

BETA TEST VERSION

1. **CONTRACT**

These User Terms, when accepted, constituting a binding contract between Urpla Pty Ltd ACN 625 916 681 (**us, we** and **our**) and the person subscribing for the Service by accepting these User Terms (**you** and **your**).

2. **DURATION OF CONTRACT**

These User Terms apply for the period commencing on the date you accept these User Terms and ending on the earlier of:

- (a) the date that is 12 weeks later; and
- (b) the date when these User Terms are terminated in accordance with clause 14.

3. **CONSIDERATION**

You are not required to pay us any fees in respect of the Service. In consideration of you receiving the benefit of the Service free of charge, you agree to comply with all of your obligations in these Beta User Terms.

4. **PARTICIPATION CONDITIONS**

4.1 **Limited licence**

We grant you a non-exclusive, non-transferrable licence to access and use the Service for Beta Testing purposes. Without limitation, you acknowledge that subject to these Beta User Terms:

- (a) you are not authorised to use the Service in a commercial production environment except in accordance with these Beta User Terms; and
- (b) you are not to use the Service for the benefit of a third party except in accordance with these Beta User Terms.

4.2 **Limited commercial application**

You are permitted to use the Service on a limited commercial basis. This means that you may use the Service to prepare planning development applications (and for related and ancillary purposes) on behalf of your clients provided that such activities are within the ordinary course of your business. You must not use the Service on behalf of any other person and you must not demonstrate the capabilities of the Service to any person who is, or may be, a direct or indirect competitor of our business.

4.3 **Not a full licence**

These Beta User Terms do not authorise you to use the Software or the Service beyond the conclusion of the Beta Test Period. You acknowledge that you will be required to enter into separate user terms or such other contract as we require in the event that you wish to continue using the Software and the Service.

4.4 **Beta Test Reports**

- (a) During the Beta Test Period, you acknowledge that we are seeking proactive and timely feedback about your experience using the Software and the Service.
- (b) As a condition of participation during the Beta Test Period, you will provide us with Beta Test Reports at such times as we may be reasonably request.

4.5 **Supplementary feedback**

- (a) If reasonably requested by us, you will provide additional feedback, reporting or supplementary information following your submission of any Beta Test Report.

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(b) We will use our best efforts to ensure that we do not make any unreasonable request for Beta Test Reports or for any additional feedback, reporting or supplementary information.

(c) it would involve the contravention of any person's rights (including rights in respect of Intellectual Property);

(d) it does or is likely to breach any applicable laws; or

(e) it may otherwise be regarded by us, on reasonable grounds, to be unacceptable.

4.6 Meetings

If requested by us, you agree to meet with us, at a mutually convenient time and location, to discuss the outcome of the Beta Tests and such other issues that you have identified in the Beta Test Period.

4.10 Your access obligations

When accessing and using the Service, you must not and must not attempt to (and must not assist any person to):

4.7 Operating Environment

You acknowledge that you are responsible for providing and maintaining your Operating Environment at your own cost. We do not warrant or represent that the Service will be available, or fully functional, when used in your Operating Environment.

(a) Destabilise or damage the Software and/or the security or integrity of our IT infrastructure or networks or, where the Service as is hosted by a third party, that third party's IT infrastructure or network;

(b) replicate, copy, recreate or decompile any coding on which the Software or the Website is based;

4.8 Use of your feedback

You acknowledge that there is no restriction on the use that we may make of any information (except Confidential Information which must be treated in accordance with clause 8.4) obtained as a result of the Beta Tests, to the extent that such information may affect the future functionality, performance or features of the Service.

(c) use, or misuse, the Service in any way which is likely to adversely affect the functionality and useability of the Service;

(d) gain unauthorised access to any data that you are not permitted to access under these Beta User Terms; or

4.9 Unacceptable use

You must not use, or permit any of your directors, officers, employees or agents (**Your Personnel**) to use the Service in any way in which is unacceptable. Use is unacceptable if:

(a) it involves anything which is fraudulent, false, defamatory, harassing, obscene or indecent;

(b) it involves unsolicited electronic messages;

(e) transmit or input, using the Service, any data that may damage another person's IT infrastructure or software; or content that may be offensive; or material or data in violation of any law (including data or other material which is Intellectual Property not owned by, or licensed to, you).

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4.11 **Viruses etc.**

You must use your best efforts to prevent the transmission of any virus, trojan, worm, malware, spyware or any other form of malicious software or code from your Operating Environment to our IT infrastructure, networks or systems

(a) testing and further developing the Software and the Service; and

evaluating and improving the usability and functionality of the Software and the Service.

4.12 **Suspension**

In addition to our rights under clause 14, we may suspend your use of the Service in connection with any actual or threatened breach of clauses 4.9 and/or 4.10.

6.2 **Ownership of Data**

We acknowledge that, subject to clause 7, we acquire no ownership of or proprietary interest in the Data.

6.3 **Accuracy of Data**

You accept responsibility for the accuracy of the Data. Without limitation, we accept no responsibility for inaccurate or deficient output(s) resulting from the inaccurate Data.

5. **AVAILABILITY OF SERVICE**

5.1 **Anticipated service level**

We will use our reasonable commercial efforts to:

- (a) make the Service available to you; and
- (b) ensure that the you can access the Service at times during the Beta Test Period subject to scheduled maintenance or downtime which is notified by us to the User and unscheduled interruptions to the availability of the Service due to factors beyond our reasonable control.

6.4 **Access to Data**

We will use our reasonably commercial efforts to ensure that you have access at all reasonable times to Data that is in our possession or under our control.

5.2 **No guarantee of performance**

You acknowledge that we are offering only the Service for Beta Tests and that no outcome, results or level of performance are represented, warranted or guaranteed.

6.5 **Security**

We will implement and maintain such security procedures in relation to the Data as we consider reasonably appropriate in the context of the arrangements contemplated by these Beta User Terms. We have not made any specific commitments to you in relation to this matter.

6. **DATA**

6.1 **Collection**

You acknowledge and agree that we may collect, store and use the Data for the purposes of:

7. **PLANNING DATA**

In consideration of us making the Service available to you, you irrevocably and unconditionally assign and transfer all of your proprietary interests in the Planning Data to us and you acknowledge that the Planning Data will become our absolute property. This clause 7 survives the termination of these Beta User Terms.

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8. CONFIDENTIALITY

does not use it for any purpose other than as permitted under clause 8.2(a).

8.1 Use and disclosure of Confidential Information

A party (the **Recipient**) that acquires Confidential Information of another party (the **Discloser**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under these Beta User Terms; or
- (b) disclose any of the Confidential Information except in accordance with clauses 8.2 or 8.3.

8.2 Disclosures to personnel and advisers

- (a) The Recipient may disclose Confidential Information to a director, officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the Recipient to perform its obligations or to exercise its rights under these Beta User Terms; and
 - (ii) prior to disclosure, the Recipient informs the person of the Recipient's obligations in relation to the Confidential Information under these Beta User Terms and obtains an undertaking from the person to comply with those obligations.
- (b) The Recipient must ensure that any person to whom Confidential Information is disclosed under clause 8.2 (a) keeps the Confidential Information confidential and

8.3 Disclosures required by law

- (a) Subject to clause 8.1, the Recipient may disclose Confidential Information that the Recipient is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any government agency, stock exchange or other.

8.4 Confidentiality of these Beta User Terms

For the avoidance of doubt and without limiting the definition of Confidential Information in clause 8.1, information concerning the existence and terms of these Beta User Terms is Confidential Information and must not be disclosed by a party other than in accordance with clauses 8.2 or 8.3.

8.5 Destruction

On termination or expiry of these Beta User Terms, you must if requested in writing by us:

- (a) return to us all documents and other materials containing, recording or referring in any way to our Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to our Confidential Information,

which are in your possession, power or control or of any person whom we have given access.

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9. PRIVACY

9.1 You are responsible for obtaining consent and giving notice to individuals

- (a) You are responsible for obtaining all relevant consents from, and providing all relevant notices to, individuals whose Personal Information you provide to us in connection with these Beta User Terms so as to ensure that our dealings with that information pursuant to these Beta User Terms comply with our obligations under any Privacy Laws.
- (b) You must indemnify us against, and must pay us on demand the amount of, all Losses, liabilities, costs and expenses arising out of your failure to comply with clause 9.1(a).

9.2 Mandatory data breach reporting

You must:

- (a) immediately notify us if you become aware of any unauthorised access to, or unauthorised disclosure of, personal information under your control by virtue of these Beta User Terms, and provide advice as to whether you consider that such security breach may result in serious harm to any individual to whom the information relates;
- (b) comply with any directive from us as to which party will discharge any statutory reporting obligation arising from the incident;
- (c) conduct or assist us in conducting a reasonable and expeditious assessment of the breach or suspected breach; and

- (d) ensure compliance with all mandatory data breach reporting obligations arising out of the breach or suspected breach.

9.3 Survival of clause

The provisions dealing with Personal Information under these Beta User Terms survive the termination or expiry of these Beta User Terms.

10. INTELLECTUAL PROPERTY

10.1 Ownership of Intellectual Property

- (a) All Intellectual Property in the Software, the Service and the Website is our and/or the property of our related bodies corporate.
- (b) The parties agree that, other than as expressly provided in this clause, nothing in these Beta User Terms transfers or grants to any party any right, title or interest in or to any existing Intellectual Property.
- (c) We grant to you a worldwide, royalty free, perpetual, irrevocable, transferable, non-exclusive licence to use the Software to the extent necessary for you to derive full benefit from your acquisition of the Service.
- (d) You grant us a non-exclusive, royalty-free, transferable licence to use, copy, transmit, store, and back-up the Data for the Beta Test Period for the purposes contemplated by clause **Error! Reference source not found.** and to the extent necessary for us to deliver the Service.

10.2 Ownership of Contract IP

- (a) You acknowledge that ownership of any Contract IP vests and remains vested in us.

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- (b) We grant to you an exclusive, perpetual, fully paid-up, irrevocable, worldwide licence to use the Contract IP for the sole purpose of enabling you to derive full benefit from your acquisition of the Service.
- 10.3 **Indemnity for infringement**
- We will indemnify you against liability under any final judgment in proceedings brought by a third party against you which determine that your use of any of the Service constitutes an infringement of Intellectual Property (other than patents) under Australian law.
- 10.4 **You must not to infringe Moral Rights**
- You must not do anything that is, or is likely to be, an infringement of, or otherwise inconsistent with, any Moral Rights in connection with any Software or related documentation.
11. **EXCLUSION OF REPRESENTATIONS AND WARRANTIES**
- 11.1 **No reliance upon representations**
- Subject to subclause 11.2, you warrant that you have not relied on any representation made by us that has not been stated expressly in these Beta User Terms or in any descriptions, illustrations or specifications contained in any document (including catalogues or publicity and marketing materials) produced by us.
- 11.2 **Exclusion of implied conditions and warranties**
- The use of the Service is at your sole risk. The Software and the Service is provided 'as is' and 'as available' with all faults that do, or may, exist and to the fullest extent permitted by law, all conditions and warranties which would otherwise be implied in these Beta User Terms (by statute,
- general law, customs or otherwise) are expressly excluded.
12. **LIABILITY**
- 12.1 **Exclusion of liability**
- To the extent permitted by law, we are not liable to you whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any:
- (a) loss of profit, revenue or anticipated savings, business interruption, loss of chance or business opportunity, loss of or damage to goodwill or reputation, or claims by a third party for liquidated sums; or
- (b) indirect or Consequential Loss (even if you have advised us of that possibility),
- incurred by you in connection with or as a result of your entering into or performing these Beta User Terms.
- 12.2 **Liability cap**
- To the extent permitted by law, and
- (a) without limiting clause 12.1; and
- (b) in acknowledgement that the Service is being accessed by you in the knowledge that the Software is still under development,
- our liability to you for any claim in connection with these Beta User Terms, whether in contract, tort (including negligence and breach of statutory duty) or otherwise is excluded.
- 12.3 **Your indemnity obligations**
- You must indemnify us and our directors, officers, employees and agents (the **indemnified parties**) and must pay on demand the amount of all Loss (including without limitation loss of profit or business opportunity and loss of or damage to

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reputation) incurred by the indemnified parties in connection with:

- (a) a breach of your obligations under these Beta User Terms or by any of your directors, officers, employees, agents or contractors; or
- (b) any wilful, unlawful or negligent act or omission by you or your officers, employees, agents or contractors;
- (c) any unauthorised representation made, or warranty given, by you in connection with the Service.

13. CONSUMER GUARANTEES

13.1 Application of this clause

This clause, other than clause 13.2, applies only if, and to the extent, that these Beta User Terms are subject to Consumer Guarantees.

13.2 Service not for consumer use

- (a) You acknowledge and agree that the Service is not made available by us for personal, domestic or household use or consumption.
- (b) You warrant to us that you are not acquiring the Service as a consumer (as that term is defined in the *Australian Consumer Law*).

13.3 Liability in respect of Consumer Guarantees

Our liability for failure to comply with a Consumer Guarantee is limited to:

- (a) in the case of goods supplied to you, the replacement of the goods or the supply of equivalent goods (or the payment of the cost to you of the replacement or supply), or the repair of the goods (or

the payment of the cost to you of the repair); and

- (b) in the case of services supplied to you, the supply of the services again, or the payment of the cost to the Customer of having the services supplied again.

14. TERMINATION

14.1 Our right to terminate for convenience

- (a) The parties acknowledge that these Beta User Terms exists for the purpose of facilitating Beta Testing. Accordingly, the parties agree that we may terminate these Beta User Terms at any time (with immediate effect) by notice to you in writing.
- (b) Any exercise by us of our right to terminate under clause 14.1(a) is not a breach or repudiation of these Beta User Terms.

14.2 Our rights on termination

If we give you notice of termination pursuant to clause 14.1(a), we may, in addition to terminating these Beta User Terms:

- (a) repossess, any of our property in your possession, custody or control;
- (b) be regarded as discharged from any further obligations under these Beta User Terms; and
- (c) pursue any additional or alternative remedies provided by law.

15. NOTICES AND OTHER COMMUNICATIONS

Any notice give under these Beta User Terms (**Notice**) by one party to any other party must be in writing and delivered by email and will be deemed to have been given on

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transmission of that email by the sender. You acknowledge that Notices may be given by us to the email address specified in Item 2 of Schedule 1.

claim that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

16. GENERAL

16.5 Entire agreement

16.1 Alterations

These Beta User Terms may be altered only in writing signed by each party.

These Beta User Terms contain the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

16.2 Survival

All indemnitees given under these Beta User Terms are independent and survive termination of these Beta User Terms. Any other term by its nature intended to survive termination of these Beta User Terms survives termination of these Beta User Terms.

17. DEFINITIONS AND INTERPRETATION

17.1 Defined terms

In these Beta User Terms:

16.3 Counterparts

These Beta User Terms may be executed in counterparts (including by the exchange of scanned PDF copies of original documents and the exchange of documents executed electronically by any party). All executed counterparts constitute one document.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the City of Gold Coast, Queensland.

Beta Test Period means the period during which Beta Tests are to be conducted on the Software and the Service pursuant to these Beta User Terms.

16.4 Governing law

- (a) These Beta User Terms and any dispute arising out of or in connection with the subject matter of these Beta User Terms is governed by the laws of Queensland, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of that Queensland, Australia, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of these Beta User Terms. Each party irrevocably waives any right it has to object to any legal process being brought in those courts including any

Beta Test Reports means reports generated by you, in such format as may be acceptable to us in our reasonable discretion, detailing the results of the Beta Tests.

Beta Tests means use of the incomplete Software and the untrials Service by you free of charge, but on condition that relevant feedback is received, on the terms set out in these Beta User Terms and Beta Testing has a corresponding meaning.

Confidential Information means includes all information exchanged between us and you, whether in writing, electronically or orally, including the Service but does not include:

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- (a) information which is, or becomes, publicly available other than through unauthorised disclosure by the other party; or
- (b) Planning Data.

Consequential Loss means any Loss that does not arise naturally and according to the usual course of things as a result of a breach of these Beta User Terms or other event giving rise to such Loss, whether or not such Loss may reasonably be supposed to have been in the contemplation of the Parties at the time they made these Beta User Terms.

Consumer Guarantee means a guarantee applicable to the supply of goods or services which is incorporated into these Beta User Terms pursuant to Division 1 Part 3-2 of the Australian Consumer Law.

Contract IP means all Intellectual Property created by or on behalf of us in the course of performing our obligations under these Beta User Terms.

Corporations Act means *the Corporations Act 2001* (Cth).

Data means any data inputted by you or on your behalf into the Website including in connection with using the Service.

Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business and domain names, database rights, confidential information, know how, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields existing anywhere in the world, whether or not registered or capable of registration, and any goodwill associated with such activity and

any applications, renewals and extensions of such rights.

Loss includes any loss, damage, liability, cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent, direct or indirect.

Moral Right means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship,

conferred by the *Copyright Act 1968* (Cth) and any right of a similar nature anywhere in the world that exists now or that may come to exist in the future.

Personal Information has the meaning as defined in any applicable Privacy Law.

Privacy Law means any legislation or administrative requirement (as amended from time to time) imposing an obligation in relation to the collection, use, disclosure, storage and transmission of personal information which is applicable to a party in the performance of its obligations under these Beta User Terms, including without limitation any codes, principles or guidelines contained in or arising out of such legislation and includes the *Privacy Act 1988* (Cth).

Planning Data means all professional planning and development application data inputted by you or on your behalf into the Website, including without limitation, legal and technical information, methodologies, solutions, planning, project and real property data, statistics and development application outcomes created by you or on your behalf in

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connection with the Service, but excluding all Personal Information which is comprised in such data.

Service means the 'Software-as-a-Service' (**SaaS**) pursuant to which we will centrally host the Software and make the Software available to you via the Website.

Software means the software product capable of automating the research, formatting, production,

information management, and quality of town planning development permit applications which forms the basis of the Services.

Website means [<http://app.urpla.com/>].

Your Operating Environment means the technical infrastructure required by you in order to access and utilise the Service.