



## TERMS OF SERVICE

By using or accessing the Service or any of its functionality, you agree that you have read and understood these **Terms of Service** and that they will apply to your access and use of the Service.

The **Dictionary** at the end of these Terms of Service defines words that begin with a Capital letter (except when used in a heading).

### 1. Your access to the Service

Your access to the Service will be provided for the Term in accordance with these Terms of Service and your Subscription.

You remain responsible at all times for the use of the Service by your personnel and indemnify us for any loss caused by a breach of these Terms of Service by your personnel.

While great care has been taken in organising and presenting the Data for your Sites, We do not warrant or guarantee its correctness or accuracy. We do not perform any independent analysis or investigation of any of the Data provided by You. We do not assume, and expressly disclaim, any obligation to obtain and include any information other than that provided in the Data. It should be understood that by making this material available, We are not endorsing its accuracy, nor are we responsible for misuse of any Data due to, or other consequence of, any error or other inaccuracy.

### 2. Site set-up

We will assist you in setting up the number of Sites included in your Subscription. Set up includes all reasonable services usually associated with setting up a Site and as set out in the quote or purchase order specifically provided to you. Any unusual set-up (as determined by us) will only be provided as Additional Professional Services. Set up will occur within such a reasonable timeframe as we determine, following consultation with you.

No hardware or other equipment is included and, if required, must be provided by you and at your own cost. We are not responsible for testing the accuracy of any monitoring equipment that you choose to install or use at a given Site.

### 3. Performance



We warrant that the Service will perform as described in the Documentation. We do not warrant that the Service will be error-free or bug-free.

#### **4. Availability**

We will use our reasonable commercial endeavours to maintain reasonable availability for the Service, but we make no commitment that the Service will be accessible over any particular period. We have no control over the uptime or availability of any other third-party service provider, including our hosting provider or the provider of your internet service.

#### **5. Your Sites**

The Service processes Data which is collected from your Sites. You warrant that we will have the right to receive Your Data from those Sites and to process it using the Service and in accordance with these Terms of Service. You agree to indemnify us (including our reasonable legal costs) in respect of any claim or allegation by a third party that you did not have the right to provide us with Data from a Site.

We may also include Data feeds from commercial weather services as part of your set-up, if requested by you. We are not responsible for the accuracy or availability of that Data.

#### **6. Support**

If you have any questions about the operation of the Service, or you consider that the Service is not functioning in accordance with the Documentation, you may contact us during our business hours (Monday to Friday) between 8.30 a.m. – 5 p.m. on (07) 3871 0411. Alternatively, you may use the 'Feedback' button on our website. We will respond to all queries within a reasonable time.

If you would like us to assist you in adding Your Data or with the configuration of the various options within the Service beyond the initial set-up, this assistance will only be provided as Additional Professional Services (see below).

#### **7. Your Data**

Subject to any requirement at law for us to disclose Your Data to third parties, including government agencies, Your Data will be treated by us as confidential information. Ownership of any Intellectual Property Rights in Your Data will remain with you. You grant us a non-exclusive, worldwide, perpetual, royalty-free, sublicensable licence to use, modify and adapt Your Data as follows:

- (a) for the purpose of providing you with the Service during the Term (including Support and any other services), further developing the Service or otherwise in accordance with these Terms of Service; and
- (b) on a de-identified basis, for the purposes of research or other projects.

We will also transmit Your Data to our third-party hosting provider and may share it with our subcontractors for these purposes. Our hosting provider will hold all of Your Data in Australia.



You agree to indemnify us (including our reasonable legal costs) in respect of any claim or allegation by a third party that our use of Your Data infringes that third party's Intellectual Property Rights or that we have lost or damaged that Data in any way (including our negligence). (Our liability to you is described below.)

## **8. Privacy**

Your privacy is important to us and we comply with the *Privacy Act 1988* (Cth) (**Privacy Act**) and deal with all Personal Information in Your Data, or otherwise provided to us, in accordance with our *GPLus Live Privacy Policy* available on our website.

You warrant that any information or data entered into the Service or otherwise provided to us has been collected in compliance with the Privacy Act and in particular that you have the consent of any party whose personal information you provide to us for that disclosure. You are responsible for any compliance with the Privacy Act in relation to information collected by you and provided to us, or entered into the Service directly by you. You agree to indemnify us (including our reasonable legal costs) in respect of any claim or allegation by a third party that our use of information or data provided to us by you is not in compliance with the Privacy Act.

## **9. Back-ups**

Our hosting provider performs regular system back-ups, including of Your Data. In the event that we need to restore the Service, we will do so from the last such useable back-up. However, we are not able to provide you with access to point in time back-ups for Your Data..

## **10. Accessing Your Data at the end of the Term**

If the Term of your Subscription has expired, and you have chosen not to renew it, or we have terminated your Subscription because you have breached these Terms of Service, you may access the Service for a further thirty (30) days for the sole purpose of downloading Your Data. Your access to the Service will be restricted accordingly. The format in which Your Data is provided will be determined by us, but generally will be limited to CSV format.

No Support for the download process and no data migration services is included. Any such assistance will only be provided as Additional Professional Services.

## **11. Cookies**

We may use cookies to help provide you with a better experience while using the Service through your web browser and you consent to such use.

## **12. Cyber security**

Although we do take reasonable measures to prevent it, we do not make any representation to you that the Service, any file generated by the Service or any platform or device through



which you access the Service, will be free from viruses, malware, ransomware or any other malicious code. You should take reasonable precautions in this respect.

You must, as a condition of using the Service, keep all access details, including log-in credentials and passwords, safe and secure and ensure that your personnel also observe these requirements as well as these Terms of Service. You are responsible for the actions of your personnel.

You will be solely responsible for the security of any on-Site devices providing Your Data to the Service.

### **13. Additional Professional Services**

Any Additional Professional Services will be charged on a time and materials basis, using our then current rates. A quotation will be provided to you for your acceptance prior to the provision of any Additional Professional Services. A separate 'Services Agreement' may be applicable to larger Additional Professional Services projects.

### **14. Licence**

We own the Intellectual Property Rights in the Service, including the Software and Documentation, except for licensed third-party or open source components, which are used by us under licence.

We grant you a worldwide, limited, non-exclusive right to:

- a. use the Service during the Term or as otherwise permitted by these Terms of Service; and
- b. use, modify, copy and adapt any Site reports or other reports generated by the Service from Your Data and downloaded by you during the Term,

for your own internal business purposes (which, to avoid doubt, does not include commercialising, re-selling or leasing the Service, including the Software or any of our Documentation or other associated content, to customers).

Your rights under clause 14(a), apart from the limited access right under clause 10, end at the conclusion of the Term. Your rights in respect of the reports under clause 14(b) are perpetual.

We warrant that you have the right to use the Service as permitted by these Terms of Service and will indemnify you for any claims against you by a third-party that you have infringed that third-party's Intellectual Property Rights by using the Service as so permitted. We will manage the defence and settlement of any such claims and, provided you are indemnified, you agree to any reasonable settlement. At our election, we may choose to substitute an infringing component and replace it with one that alters the functionality of the Service in a non-material way.



You agree that it is a condition of your access and these Terms of Service that you are not to tamper with or access the Software or the Service in any unauthorised manner or to seek to introduce any viruses, malware, ransomware or any other malicious code into our Service or to subject the Service, our website or other platform through which you are accessing our Service to any form of attack, including to slow the speed of, or to deny access to, the Service or that website or platform.

You must not use our trade marks (including unregistered trade marks) without our express written permission.

### **15. Data charges**

You are solely responsible for any data charges by third party telecommunications providers associated with using or accessing the Service.

### **16. Your purchases**

Subscription sales will be made by direct invoice to you and payment terms specified in the invoice will apply to the Terms of Service. If at any time payments are to be made through third-party websites, those transactions will be processed according to their applicable terms. This will be the case to the extent the law permits.

### **17. Cancellation**

Subscriptions may not be cancelled by you during the Term. Specific requirements in regards to cancellation and the Term of your Subscription may be specified in any quote or purchase order documentation provided to you, in which case, those requirements will apply. A Subscription for a period must be cancelled before the next Subscription period starts. Subscription renewals will be automatic where this option is selected at the time of purchase.

### **18. Goods & Services Tax (GST)**

All Fees listed in Schedule 1 to the Terms of Service are listed without GST. GST will be added to the invoice (which will be a complying tax invoice) at the point of purchase and you agree to pay that GST in addition to the Fees.

### **19. Our liability**

We exclude all liability and warranties including those implied by law (other than consumer guarantees which cannot be excluded) to the extent the law permits in respect of the service, including any liability for our negligence.

The following notice is included as required by the Australian Consumer Law and applies to the extent that it is so required:

*Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*

- to cancel your service contract with us; and*



- *to a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.*

To the extent that our goods and services (as defined in the Australian Consumer Law) are subject to non-excludable statutory guarantees under the Australian Consumer Law, and those goods or services are not of a kind ordinarily acquired for personal, domestic or household use, our liability is limited under section 64A to the following (at our election) to: (a) the replacement of the goods or the supply of equivalent goods; (b) the repair of the goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; (d) the payment of the cost of having the goods repaired; (e) supplying the services again; or (f) the payment of the cost of having the services supplied again.

For any liability that cannot be excluded, and to the extent the law permits:

- we are not liable for any indirect or consequential loss, such as your loss of income, profits, revenue, opportunity or Data (such as Your Data), including because of our negligence; and
- our liability to you (except under our indemnity to you about Intellectual Property Rights in clause 14) is limited for each calendar year to the value of the Fees you have paid in that year.

Reports or other Data generated by the Service are intended for your use only and we accept no liability to any third party to which you choose to share them. You agree to indemnify us (including our reasonable legal costs) in respect of any claim or allegation by a third party that they have suffered loss or damage because they have used any such report or Service-generated Data accessed or downloaded by you.

The service, including its monitoring capabilities, is not a medical, lifesaving or safety device and it is a condition of these terms of service that it not be used as such.

## **20. Suspension & termination**

If you breach these Terms of Service:

- by not complying with your licence in clause 14(a);
- introducing malicious code or subjecting the Service to an attack, as described further in clause 14;
- your continued use the Service would bring us into disrepute (such as its use by you for an illegal or suspect illegal purpose);
- you have not paid any Fees due to us on time;



- you have breached another clause of these Terms of Service and not remedied that breach within a reasonable time, as determined solely by us;
- you have breached another clause of these Terms of Service and it is not a breach of an kind that is capable of being remedied,

We may terminate these Terms of Service immediately (other than the right under clause 10 and any provisions necessarily continuing for that clause to operate). If we do so this will end your Subscription and we will not liable to provide you with any refund or credit for any unused part of the Subscription.

Without limiting our other rights and remedies, we may also suspend your access to the Service for any of these reasons.

We may also suspend the Service to protect it or for maintenance, without liability to you.

## **21. Applicable law**

The law applying in the State of Queensland, Australia, applies to these Terms of Service and any dispute about them will be resolved by a court or tribunal in that jurisdiction only.

## **22. Changes to these Terms of Service**

We may change these Terms of Service on reasonable notice to you. By continuing to use the Service, you agree to those changes. If you do not wish to accept the changes, you should cancel your Subscription.

## **23. Survival of clauses**

Clauses which necessarily extend beyond the Term will survive termination or early expiry of these Terms of Service. This includes clause 14 and any other indemnities.

## **Dictionary**

*Additional Professional Services* means any services other than Support or included set-up activities.

*Data* includes information in any format which is relevant to the operation of the Service.

*Documentation* means the description of the Service and its functionality and operation, as described in any user manuals or guides made available by us to you as a user.

*Fees* means the Subscription and other fees described in Schedule 1 to these Terms of Service.

*Intellectual Property Rights* includes current and future copyright, trade marks, designs, circuit layouts and patents, whether or not registered, and, as applicable, moral rights.

*Personal Information* has the meaning it does in the *Privacy Act 1988* (Cth).



*Site* means a location at which Data is gathered for processing using the Service.

*Site Data* means Data gathered from a Site for processing by Service.

*Service* means the GPLUS LIVE online service provided by us using the Software hosted by our third-party hosting provider. It includes the Software and Documentation.

*Software* means all of the software we use to provide the Service from time to time, including software owned by us and any licensed third-party or open source components.

*Subscription* means your subscription for the Service as described in Schedule 1.

*Term* means the duration of your Subscription.

*Your Data* means any Data which you upload to the Service, including any Personal Information.

Groundwork Plus Pty Ltd (ABN 13 609 422 791)





SCHEDULE 1  
(SUBSCRIPTIONS & FEES)

Sites	Monthly Fee/Site (ex GST)*
1-2 sites	Quoted
3-5 sites	\$450.00
6-10 sites	\$400.00
11-15 sites	\$350.00
16-30 sites	\$300.00
30+ sites	\$250.00
Add-Ons	Monthly Fee/Site (ex GST)
Safety and Health	\$50.00/month
Aggregate Testing	\$30.00/work order

\*Please note a minimum subscription of 12 months applies and fees are subject to review after 24 months of subscription