



Euclidean udCloud

## End-User License Agreement (EULA)

PLEASE READ CAREFULLY BEFORE USING udCLOUD

This End-User License Agreement (*EULA*) is a legal agreement between the person named in the application to use udCloud (*you*) and *Euclidean Ltd* (ABN 80 143 410 155) which has its registered office at 610 Wickham Street, Fortitude Valley QLD 4006, Australia (us or we).

**IMPORTANT NOTICE:** THIS EULA TAKES EFFECT AND WILL BIND YOU WHEN YOU CLICK ON THE “ACCEPT TERMS” OR “ACCEPT TERMS & LAUNCH WITH 1-CLICK” BUTTON OR ACCESS, INSTALL OR OTHERWISE USE UDCloud. YOU REPRESENT TO US THAT YOU ARE LAWFULLY ABLE TO ENTER INTO THIS EULA AND IF YOU ARE ENTERING INTO THIS EULA FOR AND ON BEHALF OF AN ENTITY, SUCH AS A COMPANY FOR WHICH YOU WORK, YOU REPRESENT TO US THAT YOU HAVE LEGAL AUTHORITY TO BIND THAT ENTITY.

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth of Australia);

**Concurrent User Sessions** means the User Sessions that may be active at any given time;

**Convert Compute** means the cloud-based computation resources required to convert files to the UDS format;

**Customer Computers** means computers owned or controlled by you;

**Customer Data** means any information which you may supply to us or to which you may grant us access in connection with the EULA and includes the Customer Personal Data;

**Customer Personal Data** means the personal data comprised in any Customer Data, further details of which are set out in paragraph 2 of the Data Processing Terms;

**Data Processing Terms** means the provisions set out in Schedule 1 to this EULA;

**Data Protection Legislation** means the Privacy Act, the GDPR, United States Data Privacy Laws and any data protection act applicable in a state or territory in which Customer Personal Data is processed;

**Data Transfer Terms** means the provisions set out in Schedule 2 to this EULA;

**Documentation** means the user manual or other explanatory documentation for udCloud available on our website or that we may otherwise make available to you from time to time;

**Download Bandwidth** means the bandwidth incurred during the download of files;

**Free Tier** has the meaning given in clause 4a);

**GDPR** means the General Data Protection Regulation;

**Insolvency Event** means when you:

- (a) have an administrator, receiver, manager, receiver and manager, liquidator or provisional liquidator or external controller appointed in relation to it; or
- (b) are wound up or is dissolved; or
- (c) are, or states that you are, unable to pay your debts when they fall due or are deemed unable to pay your debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute); or
- (d) enter into or resolve to enter into any arrangement, composition or compromise with or assignment for the benefit of your creditors generally or any class of your creditors or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment; or
- (e) cease, or threaten to cease, to carry on business; or (f) take any steps to obtain protection or are granted protection from your creditors under the laws of any applicable jurisdiction;

**Intellectual Property Rights** means all patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to engage legal action for passing off, or unfair competition, rights in designs, rights in computer software, website rights, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

**PAYG Subscription** has the meaning given in clause 4b);

**Permitted Purpose** has the meaning given in clause 5;



**Platform** means *udCloud* and/or any products or services accessible through or provided in connection with *udCloud* together with any updates;

**Privacy Act** means the *Privacy Act 1988 (Commonwealth of Australia)*;

**Project** is a logical collection of files and jobs representing a 3D scene or scenes;

**Third Party Software** means software licensed by third parties including software licensed under open source Licenses such as those approved by the Open Source initiative;

**Specialised Compute** means the cloud-based computation resources required to solve problems other than the conversion of files to UDS format. These resources may include, but are not limited to, processes to manipulate scenes or AI algorithms;

**Storage** means the cost of storing files in the cloud. This cost includes hosting UDS files that are created as part of a conversion process needed to stream visualisations; storage is available in two formats; *Archive Storage* and *Hosted Storage*. *Archive Storage* is long term storage of data. Retrieval from *Archive Storage* incurs additional time and costs as per the pricing schedule found at <https://www.euclidean.com/udcloud-price-schedule/>. *Hosted Storage* is data that is always ready to be streamed or downloaded.

**Streaming Bandwidth** means bandwidth incurred during the streaming of data to visual scenes;

**Subscription Fees** means the fees payable by you for the use of the Platform if you have a PAYG Subscription as varied from time to time by written notice to you;

**Support** means services provided by us to you in connection with the Platform;

**Tax** means a tax, levy, duty, charge, impost, deduction or withholding, that is imposed by law or by a government agency, together with any related interest, penalty, fine or other charge;

**udCloud** is a cloud hosted subscription software (SaaS) developed by us and operated through *Microsoft Azure* provided by *Microsoft Corporation* which is designed to manage large 3D data sets grouped into Workspaces and Projects to enable the processing, sharing, lifecycle management and visualisation of data;

**User** means you, your employees and other third parties (including your agents and contractors) who use the Platform under this EULA;

**User Session** means the use of the Platform by a User on a device; and

**Workspace** means a logical grouping of Projects created by a User against which permissions are applied and collaborators are invited.

## 2. INTERPRETATION

**2.1** Headings are inserted for convenience only and will not affect the interpretation of this EULA.

**2.2** A reference to a clause or schedule is to a clause of or schedule to this EULA.

**2.3** A reference to a person includes an individual, corporation, association, joint venture, partnership or unincorporated body (whether or not having separate legal personality), government or local authority or agency and that person's legal and personal representatives and successors or permitted assigns.

**2.4** Unless the context otherwise requires:

- a) words in the singular will include the plural and vice versa; and
- b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- c) a reference to one gender will include a reference to the other genders;
- d) reference to a statute or statutory provision includes reference to any modification or re-enactment of or any provisions substituted for such statute or provision and includes all subordinate legislation made under that statute or statutory provision.

**2.5** Any reference to a legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing will, in respect of any jurisdiction other than Australia, be deemed to include a reference to that which most nearly approximates to that term in the other jurisdiction.

## 3. APPLICATION OF THIS AGREEMENT

**3.1** We may change the terms of this EULA at any time by notifying you via our website, by email or any other reasonable means. Your continued use of the Platform will be subject to and conditional on your acceptance of such revised terms.

**3.2** From time to time updates to and new versions and/or releases of the Platform or its components may be issued. You acknowledge that you that bugs and errors in the Platform may be fixed by way of updates or new versions and/or releases. We are not obligated to fix any bugs or errors that do not materially impair or affect the use, reliability, security, safety or functionality of the Platform. The Platform may incorporate code which automatically checks for updates or new versions and/or releases using your or your Users' internet connection. By accepting this EULA, you agree to this service.

- 3.3** You agree that if you have installed updates, then any update or new version and/or release to the Platform will be on the basis that you accept and agree to the then current subscriptions and License terms.
- 3.4** You agree to comply with and be bound by the *Acceptable Use Policy* which is located at <https://www.euclidean.com/tsnsc/> which policy is incorporated into this EULA by reference.
- 3.5** You acknowledge that some portions of the Platform and any updates to the Platform may contain Third Party Software. Use of such Third Party Software may be governed by a separate License, which will be identified in the Documentation or on our website or in other material provided or made available to you by us. Where there is any inconsistency between a License with respect to Third Party Software and this EULA, the Third Party Software License will prevail to the extent of any inconsistency.

#### **4. SUBSCRIPTIONS**

*udCloud* is available via three subscriptions:

- a) FREE TIER: 15GB of Hosted Storage with the inclusion of Streaming Bandwidth and Convert Compute. This service is limited to three Users (the primary User plus two Users for collaboration), one Workspace, any number of Projects and a maximum of three Concurrent User Sessions. It has no Download Bandwidth. There are no commercial limitations;
- b) PAYG TIER: (Pay-As-You-Go): Month to month billing charged in arrears with no limitations on Hosted Storage, Archive Storage, Download Bandwidth, Streaming Bandwidth, Convert Compute, Users, Concurrent User Sessions, Workspaces and/or Projects.. Charges for PAYG Tier options are specified at our price schedule page found at <https://www.euclidean.com/udcloud-price-schedule/>.
- c) ENTERPRISE: Storage reserved commitment with an agreed annualised contractual period. Minimum commitment on storage, no limits on Users, Concurrent User Sessions, Convert Compute, Workspaces and/or Projects. This EULA does not apply to Enterprise subscriptions which governed by a separate agreement between us and each subscriber.

#### **5. LICENSE**

Subject to your ongoing compliance with the terms of this EULA, and subject to any rules or policies applied from time to time by *Microsoft Azure* (Online Service Terms) we grant you a limited, revocable, non-exclusive, non-transferable, non-sublicensable License during the term of this EULA to:

- a) access and use the Platform in accordance with the subscription terms referred to in clause 4;
- b) view, use and display the Customer Data;
- c) reproduce the Platform on your Customer Computers,
- d) authorise Users to access and use the Platform as if such access and use had been by you, for the purposes specified in the *Acceptable Use Policy* and the Documentation (Permitted Purpose) and in accordance with the Documentation.

#### **6. USERS**

- 6.1** Any person accessing the Platform using your credentials will be assumed to be authorised by you, to have obtained permission from you and be acting with your authority.
- 6.2** You are responsible for:
- a) ensuring that the Users comply with this EULA, for their use of the Platform and Documents and for any breach of this EULA by a User; and
  - b) all activity and use undertaken by undertaken by you, your employees or third parties engaged by you (including your agents or contractors) in connection with the Platform.
- 6.3** You must ensure that Users are limited to those of your employees, agents and independent contractors whom you permit to use the Platform.
- 6.4** We are not responsible for any unauthorised access to the Platform or your *Microsoft Azure* account using your credentials.

#### **7. LICENSE RESTRICTIONS**

- 7.1** Except to the extent such restriction is expressly prohibited by applicable law, you must not and must not assist or permit any third party or User to:
- a) copy, merge, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all, or any portion of the Platform and/or the Documents (as applicable) in any form or media or by any means; or
  - b) reverse compile, disassemble, reverse engineer or in any manner attempt to derive the source code for, or otherwise reduce to human-perceivable form all or any part of, the Platform;
  - c) access or allow access to all, or any part of the Platform source-code (or any information derived from such source code) and the Documents in order to build a product or service which competes with the Platform;
  - d) remove or modify any copyright notices in the source code for the Platform or in the Documentation;
  - e) take any action with respect to the installation of the Platform that would require us to comply with or obtain any open source software License;

- f) not to use the Platform and/or the Documents to provide services to third parties or for any purpose other than the Permitted Purpose;
- g) License, sell, rent, lease, transfer, assign, sublicense, distribute, display, disclose or otherwise commercially exploit the Platform, or otherwise make the Platform available to any third party who is not a User;
- h) use the Platform to violate, misappropriate or infringe the rights of any third party;
- i) interfere with or circumvent any component of the Platform, including any security access control mechanism;
- j) use the Platform in any way not specifically authorised by this EULA or in a manner that breaches the Acceptable Use Policy; or
- k) attempt to do any of the foregoing.

unless otherwise permitted under this EULA.

**7.2** You must and must procure all Users to:

- a) comply with the terms of this EULA;
- b) comply with all applicable laws with respect to your and all Users' use of the Platform;
- c) comply with all technology control or export laws and regulations that apply to the technology used or supported by the Platform; and
- d) prevent any unauthorised access to, or use of, the Platform and in the event of any such unauthorised access or use, you agree to promptly notify us in writing of such access.

**7.3** You undertake that the number of Users, Concurrent User Sessions, total file size, and Workspaces at any given time must not in aggregate exceed the limits applicable to your subscription.

## **8. ACCEPTABLE USE RESTRICTIONS**

You must not and must procure that your Users do not:

**8.1** access, store, distribute or transmit during the course of your use of the Platform, any:

- a) thing, or device (including any software, code, file or program) which may prevent, impair or otherwise adversely affect:
  - (i) the operation of any computer software, hardware or network, any telecommunications service, equipment, or network, or any other service or device;
  - (ii) access to, or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or
  - (iii) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; or
- b) material that:
  - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (ii) facilitates illegal activity;
  - (iii) depicts sexually explicit images;
  - (iv) promotes unlawful violence;
  - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

**8.2** infringe our Intellectual Property Rights or those of any third party in relation to your use of the Platform.

**8.3** use the Platform in a way that could damage, disable, overburden, impair or compromise our security or interfere with other users; or

**8.4** otherwise act in a manner that is illegal or causes damage or injury to any person or property.

## **9. PAYMENT TERMS**

**9.1** You agree to make all payments through our nominated payment portal and must ensure at all times that your credit card and/ or other account details provided to us are accurate and up to date. You authorise our payment portal and any related payment gateway to deduct the Subscription Fees on such credit card on our behalf. You also acknowledge and agree to pay all fees associated and related to your use of the Platform. Additional fees apply for downloading files or moving data out of the Platform. Details of charges are set out in the Price Schedule Table at <https://www.euclidean.com/udcloud-price-schedule/>.

**9.2** All Subscription Fees and other amounts payable in connection with this EULA: do not include any GST or other taxes unless otherwise stated.

**9.3** To the extent that we or you make a taxable supply in connection with this EULA, the party liable to pay for the taxable supply must also pay, at the same time and in the same manner an additional amount equal to the Taxes on the charges.

**9.4** The Price Schedule Table may specify a charge followed by another amount in parentheses specified as 'exclusive of GST' or 'inclusive of GST', in which case:

- a) the GST is specified at the rate in effect at the date this EULA takes effect; and

b) the GST amount is included by way of information only and its inclusion does not limit your obligation under clause 9.3 to pay an additional amount equal to the GST at the applicable rate.

**9.5** We will issue you with a valid tax invoice in respect of each taxable supply.

**9.6** Terms used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth of Australia) have the meaning given to them in that act.

**9.7** We will be entitled to change the Subscription Fees at any time by notice in writing to you.

**9.8** All payments made under this EULA must be made without set-off, counterclaim, deduction or withholding.

## **10. INTELLECTUAL PROPERTY RIGHTS**

**10.1** We (or our licensors, as appropriate) own all rights, title and interest in and to the Platform and the Documents including all copyright.

**10.2** You acknowledge that nothing in this EULA will constitute a transfer or assignment of any Intellectual Property Rights in the Platform and the Documents and that you have no Intellectual Property Rights in the Platform and the Documents other than the right to use each of them in accordance with the terms of this EULA.

**10.3** We will own the Intellectual Property Rights in:

- a) any enhancements, changes, upgrades, bug fixes or other modifications made by you, a User or any third party engaged by you;
- b) any feedback, suggestions, recommendations, troubleshooting information and other similar information you or a User provides or makes available to us (Feedback), and

you must and must procure that your Users execute any document reasonably required by us to assign the Intellectual Property Rights in such modifications. You acknowledge and agree that any Feedback may be used by us to modify, enhance, maintain and improve the Platform.

**10.4** You must indemnify us and our employees, officers and agents (each an Indemnified Person) from and against all claims, actions, proceedings, losses, damages, expenses and costs (including legal fees) incurred by us arising out of, or in connection with:

- a) use of the Platform and the Documents by you, or any other User in breach of this EULA or any applicable law; or
- b) third party claims arising from or relating to your or your Users' use or misuse of the Platform and/or actual or alleged infringement of a third party's rights related to any modifications to the Platform made by, for or at your direction or the direction of any User.

**10.5** Your liability under clause 10.4, will be decreased proportionately to the extent that the loss, cost, expense or damage arises from the gross negligence of or breach of this EULA by any Indemnified Person.

**10.6** You acknowledge that *Microsoft*, *Microsoft Azure*, *Microsoft Azure Marketplace* and the *Microsoft Azure Marketplace* logos are trade marks of *Microsoft Corporation* or its affiliates and *udCloud*, and the *udCloud* logo are trade marks of *Euclidean* or its affiliates and agree that you will not and will procure that your Users do not remove any trade marks from the *udCloud* or any products or services accessible through or provided in connection with *udCloud* or otherwise act in breach of any rights in respect of such trade marks.

## **11. CUSTOMER DATA**

**11.1** You confirm that you own all right, title and interest in, and to or have a License to use all Customer Data in respect of which the Platform is to be used and you will be solely responsible for the legality, reliability, integrity, accuracy and quality of the Customer Data.

**11.2** We may access your Customer Data for the purposes of testing product stability and product improvement only if we obtain your prior permission.

**11.3** We require minimum metadata information in respect of your Customer Personal Data solely for the purposes of billing.

**11.4** You acknowledge that all storage and processing of Customer Data is carried out by you on the Platform. You must make a copy of the Customer Data prior to using the Platform. You acknowledge and agree that we will not be liable for any loss, destruction, alteration or disclosure of Customer Data which occurs as a result of or in connection with the use by you and your Users of the Platform.

**11.5** You acknowledge and agree that we may access and process Customer Personal Data when providing Support, where you facilitate access to such Customer Personal Data. You must only provide access to such Customer Personal Data if, and to the extent, strictly necessary for the provision of such Support and to the extent that it is lawful to do so.

- 11.6** If we process any Customer Personal Data on your behalf when providing Support then, if and to the extent that the Data Protection Legislation applies in respect of such processing, the parties agree that the Data Processing Terms will apply to and be incorporated in this EULA.
- 11.7** All transfers of Customer Personal Data made under, or in connection with this EULA from Australia, the European Union and/or the United States to us or any of our employees to the extent they are located in a jurisdiction in respect of which the European Commission has not made an adequacy decision under Article 45 of the GDPR (which may include the United Kingdom once it is no longer directly subject to European Union law on the protection of personal data), and in respect of which you are the controller and we are the processor, will be governed by the Data Transfer Terms.
- 11.8** In the event of any conflict between the Data Transfer Terms and any other provision of this EULA, the Data Transfer Terms will prevail.
- 11.9** Where you have explicitly activated the collection of telemetry data when using the Platform, we will collect certain anonymous information regarding how you use the Platform, including to assess the efficiency of components and features within the Platform. You may activate or deactivate this functionality at any time by adjusting your user settings.

## **12. LIMITED WARRANTY AND SUPPORT**

- 12.1** We warrant that:
- a) the Platform will, when properly used, perform substantially in accordance with the functions described in the Documents; and
  - b) the Documents correctly describe the operation of the Platform in all material respects, for a period of 30 days from the date on which this EULA comes into effect (Warranty Period).
- 12.2** If within the Warranty Period you notify us in writing of any defect or fault in the Platform which results in the Platform failing to perform substantially in accordance with the Documents, we may modify the Platform so that it complies with the warranty in clause 12.1 or if a modification is not reasonably practicable or we fail to do so within 30 days from the date on which you notified us of the defect or fault, you may terminate this EULA immediately by giving us written notice.
- 12.3** The warranty clause 12.1 does not apply if:
- a) the defect or fault in the Platform is caused as a result of the use of the Platform by you and/or your Users being in breach of this EULA;
  - b) the use of Platform is in breach of the Acceptable Use Policy; or
  - c) there is an update (whether a new release or new version) to the Platform which corrects the defect or fault.
- 12.4** We may (but are under no obligation to) provide Support from time to time.
- 12.5** All Support will be subject to this EULA (including the Permitted Purpose, limitations of liability, License Restrictions and Acceptable Use Policy) except as expressly provided otherwise on any documents provided by us in connection with the Support from time to time and will be subject to such additional policies, terms and conditions as may be set out on such documents.

## **13. CONSUMER GUARANTEES**

- 13.1** Where any applicable legislation:
- a) implies any term, condition or warranty into the relationship between the parties or into this EULA;
  - b) imposes a consumer guarantee in respect of services provided under this EULA; or
  - c) otherwise provides you with a particular remedy against us, and that legislation or any legislation avoids or prohibits provisions excluding or modifying the application of, or exercise of, or liability under, such term, condition warranty, consumer guarantee or remedy (Non Excludable Condition) then:
  - d) that Non-Excludable Condition will be deemed to be included in this EULA; or
  - e) in the case of a Non-Excludable Condition imposed on any services supplied under this EULA, that Non-Excludable Condition will apply in respect of those services.
- 13.2** Where you subscribe for our services in Australia, those services come with guarantees that cannot be excluded under the Australian Consumer Law. These guarantees are not limited by a defined timeframe.
- 13.3** If any service you purchase has a major failure or cannot be fixed, under the Australian Consumer Law, you may terminate this EULA and seek a refund of the Subscription Fees or seek compensation for the difference between the value of the services provided compared with the price paid.
- 13.4** If the services we supply fail to meet one or more of the guarantees in the Australian Consumer Law and the failure does not amount to a major failure, you must give us an opportunity to remedy the failure. If the services are not remedied within a reasonable time, you may arrange for a third party to fix the problem and request us to pay your reasonable costs or you may terminate this EULA and receive a refund of the Subscription Fees.

**13.5** The Australian Consumer Law recognises that the relevant time period may vary by depending on the nature of the services, the price paid and any representations made about the services.

#### **14. LIMITATION OF LIABILITY**

**14.1** Clauses 13 and 14 set out our entire liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you:

- a) arising under or in connection with this EULA;
- b) in respect of any use of the Platform and the Documents; and
- c) in respect of any representation, statement or tortious act or omission (including negligence) by us under or in connection with this EULA.

**14.2** Except as expressly provided in this EULA:

- a) you acknowledge that the Platform is a tool and that you are responsible for the use of such tool and you assume sole responsibility for results obtained from the use of the Platform and the Documents and for any results arising from such use. You must verify and test the results to ensure that they meet your requirements and that they are accurate based on the Customer Data and the use of the Platform;
- b) you acknowledge and agree that any instructions, messages or information you send when using the Platform may be read or intercepted by others notwithstanding that we take all reasonable steps to prevent such access;
- c) other than as provided in clause 12, we do not:
  - (i) make and expressly disclaim all warranties, representations, conditions and all other terms of any kind whether express or implied including where imposed by statute or common law, including any implied warranty of merchantability or fitness for a particular purpose to the fullest extent permitted by applicable law;
  - (ii) warrant that the use of the Platform will be timely, secure, uninterrupted or error free or that any defects in the Platform will be corrected; or
  - (iii) warrant that the Platform, Documents and/or the information obtained through them will meet your requirements;

**14.3** Nothing in this EULA excludes our liability for:

- a) death or personal injury caused by our negligence; or
- b) fraud or fraudulent misrepresentation by us; or
- c) any other liability which may not otherwise be excluded by law.

**14.4** Subject to clauses 13 and 14.3:

- a) we will have no liability for any damage or loss which is caused by use of the Platform and/or the Documents contrary to our instructions (including any Support) or in breach of this EULA, or any modification or alteration of the Platform by any party which is not carried out by us or our duly authorised contractors or agents or which would not have arisen had you accepted and installed an update or upgrade (whether a new release and/or new version) to the Platform which had been made available to you;
- b) we will not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any direct or indirect loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising even if we have been advised of the possibility of such damages;
- c) our liability for breach of the EULA and for breach of any Non-Excludable Condition (other than a guarantee under sections 51, 52 or 53 of the Australian Consumer Law), will be limited, at our option, in any one or more of the ways permitted by applicable legislation, to:
  - (i) the re-supply of the services; or
  - (ii) the payment of the cost of having the services supplied again; or
  - (iii) the refund of the Subscription Fees paid by you in respect of the services;
- d) our total aggregate liability in contract (including in respect of any indemnity), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, will in respect of any:
  - (iv) PAYG subscription be limited to the total Subscription Fees paid by you during the 12 months prior to the date on which you make the claim; and
  - (v) Free Tier subscription will be nil; and
- e) we will have no liability to you unless you notify us in writing of your claim within 3 months of the date you become aware or ought to have become aware of the claim or the circumstances giving rise to the claim.

## 15. TERMINATION

- 15.1** This EULA will commence on the date on which you agree to its terms and will continue until it is terminated in accordance with its terms.
- 15.2** We may terminate this EULA and the use of Platform immediately by notice to you if
- a) you fail to make a payment when due;
  - b) you commit a material or persistent breach of this EULA or the Acceptable Use Policy;
  - c) an Insolvency Event occurs in relation to you; or
  - d) you fail to have a valid, subsisting udCloud account or subscription.
- 15.3** Without prejudice to any other rights or remedies set out in this EULA, either party may terminate this EULA by giving notice not less than 14 days' written notice to the other party.
- 15.4** On termination of this EULA:
- a) all rights granted to you under this EULA will cease;
  - b) you must immediately cease your use of the Platform and the Documents;
  - c) you must immediately delete, remove, or destroy all copies of the Platform and Documents then in your possession, custody or control; and
  - d) we may disable your access to the Platform.
- 15.5** If you have a PAYG Subscription and this EULA is terminated by us under clause 15.3, we will refund the relevant proportion of the Subscription Fee calculated on a pro rata basis for the remainder of the month in respect of which the Subscription Fees have been paid to you.

## 16. COMMUNICATION BETWEEN US

- 16.1** If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you must send this notice to us by email at [support@euclidean.com](mailto:support@euclidean.com). All communications and notices must be in English.
- 16.2** If we need to give you notice in writing, we will use the contact details you have previously provided to us.

## 17. EVENTS OUTSIDE OUR CONTROL

- 17.1** We will not be liable or responsible for any failure to perform or delay in performance of, any of our obligations under this EULA that are caused by any act or event beyond our reasonable control, including acts of God, acts of war, telecommunications or power outages, failure of public or private networks and connectivity, pandemics or other similar health crises, strikes, riots, floods, earthquakes, fires and explosions (Event Outside Our Control).
- 17.2** If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA:
- a) our obligations will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
  - b) we will use commercially reasonable endeavours to mitigate the Event Outside Our Control and perform our obligations notwithstanding the Event Outside Our Control.
- 17.3** If an Event Outside Our Control continues for more than 60 consecutive business days (or if we are affected by an Event Outside Our Control cumulatively for more than 60 days within a six-month period) you may terminate this EULA.

## 18. OTHER IMPORTANT TERMS

- 18.1** You may not transfer or assign your rights or obligations under this EULA to another person including in connection with a change of control, merger, sale of all or substantially all of your assets or any similar transaction unless we agree in writing.
- 18.2** If we fail to insist that you perform any of your obligations under this EULA, if we do not enforce our rights against you or if we delay in doing so, that will not mean that we have waived our rights against you or have the effect that you do not have to comply with those obligations. If we waive a default by you, that will not mean that we will automatically waive any later default by you.
- 18.3** Each of the provisions of this EULA operates separately. If any court or competent authority decides that any provision is invalid, illegal, or unenforceable or the provision is otherwise inconsistent with the laws of any jurisdiction applicable to the operation of this EULA, clause 18.4 will apply and the remaining provisions of this EULA will remain in full force and effect.
- 18.4** If any invalid, illegal or unenforceable provision of this EULA would be valid, enforceable and legal if some part of the EULA were deleted, the provision will apply with whatever modification is necessary to give effect as far as possible to the commercial intention of the parties.



- 18.5** Save as expressly set out in the Data Transfer Terms (if applicable), disputes or claims arising in connection with this EULA, its subject matter and its formation (including non-contractual disputes or claims) are governed by the laws of the State of Queensland and the Commonwealth of Australia.
- 18.6** You irrevocably agree for our exclusive benefit that the courts of the State of Queensland, Australia will have exclusive jurisdiction (save as expressly set out in clause 18.7 and the Data Transfer Terms (if applicable)) to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this EULA, its subject matter or formation (including non-contractual disputes or claims) and for such purposes you irrevocably submit to the jurisdiction of such courts.
- 18.7** Nothing in clause 18.6 will limit our right to take proceedings against you in any court of competent jurisdiction, nor will the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in any such other jurisdiction whether concurrently or not (unless precluded by applicable law).
- 18.8** This EULA and any documents referred to in it, constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 18.9** Each party acknowledges and agrees that by entering into this EULA it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this EULA or not) relating to the subject matter of this EULA, other than as expressly set out in this EULA.
- 18.10** The parties' relationship is that of independent contractors. Nothing in this EULA is intended to, or will operate to create a partnership, joint venture or employment relationship between the parties or authorise either party to act as agent for the other and neither party will have the authority to act in the name of, or on behalf of, or otherwise to bind the other party in any way.
- 18.11** This EULA does not confer any rights on any person (other than the parties to this EULA and, where applicable, their successors and permitted assigns).

## SCHEDULE 1

### DATA PROCESSING TERMS

#### 1 DEFINITIONS

For the purpose of this Schedule the terms “controller”, “processor”, “data subject”, “personal data”, “processing”, and “appropriate technical and organisational measures” have the meanings given to them in the GDPR.

#### 2 DATA PROCESSING TERMS

- 2.1** The parties to this EULA hereby agree that they must comply with their respective obligations under all Data Protection Legislation, to the extent that the Data Protection Legislation is applicable to any processing of Customer Personal Data in connection with this EULA.
- 2.2** We acknowledge that, for the purposes of Data Protection Legislation, if we process any Customer Personal Data when performing our obligations under this EULA, you are the controller. You acknowledge that we are the processor of Customer Personal Data. A description of the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data is set out in paragraph 3 of these Data Processing Terms.
- 2.3** Without prejudice to the generality of paragraph 2.1, you must ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to us for the duration and purposes of this EULA so that we may lawfully use, process and transfer the Customer Personal Data in accordance with this EULA on your behalf.
- 2.4** We must, in relation to any Customer Personal Data processed in connection with the provision of Support and the performance of our obligations under the EULA:
- 2.4.1** only process the Customer Personal Data for the purpose set out in paragraph 3 of these Data Processing Terms and not for any other purpose unless we are acting on your documented written instructions or where otherwise required to do so by the laws of Australia, the European Union, the United States or by any laws applicable to us (Applicable Law). Where we are relying on Applicable Law as the basis for processing Customer Personal Data, we will notify you of this reliance before performing the processing required by the Applicable Law (unless prohibited by such Applicable Law);
- 2.4.2** ensure that we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 2.4.3** ensure that all personnel who have access to and/or process personal data are obliged to keep the Customer Personal Data confidential;
- 2.4.4** ensure we take such measures required pursuant to the Privacy Act, Article 32 of the GDPR and all other applicable Data Protection Legislation;
- 2.4.5** at your expense, assist you in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 2.4.6** notify you without as soon as reasonably practicable after becoming aware of a personal data breach in relation to the Customer Personal Data;
- 2.4.7** on your written direction, delete or return the Customer Personal Data and copies thereof to you on termination of this EULA unless required by Applicable Law to retain and store the Customer Personal Data; and
- 2.4.8** maintain complete and accurate records and information to demonstrate our compliance with these Data Processing Terms and allow for audits, including inspections by you or your designated auditor and as soon as reasonably practicable inform you if, in our opinion, an instruction infringes the applicable Data Protection Legislation.
- 2.5** You warrant and undertake that any processing of Customer Personal Data which is, or may occur in accordance with this EULA has a lawful basis and that any such Personal Data may properly be processed in accordance with the terms of this EULA.
- 2.6** You agree that we may appoint such sub-processors to process the Customer Personal Data as we deem appropriate for the proper performance of the EULA, provided that we impose contractual obligations on the sub-processor which are no less onerous

than those obligations set out in these Data Processing Terms. We must inform you of any intended changes concerning the addition or replacement of third-party processors, giving you reasonable opportunity to object to such changes.

**2.7** Without prejudice to the generality of any other provisions of the EULA, we may revise these Data Processing Terms by replacing them with any applicable controller to processor standard clauses or similar terms from time to time (which will apply when replaced by attachment to this EULA).

### **3 SCOPE, NATURE AND PURPOSE OF PROCESSING CUSTOMER PERSONAL DATA**

Subject matter and duration of processing:

The Customer Personal Data which is provided by you to us or to which you grant us access in connection with the performance of Support in relation to this EULA. We will only process the Customer Personal Data for as long as is required to provide Support to you under this EULA, or where we are required to retain and store the Customer Personal Data to comply with Applicable Laws.

Nature and purpose of processing:

Processing of the Customer Personal Data in order to perform Support in relation to this EULA.

Type of Personal Data:

The Customer Personal Data may include names, business addresses, mobile phone numbers, email addresses, IT system or account log in details, IP addresses, and such other personal identifiers and data relating to data subjects whose details may be provided (or made available) by you to us in connection with the performance of Support under the EULA.

Categories of Data Subjects:

Individuals whose details may be provided (or made available) by you in connection with the performance of Support under the EULA.

## SCHEDULE 2

### DATA TRANSFER TERMS

For the purposes of the applicable Data Protection Legislation, transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, you (as the data exporter) and we (as the data importer) have agreed that the following Terms will apply in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Annexure A.

#### 1 DEFINITIONS

For the purposes of these Data Transfer Terms:

- a) personal data, special categories of data, process/processing, controller, processor, data subject and supervisory authority will have the same meaning as in the GDPR;
- b) the data exporter means the controller who transfers the personal data;
- c) the data importer means the processor who agrees to receive from the data exporter personal data intended for processing on its behalf after the transfer in accordance with its instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the provisions of the applicable Data Protection Legislation;
- d) the sub-processor means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with its instructions, the terms of these Data Transfer Terms and the terms of the written subcontract;
- e) the applicable data protection law means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- f) technical and organisational security measures means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

#### 2 DETAILS OF THE TRANSFER

The details of the transfer and in particular, the special categories of personal data where applicable are specified in Annexure A which forms part of these Data Transfer Terms.

#### 3 THIRD-PARTY BENEFICIARY CLAUSE

- 3.1** The data subject can enforce against the data exporter this clause 3, clauses 4(b) to 4(i), clauses 5(a) to 5(e) and 5(g) to 5(j), clauses 6.1 and 6.2, clause 7, clause 8.2 and clause 9 to clause 12 as third-party beneficiary.
- 3.2** The data subject can enforce against the data importer this clause, clauses 5(a) to 5(e) and 5(g), clause 6, clause 7, clause 8.2 and clause 9 to clause 12, in cases where the data exporter no longer exists or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
- 3.3** The data subject can enforce against the sub-processor this clause, clauses 5(a) to 5(e) and 5(g), clause 6, clause 7, clause 8.2, and clause 9 to clause 12, in cases where both the data exporter and the data importer no longer exist or have ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor will be limited to its own processing operations under these Data Transfer Terms.
- 3.4** The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by the applicable law.

#### 4 OBLIGATIONS OF THE DATA EXPORTER

The data exporter agrees and warrants that:

- a) the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection laws (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- b) it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection laws and the Clauses;

- c) the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Annexure B to these Data Transfer Terms;
- d) after assessment of the requirements of the applicable data protection laws, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network and against all other unlawful forms of processing and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- e) it will ensure compliance with the security measures;
- f) if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the provisions of the applicable Data Protection Legislation;
- g) it will forward any notification received from the data importer or any sub-processor pursuant to clause 5(b) and clause 8.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- h) it will make available to the data subjects on request a copy of these Data Transfer Terms, with the exception of Annexure B and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with these Data Transfer Terms, unless these Data Transfer Terms or the contract contain commercial information, in which case it may remove such commercial information;
- i) in the event of sub-processing, the processing activity is carried out in accordance with clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subjects as the data importer under these Data Transfer Terms; and
- j) it will ensure compliance with clauses 4(a) to 4(i).

## 5 OBLIGATIONS OF THE DATA IMPORTER

The data importer agrees and warrants that:

- a) it will only process the personal data on behalf of the data exporter and in compliance with its instructions and these Data Transfer Terms and if it comply with such instructions for whatever reason, it agrees to inform promptly the data exporter, in which case, the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- b) it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by these Data Transfer Terms, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- c) it has implemented the technical and organisational security measures specified in Annexure B before processing the personal data transferred;
- d) it will promptly notify the data exporter regarding:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal laws to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- e) it will deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- f) at the request of the data exporter it will submit its data processing facilities for audit of the processing activities covered by these Data Transfer Terms which will be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- g) it will make available to the data subject upon request a copy of these Data Transfer Terms, or any existing contract for sub-processing, unless these Data Transfer Terms or the contract contain commercial information, in which case it may remove such commercial information, with the exception of Annexure B which must be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- h) in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- i) the processing services by the sub-processor will be carried out in accordance with clause 11; and
- j) it will promptly send a copy of any sub-processor agreement it concludes under these Data Transfer Terms to the data exporter.

## 6 LIABILITY

- 6.1** The parties agree that any data subject who has suffered damage as a result of any breach of the obligations referred to in clause 3 or in clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
- 6.2** If a data subject is not able to bring a claim for compensation in accordance with clause 6.1 against the data exporter, arising out of a breach by the data importer or its sub-processor of any of their obligations referred to in clause 3 or in clause 11 because the data exporter no longer exists or has ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case, the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

- 6.3** If a data subject is not able to bring a claim against the data exporter or the data importer referred to in clauses 6.1 and 6.2, arising out of a breach by the sub-processor of any of their obligations referred to in clause 3 or in clause 11 because both the data exporter and the data importer no longer exist or have ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under these Data Transfer Terms as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor will be limited to its own processing operations under these Data Transfer Terms.

## 7 MEDIATION AND JURISDICTION

- 7.1** The data importer agrees that if the data subject invokes, third-party beneficiary rights against it and/or claims compensation for damages under these Data Transfer Terms, the data importer will accept the decision of the data subject to:
- refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; and
  - refer the dispute to the courts in the Member State in which the data exporter is established.
- 7.2** The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## 8 COOPERATION WITH SUPERVISORY AUTHORITIES

- 8.1** The data exporter agrees to deposit a copy of these Data Transfer Terms with the supervisory authority if it so requests or, if such deposit is required under the applicable data protection laws.
- 8.2** The parties agree that the supervisory authority has the right to conduct an audit of the data importer and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection laws.
- 8.3** The data importer must promptly inform the data exporter regarding the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer or any sub-processor, pursuant to clause 8.2. In such a case the data exporter will be entitled to take the measures specified in clause 5(b).

## 9 GOVERNING LAWS

These Data Transfer Terms will be governed by the law of the Member State in which the data exporter is established.

## 10 VARIATION OF THE CONTRACT

The parties undertake not to vary or modify these Data Transfer Terms. This provision does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict these Data Transfer Terms.

## 11 SUB-PROCESSING

- 11.1** The data importer must not subcontract any of its processing operations performed on behalf of the data exporter under these Data Transfer Terms without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under these Data Transfer Terms, with the consent of the data exporter, it must only do so by way of a written agreement with the sub-processor which imposes the no less onerous obligations on the sub-processor as are imposed on the data importer under these Data Transfer Terms. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer will remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

## 12 OBLIGATIONS AFTER TERMINATION OF DATA PROCESSING SERVICES

- 12.1** The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor

must, at the selection of the data exporter, return all the data transferred and the copies thereof to the data exporter or destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed on the data importer prevents it from returning or destroying all or part of the data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the data transferred and will not actively process the data transferred further.

**12.2** The data importer and the sub-processor warrant that on request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in clause 12.1.

## ANNEXURE A

This Annex forms part of the Data Transfer Terms.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Annexure A.

### **DATA EXPORTER**

You are the data exporter, a licensee of udCloud.

### **DATA IMPORTER**

We are the data importer, a licensor of the udCloud and provider of associated products and services.

### **DATA SUBJECTS**

The personal data transferred concerns individuals whose details may be provided (or made available) by you in connection with the performance of Support by us under the EULA.

### **CATEGORIES OF DATA**

The personal data transferred includes databases, datasets, documents and other data in an electronic form in relation to which the Platform may be used.

### **SPECIAL CATEGORIES OF DATA (if appropriate)**

The personal data transferred concerns such special categories of data which you may inform us as being comprised within any Customer Personal Data transferred to us.

### **PROCESSING OPERATIONS**

The personal data transferred will be utilised in the provision of Support in relation to the EULA.



## ANNEXURE B

This Annexure B forms part of the Data Transfer Terms. Description of the technical and organisational security measures implemented by the data importer in accordance with clause 4(d) and clause 5(c) (or documents/legislation attached): The data importer has implemented and will maintain appropriate technical and organisational measures, internal controls, and information security routines intended to protect Customer Data, as set out at paragraph 2.4.2 of Data Processing Terms.