



APLAS PTY LTD ABN 17 625 144 461

# TERMS OF SERVICE

## V1.1 – December 2020

## INTRODUCTION

Aplas is a SaaS platform that simplifies complex software environments to enable businesses to better understand and make decisions with software.

Use of Aplas is subject to these Terms of Service.

## 1 DEFINITIONS

The following terms are used throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australian Business Number.
- (b) **Account** means a registered account with Aplas.
- (c) **Additional Features** means any advanced features for an Account as updated and made available by the Company from time-to-time.
- (d) **Administrator** means any User authorized to administer Aplas on behalf of the Customer.
- (e) **Agreement** means the agreement formed between the Users and the Company under, and on the terms of, these Terms of Service.
- (f) **API** means Application Programming Interface.
- (g) **Author User** means any User authorized to create and edit indexes, maps, styles, and publications for an Account.
- (h) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Australia.
- (i) **Company** means Aplas Pty Ltd ABN 17 625 144 461.
- (j) **Commercial Terms** means any additional terms agreed between the Company and the Customer with respect to the Customer's license of Aplas, including Fees, and (where relevant) includes any proposal or order form accepted in writing by the Customer and agreed by the Company.
- (k) **Confidential Information** means any written or verbal information that:
  - i Any information deemed as confidential under these Terms of Service;
  - ii A party informs the other party that it considers it confidential and/or proprietary;
  - iii A party would reasonably consider to be confidential in the circumstances; and
  - iv Is personal information within the meaning of the Privacy Act and GDPR.but does not include information that a party can establish:
  - v Was in the public domain at the time it was given to that party;
  - vi Became part of the public domain, without that party's involvement in any way, after being given to the party;

- vii Was in party's possession when it was given to the party, without having been acquired (directly or indirectly) from the disclosing party; or
- viii Was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.
- (l) **Customer** means the entity that Aplas is licensed to under these Terms of Service (which if in doubt shall be the named Account holder).
- (m) **Customer Data** means all information, data, code, images, video files, audio files, documents and other such materials entered into Aplas by a User such as Software Data, but excluding derivative data (such as analytics).
- (n) **Fee** means any fee charged by the Company for access to and use of Aplas.
- (o) **Force Majeure** means an event or cause beyond the reasonable control of the party claiming force majeure and includes each of the following:
  - i Act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
  - ii Act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
  - iii The effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
  - iv Embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.
- (p) **GDPR** means the EU General Data Protection Regulation 2016/679.
- (q) **Aplas** means the "Aplas" SaaS software mapping platform provided by the Company and found at the Site.
- (r) **Implementation Fee** means the Fee charged by the Company for the Implementation Services as agreed in the Commercial Terms.
- (s) **Implementation Services** means any services provided by the Company to the Customer to assist with the use of Aplas as agreed in the Commercial Terms.
- (t) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;
- (u) **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.
- (v) **Moral Rights** means:
  - i Moral rights pursuant to the *Copyright Act 1968* (Cth);

- ii Or any rights analogous to the rights set out in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works* 1886 (as amended from time to time).
- (w) **Privacy Policy** means the Company's privacy policy as updated from time-to-time, which can be found at <http://www.aplas.com>.
- (x) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (y) **Report** means any management and/or financial report generated via Aplas, including Software Maps.
- (z) **Site** means the Company's website found at <https://aplas.com>.
- (aa) **Software Data** means any information and data with respect to the Customer's software systems input into Aplas.
- (bb) **Software Maps** means a visual landscape generated via Aplas that maps out the User's software environment.
- (cc) **View User** means any User that is limited to viewing and interacting with published interfaces for an Account, and is not an Author User.
- (dd) **Third Party Service** means an online third-party service provider with whom a User holds an account.
- (ee) **User** means any Customer, Author User and View User, as the context implies.

## 2 AGREEMENT

- 2.1 The license granted under these Terms of Service shall be ongoing until terminated in accordance with the terms of these Terms of Service and/or Commercial Terms.
- 2.2 The User agrees:
  - (a) To use Aplas in accordance with the terms of these Terms of Service and the Commercial Terms; and
  - (b) If creating an Account, that it is authorized to establish, maintain and pay for the Account for the Customer.
- 2.3 The Customer agrees:
  - (a) To pay the Fees in accordance with the pricing agreed in the Commercial Terms as and when they fall due; and
  - (b) That it is responsible for the conduct of each Authorized User it authorizes, who each must agree to and comply with these Terms of Service.
- 2.4 Where there is a conflict between these terms, and any Commercial Terms, the Commercial Terms shall prevail.

## 3 USING APLAS

### 3.1 General

- (a) To access and use Aplas:
  - i The Customer's Account must be set up and registered; and
  - ii Each User must register with Aplas, either as a Customer or as a User, as the case may be.
- (b) To use Aplas, the User agrees to the terms of:
  - i These Terms of Service; and
  - ii The Privacy Policy.
- (c) The User must immediately cease to use Aplas if the User can no longer agree or adhere to clause (b).
- (d) The User agrees to use Aplas in accordance with any instructions provided by the Company, within Aplas and/or on the Site.
- (e) Aplas may permit or deny the User an Account with Aplas in its absolute discretion (although the User may generally obtain an account by registering via Aplas and accepting these Terms of Service).
- (f) The Company shall authorize one or more User to be an Administrator who shall be permitted to authorize Users to access Aplas.

### 3.2 Features

- (a) Subject to any limitations on View Users, Aplas shall enable the User to (without limitation):
  - i Build, customize and export Software Maps;
  - ii Catalogue, audit and manage software asset metadata;
  - iii Import Customer Data;
  - iv Generate, export and audit Reports;
  - v Integrate Third Party Services via the Company's APIs;
  - vi Access and deploy Additional Features;
  - vii Identify and track security risks and software downtime; and
  - viii Access and use any other features made available by the Company from time-to-time.

### 3.3 Reports

- (a) Aplas generates Reports based on Customer Data and the User is responsible for ensuring that all Customer Data that is entered into Aplas is complete and accurate. The Company shall have no liability in relation to the accuracy of Customer Data.
- (b) The Company shall not be liable for any Report that is inaccurate as a result of any incomplete or inaccurate Customer Data. The User must not rely on Reports prima facie without regard to other considerations and due diligence. The Company will not be liable

in any circumstances from any loss or injury suffered by the User as a result of decisions made on the basis of Reports.

- (c) The Company makes no representation that the Customer will achieve particular results from the use of Aplas.
- (d) The Company grants the User a limited, revocable, worldwide license to access and use Reports, via Aplas, for the duration, and on the terms, of this Agreement.

### **3.4 Third Party Services**

- (a) The User acknowledges that Aplas may require integration with one or more Third Party Services.
- (b) The User agrees and warrants they have authority to connect Aplas to any Third Party Services.
- (c) The User is wholly responsible for ensuring its own compliance with the terms of any Third Party Service in respect of any connection with Aplas.
- (d) The User agrees and acknowledges that the Company is not responsible or liable for any Customer Data introduced into Aplas from a Third Party Service.

## **4 CUSTOMER DATA**

- 4.1 The Company agrees to treat all Customer Data as Confidential Information under these Terms of Service, however the Customer agrees that the Company is not responsible for the maintaining the confidentiality of any Customer Data by Users.
- 4.2 The Company accepts no liability for the content of Customer Data.
- 4.3 Each User is responsible for the accuracy, quality and legality of any content uploaded by the User, and the User's acquisition of it, and the users that create, access and/or use Customer Data.
- 4.4 The Company shall not access, use, modify or otherwise deal with Customer Data except where required by compulsion of law or upon the User's authority (such as to provide support for Aplas).
- 4.5 The Company reserves the right to prevent the publication of any Customer Data in Aplas where the Company has formed the reasonable opinion that doing so would be a breach of any Intellectual Property Rights of a third party, or otherwise in breach these Terms of Service.
- 4.6 The Company has no liability to the Customer for any User that:
  - (a) Imports or exports any data to or from Aplas;
  - (b) Shares any information contained therein; and/or
  - (c) Accesses any Customer Data via Aplas.

## **5 PAYING FOR APLAS**

### **5.1 Fees**

- (a) Aplas is a paid service and fees apply to the Customer to access and use Aplas. Fees are as agreed between the Company and the Customer in the Commercial Terms.

- (b) The Company may also charge an Implementation Fee for any Implementation Services as agreed between the parties in the Commercial Terms.

## 5.2 Late Payment

- (a) If the Customer does not pay the full Fees as required, the Company may suspend the User's access to Aplas.
- (b) If Fees are not brought out of arrears within 28 days of becoming overdue, the Company may terminate the Customer's account in Aplas without further notice and terminate these Terms of Service on immediate written notice.
- (c) The Customer agrees that the Company shall not be responsible or liable in any way for:
  - i Interruptions to the availability of Aplas in the event of (a);
  - ii Loss of Customer Data in the event of (b).

## 5.3 Refunds

No refunds of Fees are offered other than as required by law.

## 6 GENERAL CONDITIONS

### 6.1 License

- (a) By accepting the terms and conditions of these Terms of Service, the User is granted a limited, non-exclusive, non-transferrable and revocable license to access and use Aplas for the duration of these Terms of Service, in accordance with the terms and conditions of these Terms of Service and any Commercial Terms.
- (b) The Company may issue the license to the Customer on the further terms or limitations (including the number of Users) as agreed in the Commercial Terms.
- (c) The Company may revoke or suspend the User's license(s) for breach of the terms in these Terms of Service by the User.

### 6.2 Modification of Terms

- (a) The terms of these Terms of Service may be updated by the Company from time-to-time.
- (b) Where the Company modifies the terms, it will provide the User with written notice, and the User will be required to accept the modified terms in order to continue using Aplas.

### 6.3 Software-as-a-Service

- (a) The User agrees and accepts that Aplas is:
  - i Hosted by the Company and shall only be accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
  - ii Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to Aplas is available to the User unless expressly agreed in writing.

- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Aplas.
- (c) The Company shall not exercise its rights under clause (b) in a manner that would fundamentally decrease the utility of Aplas to the User, other than in accordance with the terms of these Terms of Service.

#### 6.4 **Support**

- (a) The Company shall provide the support services in the manner published on the Site and/or notified in writing to the User from time-to-time.
- (b) The Company reserves the right to require the payment of reasonable fees for non-standard support requests prior to the provision of such support.

#### 6.5 **Use & Availability**

- (a) The User agrees that it shall only use Aplas for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.
- (b) The User is solely responsible for the security of its username and password for access to Aplas. The User shall notify the Company as soon as it becomes aware of any unauthorized access to its Account.
- (c) The User agrees that the Company shall provide access to Aplas to the best of its abilities, however:
  - i Access to Aplas may be prevented by issues outside of its control; and
  - ii The Company accepts no responsibility for ongoing access to Aplas.

#### 6.6 **Privacy**

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act and the GDPR with respect to personal information that it collects about the User and other individuals.
- (b) The Privacy Policy does not apply to how a User handles personal information. If necessary under the Privacy Act and/or the GDPR, it is the Customer's responsibility to meet the obligations of the Privacy Act and/or GDPR by implementing a privacy policy in accordance with law.
- (c) Aplas may use cookies (a small electronic file) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

#### 6.7 **Data**

- (a) **Security.** The Company takes the security of Aplas and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- (b) **Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.

- (c) **Storage.** Data that is stored by the Company shall be stored according to accepted industry standards and the Privacy Policy.
- (d) **Backup.** The Company shall perform backups of its entire systems in such manner, at such times and intervals as is reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific Customer Data from any period of time unless so stated in writing by the Company.

## 6.8 Intellectual Property

- (a) **Trade Marks.** The Company has moral, unregistered and registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Aplas.
- (c) **Aplas.** The User agrees and accepts that Aplas is the Intellectual Property of the Company and the User further warrants that by using Aplas the User will not:
  - i Copy Aplas or the services that it provides for the User's own commercial purposes; and
  - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Aplas or any documentation associated with it.
- (d) **Content.** All content (with the exception of Customer Data) remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, aggregations, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Aplas.
- (e) **Reservation.** Nothing in this Agreement shall grant the Customer, or any User, any right, title or interest in any of the Intellectual Property of the Company, including and especially Aplas.

## 6.9 Third Party Dependencies

The User agrees and acknowledges that Aplas has third party dependencies which may affect its availability, including (without limitation) internet service providers and hosting services, and that the Company has no means of controlling the availability of such dependencies and shall not be liable for any interruptions to such.

## 6.10 Confidentiality

- (a) The Company agrees to keep all Customer Data in the strictest confidence, and to the extent Customer Data is accessed and/or received by the Company it shall be deemed as Confidential Information for the purposes of these Terms of Service.
- (b) Each party acknowledges and agrees that:
  - i the Confidential Information is secret, confidential and valuable to the disclosing party (**Discloser**);

- ii it owes an obligation of confidence to the Discloser concerning the Confidential Information;
  - iii it must not disclose the Confidential Information to a third party except as permitted in these Terms of Service;
  - iv all Intellectual Property rights remain vested in the Discloser but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and
  - v any breach or threatened breach by the receiving party of an obligation under these Terms of Service may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.
- (c) A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
- i any actual, suspected, likely or threatened breach by it of any obligations it has in relation to the Confidential Information.
  - ii any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
  - iii any actual, suspected, likely or threatened theft, loss, damage, or unauthorized access, use or disclosure of or to any Confidential Information.
- (d) The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
- i any actual, suspected, likely or threatened breach of a term of these Terms of Service; or
  - ii any theft, loss, damage or unauthorized access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

#### 6.11 Liability & Indemnity

- (a) The User agrees that it uses Aplas at its own risk.
- (b) The User acknowledges that the Company is not responsible for the conduct or activities of any user and that the Company is not liable for such under any circumstances.
- (c) The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with Aplas, including any breach by the User of these Terms of Service.
- (d) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, personal injury, death, damage to property, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use Aplas, whether based on warranty, contract, tort, negligence, in equity

or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, loss, personal injury or death, or business interruption of any type, whether in tort, contract or otherwise.

- (e) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:
  - i The re-supply of services or payment of the cost of re-supply of services; or
  - ii The replacement or repair of goods or payment of the cost of replacement or repair.

#### 6.12 Termination

- (a) Unless agreed otherwise in the Commercial Terms, either party may terminate these Terms of Service by giving the other party no less than 1 months' written notice, and access to Aplas shall terminate at the end of the Customer's billing cycle active at the expiry of that notice period.
- (b) Termination of these Terms of Service is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of these Terms of Service up to the date of expiry or termination. Termination does not affect any of the rights accrued by a party prior to termination, and the rights and obligations under clauses 6.9, 6.13 and 6.14 survive termination of these Terms of Service.

#### 6.13 Force Majeure

- (a) If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:
  - i Specify the obligations and the extent to which it cannot perform those obligations;
  - ii Fully describe the event of Force Majeure;
  - iii Estimate the time during which the Force Majeure will continue; and
  - iv Specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- (b) Following a notice of Force Majeure in accordance with clause 6.1 and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money that is due and payable.
- (c) The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- (d) The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under this Agreement.

- (e) The term of this Agreement will not be extended by the period of Force Majeure.

#### 6.14 **Dispute Resolution**

- (a) If any dispute arises between the parties in connection with these Terms of Service (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
  - i Includes or is accompanied by full and detailed particulars of the Dispute; and
  - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- (b) Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) parties must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

#### 6.15 **Electronic Communication, Amendment & Assignment**

- (a) The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- (b) The User can direct notices, enquiries, complaints and so forth to the Company as set out in these Terms of Service. The Company will notify the User of a change of details from time-to-time.
- (c) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
- (d) A consent notice or communication under these Terms of Service is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- (e) Notices must be sent to the parties' most recent known contact details.
- (f) The User may not assign or otherwise create an interest in these Terms of Service.
- (g) The Company may assign or otherwise create an interest in its rights under these Terms of Service by giving written notice to the User.

#### 6.16 **General**

- (a) **Special Conditions.** The parties may agree to any Special Conditions to these Terms of Service in writing.
- (b) **Prevalence.** To the extent these Terms of Service is in conflict with, or inconsistent with, the terms of any other agreement between the Company and the User, any Commercial

Terms, or any special conditions made under these Terms of Service, as relevant, the terms of those other agreements or special conditions shall prevail.

- (c) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in these Terms of Service.
- (d) **Relationship.** The relationship of the parties to these Terms of Service does not form a joint venture or partnership.
- (e) **Waiver.** No clause of these Terms of Service will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (f) **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to these Terms of Service and the transaction facilitated by it.
- (g) **Governing Law.** These Terms of Service are governed by the laws of Victoria, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- (h) **Severability.** Any clause of these Terms of Service, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of these Terms of Service.
- (i) **Interpretation.** The following rules apply unless the context requires otherwise:
  - i Headings are only for convenience and do not affect interpretation.
  - ii The singular includes the plural and the opposite also applies.
  - iii If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - iv A reference to a clause refers to clauses in these Terms of Service.
  - v A reference to legislation is to that legislation as amended, reenacted or replaced, and includes any subordinate legislation issued under it.
  - vi Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
  - vii A reference to a party to these Terms of Service or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
  - viii A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - ix A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

**END TERMS OF SERVICE**