

## **END USER LICENCE AGREEMENT**

**THIS AGREEMENT** is between Areograph and You, the end user of Areoscan.

### **BACKGROUND**

- A** Areoscan is a product of Areograph Limited.
- B** By entering into this agreement you will be granted a limited licence to use Areoscan in accordance with the terms of this Agreement.

### **AGREEMENT**

#### **1 DEFINITIONS**

- 1.1 The following terms and expressions shall have the following meanings:

**Affiliate:** any corporation, company or other entity that directly or indirectly controls, is controlled by, or is under common control with, Areograph. For the purpose of this definition, the word "control" shall mean the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock of the corporation, company, or other entity.

**Areograph:** refers to the registered company Areograph Limited established under the laws of New Zealand with its registered office at Unit 2, Level One, 90 Crawford Street, Dunedin, New Zealand.

**Areograph's Promotional Materials:** any and all trademarks, names, signs, logos, banners, and any other materials, in whatever form, owned and/or used by Areograph for the promotion of its company, its products and activities, other than the Areograph's Online Material.

**Areograph's Staff:** the officers, directors, employees and agents of Areograph or its Affiliates, or any other persons hired by Areograph or its Affiliates.

**Areograph's Website:** any and all elements, contents and the 'look and feel' of the website available under the URL, [www.areoscan.com](http://www.areoscan.com), and any other URLs from which website Areoscan can be downloaded.

**Areoscan:** an online tool that allows users to upload a series of photos to create a three dimensional Point Cloud image.

**Content:** means any and all content consisting of text, sounds, pictures, photos, video and/or any type of information or communications.

**Documentation:** any online or otherwise enclosed documentation provided by Areograph.

**Intellectual Property Rights:** means:

- (i) patents, pending patent applications, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, know-how, trade secrets and confidential information;
- (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and
- (iii) applications, extensions and renewals in relation to any such rights.

Password: a code created by You, which, in combination with the User Name, gives You access to the User Account.

Point Cloud: a set of vertices in a three-dimensional coordinate system.

User Account: the account that Areograph creates for You to use Areoscan.

User Name: a name created by You, which in combination with the Password, gives You access to the User Account.

You: You, the end user of Areoscan, also used in the form “Your” where applicable.

- 1.2 References to the singular include the plural and vice versa, and references to one gender include the other gender.
- 1.3 Any phrase introduced by the expressions “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2 GENERAL**

- 2.1 This agreement, and any new versions between Areograph and You, covers all Your use of Areoscan from any terminals where Areoscan has been installed, by You or by third parties.
- 2.2 You can accept this agreement by clicking on the ACCEPT button. You acknowledge and agree that by clicking on the ACCEPT button you are entering into a legally binding contract. You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature.

## **3 LICENCE AND RESTRICTIONS**

- 3.1 Subject to the terms of this agreement, Areograph hereby grants You a limited, personal, non-exclusive, non-sub licensable and non-assignable license to download, install and use Areoscan on Your computers, phones or PDAs.
- 3.2 You will not sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to Areoscan or any part thereof.

- 3.3 You will not undertake, cause, permit or authorise the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of Areoscan or any part thereof.
- 3.4 Areoscan may not be incorporated into software and other technology owned and controlled by third parties.
- 3.5 Any and all Intellectual Property Rights in Areoscan, Areograph's Website, Areograph's Online Material and Areograph's Promotional Materials are and shall remain the exclusive property of Areograph and/or its licensees. Nothing in this agreement intends to transfer any such Intellectual Property Rights to, or to vest any such Intellectual Property Rights in, You. You are only entitled to the limited use of the Intellectual Property Rights granted to You under this agreement. You will not take any action to jeopardise, limit or interfere with Areograph's Intellectual Property Rights. Any unauthorised use of Areograph's Intellectual Property Rights is a violation of this agreement as well as a violation of intellectual property laws and treaties, including without limitation copyright laws and trademark laws. All title and Intellectual Property Rights in and to any third party content that is not contained in Areoscan, but may be accessed through use of Areoscan, is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties.
- 3.6 You agree that You will not remove, obscure, make illegible or alter any notices or indications of the Intellectual Property Rights and/or Areograph's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to any materials.
- 3.7 If You are interested in using Areoscan for a purpose which is not permitted under this agreement You will have to obtain Areograph's prior written consent.

#### **4 CONTENT**

- 4.1 You acknowledge and agree that You are solely responsible for any Content that You upload, submit, post, transmit or display through Areoscan and/or Areograph's Website ("Use") and that Areograph is not responsible to You or any third party for any Content that is Used by You or any other Areoscan user.
- 4.2 You agree that You shall not Use any Content that is subject to any third party Intellectual Property Rights, unless You have a licence or specific permission from the owner to Use such third party content.
- 4.3 Areograph Staff may be required to subject any Content You Use to a quality assurance process in order to facilitate Your Use of Areoscan. This shall not detract from Your obligations under this agreement in any way. In particular You acknowledge that notwithstanding such quality assurance process Areograph is not responsible to You or any third party for any Content that is Used by You.

- 4.4 Areograph reserves the right (but shall have no obligation) to decide whether any Content that You Use complies with this agreement. Areograph may in its sole discretion remove such Content and/or terminate this agreement and Your User Account if You Use any Content that is in breach of this agreement at any time and without prior notice to You.

## **5 UPGRADES**

- 5.1 Areograph, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to Areoscan. Areograph has no obligation to make available to You any subsequent versions of Areoscan. You may have to enter into a renewed version of this agreement, in the event You want to download, install or use a new version of Areoscan.

## **6 LAWFUL PURPOSES**

- 6.1 You shall use Areoscan solely for lawful purposes. In this respect the You may not, without limitation:

- (a) intercept or monitor, damage or modify any communication which is not intended for You;
- (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble Areoscan;
- (c) expose any third party to material which is offensive, harmful to minors, indecent or otherwise objectionable in any way;
- (d) use Areoscan to cause or intend to cause embarrassment or distress to, or to threaten, harass or invade the privacy of, any third party; or
- (e) use (including as part of your user name) any material or content that is subject to any third party proprietary rights, unless You have a licence or permission from the owner of such rights.

## **7 DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- 7.1 Areoscan is provided “as is” with no warranties whatsoever. Areograph does not, either expressed, implied or statutory, make any warranties, claims or representations with respect to Areoscan, including, without limitation, warranties or conditions of quality, performance, non-infringement, merchantability, or fitness for use for a particular purpose.
- 7.2 Areograph does not represent or warrant that Areoscan will always be available, accessible, uninterrupted, timely, secure, accurate, complete and error-free.
- 7.3 You acknowledge and agree that the entire risk arising out of Your use of Areoscan remains with You to the maximum extent permitted by law.
- 7.4 You acknowledge and agree that Areograph, its Affiliates and staff will have no liability in connection with or arising from Your use of Areoscan. Your

only right or remedy with respect to any problems or dissatisfaction with Areoscan is to immediately uninstall and cease use of Areoscan.

7.5 In no event will Areograph, its Affiliates or staff be liable, whether in contract, warranty, tort (including negligence), product liability or any other form of liability, for:

(a) any indirect, incidental, special or consequential damages (including without limitation any loss of or corruption to data, interruption, computer failure or pecuniary loss) arising out of the use or inability to use Areoscan;

(b) any loss of income, business or profits (whether direct or indirect) arising out of the use or inability to use Areoscan; or

(c) any loss or damage which may be incurred by You as a result of any disruptions or delays in any communication when using Areoscan, the suspension or termination of this agreement by either party for any reason or the release or the decision not to release new versions of Areoscan to You.

7.6 The limitations on Areograph's liability to You above shall apply whether or not Areograph, its Affiliates or staff have been advised of the possibility of such losses or damages arising.

7.7 In the event that the exclusions or limitations set out above are not enforceable Areograph's liability will be limited to the maximum extent possible.

## **8 YOUR WARRANTY AND INDEMNITY**

8.1 You represent and warrant that You will meet Your obligations under any and all laws, regulations and policies that may apply to the use of Areoscan and/or Areograph's Website.

8.2 You agree to indemnify, defend and hold Areograph and its Affiliates harmless from and against any and all liability and costs, including reasonable attorneys' fees incurred by Areograph, in connection with or arising out of Your:

(a) violation or breach of any term of this agreement or any applicable law or regulation, whether or not referenced herein;

(b) violation of any rights of any third parties; or

(c) use or misuse of Areoscan.

8.3 If Your use of Areoscan is dependent upon the use of a processor and bandwidth owned or controlled by a third party, You acknowledge and agree that Your licence to use Areoscan is subject to You obtaining consent from the relevant third party for such use. You represent and warrant that You have obtained such consent.

## **9 TERM AND TERMINATION**

9.1 This Agreement will remain effective until terminated in accordance with the provisions set out below.

- 9.2 Areograph may terminate this agreement with immediate effect at any time. Without limiting other remedies, Areograph may limit, suspend, or terminate this license and Your use of Areoscan, prohibit access to Areograph's Website(s) and delete Your User Account and/or User ID, with immediate effect, automatically and without recourse to the courts, if Areograph thinks that You are in breach of the terms of this agreement, creating problems, legal liabilities (actual or potential), infringing someone else's intellectual property rights, engaging in fraudulent, immoral or illegal activities, or for other similar reasons.
- 9.3 Areograph shall effect termination by providing notice the email address You have provided at the bottom of this agreement (if any), or by preventing Your access to Your User Account.
- 9.4 Upon termination of this agreement:
- (a) all licenses and rights to use Areoscan shall immediately terminate;
  - (b) You will immediately cease any and all use of Areoscan; and
  - (c) You will immediately remove Areoscan from all hard drives, networks and other storage media and destroy all copies of Areoscan in Your possession or under Your control.

## **10 MISCELLANEOUS**

- 10.1 Areoscan may be subject to international rules that govern the export of software. You shall comply with all applicable international and national laws that apply to Areoscan as well as end-user, end-use and destination restrictions issued by national governments.
- 10.2 The terms and conditions of this agreement will supersede and replace all prior understandings and agreements to the extent that such understandings and agreements are inconsistent with the terms of this agreement.
- 10.3 If any provision of this agreement, or any part of a provision, is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision (or part-provision) in question is not of a fundamental nature to this agreement as a whole, the legality, validity or enforceability of the remainder of the provisions of this agreement (including the remainder of the term which contains the relevant provision) shall not be affected.
- 10.4 The failure to exercise, or delay in exercising, a right, power or remedy provided by this agreement or by law shall not constitute a waiver of that right, power or remedy. If Areograph waives a breach of any provision of this agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.
- 10.5 You shall not assign this agreement or any rights hereunder. Areograph may at its sole discretion assign this agreement or any rights hereunder to any third party, without giving prior notice.

- 10.6 This agreement shall be governed by and interpreted in accordance with the laws of New Zealand and shall be subject to the jurisdiction of the courts of New Zealand.
- 10.7 Any provisions of this agreement which are expressed to survive or operate in the event of termination, shall survive termination of this agreement.