscribing to the Subscription Service (or in the case of ordering products or deliverables, the time of such order).
- 4.3 If the Customer fails to renew its subscription to the Subscription Service within the specified timeframe in the Platform, the Subscription Service will be cancelled, access to the Platform for the Customer and each of its Authorised Persons may be terminated and the Customer must pay for any Products on a pay per use basis.
- 4.4 Payment must be made via the Platform or, if agreed in writing by SHA, by direct debit.
- 4.5 If the Customer completes a Direct Debit Request, the Customer consents to SHA charging any amounts specified in the Platform in accordance with the Direct Debit Request.
- 4.6 The Customer agrees that it is not entitled to a refund of the price of the Product or Subscription Service for any reason after the purchase of the Product or payment for the Subscription Service.

## 5. Permitted Use

- 5.1 When using the Product and the Platform, the Customer and each Authorised Person must:
  - 5.1.1 comply with these Conditions at all times;
  - 5.1.2 use the Product and Platform solely for the purpose for which it is intended, and in accordance with all laws;
  - 5.1.3 only use the Product and Platform for personal use or for internal purposes within the Customer's business (and not for resale or the benefit of anyone outside of the Customer's business); and
  - 5.1.4 only use the Product and Platform within the Territory.
- 5.2 The Customer and each Authorised Person undertakes, represents and warrants to SHA that it will not:
  - 5.2.1 use the Product, Platform or Data for any other purpose other than as

- listed in **clause 5.1** of these Conditions;
- 5.2.2 distribute the Product or Data to third parties without SHA's prior written consent;
- 5.2.3 use any list of addresses compiled from the Product (or other information contained in the Product) to facilitate the provision by any person of advertising matter or any other information to, or otherwise to facilitate any person contacting any other person, and whether for marketing purposes or for any other purpose, commercial or otherwise;
- 5.2.4 use the Product or the Platform for any unlawful purpose or in any way that violates the rights of SHA or any licensor or otherwise brings any of them into disrepute;
- 5.2.5 modify the Product, Platform or Data in any way;
- 5.2.6 reverse assemble, reverse engineer or reverse compile the Product, Platform, Data or any part of the Product;
- 5.2.7 infringe any intellectual property rights of SHA or any other person (including with respect to the Product, Platform or the Data); or
- 5.2.8 unless otherwise agreed with u
- 5.2.9 s in writing, purchase the Product for a third party.
6. **Title and Risk**
- 6.1 Risk in the Products passes to the Customer when the Products are made available to the Customer or any of their Authorised Persons via the Platform.
- 6.2 Subject to the licence set out in **clause 2.1**, no title in the Product, Platform, Deliverables or Data passes from SHA to the Customer or any Authorised Person.
7. **Intellectual Property Rights**
- 7.1 SHA grants the Customer a non-exclusive, non-transferable, non-sub-licensable limited license to use the Product in accordance with these Conditions.
- 7.2 SHA owns all of the Developed IP and grants the Customer a non-exclusive, royalty free, non-transferrable, non-sublicensable limited licence to use the Developed IP contained in a Deliverable made available to the Customer or an Authorised Person over the Platform ('**Developed IP Licence**').
- 7.3 The Customer may, in accordance with the Developed IP Licence, only use the Developed IP for its personal use or for internal purposes
- 7.4 All Intellectual Property Rights in relation to the Product, Platform and Data belongs to SHA or its licensors. You do not obtain an interest in any intellectual property rights of SHA or its licensors in connection with or relating to the Product or Data, save for the limited licenses in **clauses 7.1 and 7.2**.
- 7.5 All information, data (including the Data) and content in the Product, Deliverables and the Platform, without limitation, is protected by Australian and international copyright and other intellectual property laws. The Customer and each Authorised Person undertakes, represents and warrants to SHA (for SHA itself and on behalf of SHA's licensors) not to engage in any conduct or do anything which interferes with or breaches those laws or the intellectual property rights in the Product, Platform, Deliverables or Data.
- 7.6 The Customer retains all Intellectual Property Rights in the Customer Data. The Customer grants to SHA a non-exclusive, royalty free licence to use the Customer Data on the Platform for any purpose. Without limitation, this includes adapting Customer Data and assigning or sub-licensing its rights in relation to Customer Data under this clause.
- 7.7 Aggregated Data belongs to SHA and SHA has the right to retain, use, reproduce and adapt the Aggregated Data for any purpose.
- 7.8 In respect of the Customer Data, the Customer undertakes, represents and warrants to SHA that it owns all Intellectual Property Rights in the Customer Data and the Customer indemnifies SHA (to the greatest extent permitted at law) from all loss or damage that SHA suffers or incurs as a result of or in connection with SHA's use of the Customer Data in accordance with these Conditions.
8. **Variation**
- 8.1 SHA may make changes to these Conditions from time to time to accommodate changes in law or business practice. If SHA makes changes, it will notify the Customer and each Authorised Person in writing before the changes take effect.
- 8.2 The continued use of the Platform by the Customer or any Authorised Person or any acceptance of further goods and services and/or payment for goods and/or services after the date of notification of the change is deemed acceptance of those changes by or on behalf of the Customer.
- 8.3 If the Customer does not want to accept the changes, the Customer is entitled to terminate any ongoing licence affected by the change by written notice to SHA within 30 days after receiving notice of the relevant changes.

8.4 The Customer cannot make changes to the Conditions without written agreement signed by both SHA and the Customer.

## 9. Disclaimers

By acquiring the Product or accessing the Platform, the Customer and each Authorised Person acknowledges and agrees to the following disclaimers, each of which limits any liability that SHA may otherwise owe the Customer or any Authorised Person (whether in contract, tort or otherwise):

9.1 SHA does not warrant:

- 9.1.1 the accuracy or completeness of the information in the Product;
- 9.1.2 that the Data is up to date;
- 9.1.3 that the use of the Data will not infringe on any third-party rights, noting that the Data comes from a number of third-party data providers and the third-party data providers are responsible for their datasets.

9.2 The information (as it is contained in the Product) is based on data supplied by the third-party data providers and is published by permission. SHA does not accept any responsibility for the accuracy, completeness or suitability for any purpose of the published information or the underlying data.

9.3 The information in the Product is general in nature, and does not constitute advice.

9.4 The information in the Product is provided for general information purposes only and is a summary based on selective information which may not be complete for your particular purposes. SHA has not, and has no obligation to, take into account any of the particular circumstances or goals of the Customer or any Authorised Person.

9.5 As the Product does not take into account the particular circumstances or goals of the Customer or any Authorised Person, the Customer and each Authorised Person undertakes, represents and warrants to SHA that it will:

- 9.5.1 seek advice specific to their circumstances from professional advisers before acting on any information in the Product;
- 9.5.2 consider whether it is appropriate for their circumstances; and
- 9.5.3 independently check the suitability of the Product, including by obtaining advice from appropriately qualified professional advisers.

9.6 The Product is of a general nature and does not constitute financial, tax or legal advice in any form. The Customer and each Authorised Person undertakes, represents and warrants that it will seek independent financial, tax and legal advice

before making any decision in relation to use of the Data.

9.7 The Customer and each Authorised Person elects to use the Product at its own sole risk and releases and indemnifies SHA (to the greatest extent permitted at law) from all loss or damage that the Customer or any Authorised Person suffers or incurs as a result of or in connection with the Customer's or any Authorised Person's use of the Product.

9.8 The information comprised in the Data that forms the Product may change without notice and SHA is under no obligation to notify the Customer or any Authorised Person of any change or to provide any update to the Product.

9.9 To the extent that the Competition and Consumer Act 2010 (Cth) implies any warranties under these Conditions that cannot be excluded, SHA's liability in respect of those implied warranties is limited to:

9.9.1 the replacement of the Product, Deliverables or the service provided in connection with the Product or Deliverables (as the case may be); or

9.9.2 the payment of the cost of replacing the Product, Deliverables or the service provided in connection with the Product or Deliverables (as the case may be) or acquiring an equivalent product.

## 10. Limitation of Liability and Indemnity

10.1 The Customer and each Authorised Person agrees that SHA will not be responsible for any loss or damage arising directly or indirectly from or in relation to the accuracy of the Data or information contained in the Product or the Customer's or any Authorised Person's reliance on the Product.

10.2 No Customer or Authorised Person may bring, and the Customer and each Authorised Person releases SHA, SHA's directors, officers, employees and agents ('our Personnel') from any claim against SHA or our Personnel.

10.3 The Customer and each Authorised Person jointly and severally indemnifies SHA and our Personnel for any demands, claims, actions, damages, costs (including legal costs on a solicitor and own client basis), losses (including consequential loss), expenses or other amounts SHA or our Personnel suffer or incur as a result of or in connection with:

10.3.1 the acts or omissions of the Customer and each of its Authorised Persons (including but not limited to their failure to comply with these Conditions);

10.3.2 any claim or proceedings brought by a third party against SHA or our Personnel in connection with the use

- of the Product or Platform by the Customer or any of its Authorised Persons;
- 10.3.3 any person's use or reliance on the Data;
- 10.3.4 any infringement of our intellectual property rights;
- 10.3.5 any wilful, unlawful or negligent act or omission of the Customer or any of its Authorised Persons;

except to the extent that such loss, damage or injury was directly caused by SHA.

- 10.4 To the maximum extent permitted by law, SHA does not accept liability for any loss or damage whatsoever which may directly or indirectly result from any advice, opinion, information, representation or omissions, whether negligent or otherwise, contained in a Product.
- 10.5 To the extent that any disclaimer or exclusion in these Conditions is prohibited by law, the maximum liability of SHA to the Customer or any Authorised Person in relation to the their use of the Product is limited to the amount the Customer paid to purchase the Product. No Authorised Person may recover from the same circumstances in respect of which SHA has satisfied any liability to the Customer and the Customer may not recover from the same circumstances in respect of which SHA has satisfied any liability to an Authorised Person of the Customer.

## 11. Privacy

- 11.1 To the extent that SHA has obligations under the *Privacy Act 1989* (Cth) (**'Privacy Act'**), it remains fully responsible for those obligations and ensuring that the Products and Platform will comply with those obligations and its obligations under the Privacy Policy.
- 11.2 The Customer and each Authorised Person agrees to comply with:
  - 11.2.1 any requirements imposed upon it under the Privacy Act; and
  - 11.2.2 the Privacy Policy.

## 12. Confidentiality

Each party agrees in favour of the other party that all Confidential Information provided to it or which it becomes aware under these Conditions:

- 12.1 will be kept strictly confidential;
- 12.2 will not without the other party's consent be disclosed or divulged to any third party, reproduced or used for any purpose or enterprise
- 12.3 will be safely and securely stored when not in use; and
- 12.4 will remain the absolute and exclusive property of the disclosing party.

## 13. Force Majeure

SHA will not be liable for any Liability caused by SHA's failure to supply Products or access to the Platform as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, war or any other matter beyond SHA's reasonable control.

## 14. GST

Unless otherwise stated, all fees stated on the Platform are inclusive of GST and the Customer is responsible for payment of any GST liability in respect of the provision of the Products, which amount will be payable to SHA at the same time as the GST exclusive consideration subject to the provision by SHA of a GST invoice to the Customer.

## 15. General

- 15.1 The Laws in South Australia govern these Conditions. Each party submits to the non-exclusive jurisdiction of the courts of South Australia and the Federal Court of Australia (Adelaide Registry) and irrevocably waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.
- 15.2 Any provision of these Conditions must be read down to any extent necessary to be valid. If that is not possible, it must be severed. All other provisions of these Conditions are unaffected.
- 15.3 A provision of these Conditions must not be construed to the disadvantage of a party because that party was responsible for including that provision and/or that provision benefits that party.

## 16. Definitions

In these Conditions:

- 16.1 **'Access Details'** means the user name, password or other authentication credentials for the User Account adopted by the Customer or an Authorised Person;
- 16.2 **'Advanced Report'** means a more comprehensive detailed report for a particular product
- 16.3 **'Aggregated Data'** means all aggregated technical or other data that SHA creates or obtains from any data that it can access on or through the Platform, including with regard to the use of the Platform by customers or any Authorised Person, but excluding any personally identifiable Customer Data;
- 16.4 **'Basic Report'** means a shorter summarised report for a particular product
- 16.5 **'Authorised Person'** means the individuals nominated by the Customer that are authorised and registered by SHA to access and use Platform pursuant to the Customer's Subscription Service;
- 16.6 **'Conditions'** means these terms and conditions;
- 16.7 **'Confidential Information'** means any information coming to a party by virtue of being a party to

these Conditions (including specification and any charges for Products), except so far as:

- 16.7.1 it is contained in a Deliverable used strictly in accordance with these Conditions;
- 16.7.2 it is in the public domain other than as a result of a breach by the party;
- 16.8 **'Customer'** means the individual or entity that subscribes to the Subscription Service or purchases the Products;
- 16.9 **'Customer Data'** means the data that the Customer or any of its Authorised Persons submits, posts, displays or uploads to the Platform (but does not include Aggregated Data);
- 16.10 **'Data'** means data provided by third parties and external sources to generate the Product (including the Customer Data and Aggregated Data used on the Platform);
- 16.11 **'Deliverable'** means the deliverables to be provided to the Customer through the Platform, including any reports;
- 16.12 **'Developed IP'** means the Intellectual Property developed in the creation of the Deliverables;
- 16.13 **'Developed IP Licence'** means the licence to use the Developed IP as specified in **clause 7.2**;
- 16.14 **'Direct Debit Request'** means a form whereby the Customer authorises SHA to direct debit any fees payable to access the Platform, any Products or Subscription Services;
- 16.15 **'Domain'** means any of the website locations maintained by SHA from time to time and including:
- 16.15.1 farmmap4d.com.au in respect of FarmMap4D;
- 16.15.2 mypropertyscope.com.au in respect of PropertyScope;
- 16.16 **'FarmMap4D'** means the SHA product available through the domain specified at **clause 16.15.1**;
- 16.17 **'GST'** means the goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related legislation;
- 16.18 **'Intellectual Property'** and **'Intellectual Property Rights'** include property and rights in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, designs, inventions (including patents), semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights (including renewals and extensions);
- 16.19 **'Liability'** means liabilities, losses, damages, actions, causes of action, arbitrations, claims, orders, judgments, outgoings, costs (including legal costs calculated on a solicitor and own client basis) and expenses, whether present or future, actual or contingent;
- 16.20 **'Licence Fee'** means all fees set by SHA for access to the Platform based on the Subscription Service;
- 16.21 **'Licence Period'** means the period for which the Licence Fee has been paid by the Customer;
- 16.22 **'Lite Subscription'** means the lite subscription service for a particular Product, as set out in the Platform;
- 16.23 **'Permitted Use'** means the permitted use of the Product and Platform as specified in **clause 5**;
- 16.24 **'Platform'** means the Spatial Hub platform made available to the Customer and Authorised Persons pursuant to these Conditions at any of the Domains;
- 16.25 **'Premium Subscription'** means the premium subscription service for a particular Product, as set out in the Platform;
- 16.26 **'Privacy Policy'** means the privacy policy of SHA located at <https://spatialhub4d.com/wp-content/uploads/2022/02/SHA-Privacy-Policy.pdf>;
- 16.27 **'Product Schedule'** means the Product Schedule provided by SHA to the Customer, or attached to these Conditions, and pertaining to any Product or Subscription Service;
- 16.28 **'Products'** means goods and/or Services for which the Customer has subscribed to be provided by SHA through the Platform, including but not limited to FramMap4D and PropertyScope;
- 16.29 **'SHA'** means Spatial Hub Analytics Pty Ltd ACN 619 055 698 and includes its officers, employees, agents and sub-contractors;
- 16.30 **'Standard Subscription'** means the standard subscription service for a particular Product, as set out in the Platform;
- 16.31 **'Subscription Service'** means the Lite Subscription and/or the Standard Subscription and/or the Premium Subscription (as the case may be);
- 16.32 **'Territory'** means Australia; and
- 16.33 **'User Account'** means a user account created on the Platform by the Customer or Authorised Person.