Kinematica End User License Agreement (EULA)

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2.1 The SOFTWARE PRODUCT can be utilised via either a web interface, or Application Programming Interface (hereinafter referred to as the “API”).

2.2 Access to the SOFTWARE PRODUCT is facilitated via the “Subscription model” or the “Credit model”.

2.3 In the Credit model, each credit allows the customer to process one-hour of data with the SOFTWARE PRODUCT, either via the web interface or the API.

2.4 The Subscription model allows the customer unlimited access to the SOFTWARE PRODUCT subject to the fair use conditions below:

2.4.1 Excessive use, considered to be the processing of more than 35 hours per week of data, is not permitted in the Subscription model.

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2.5.3 You may not attempt to disable or work around any software licensing security mechanisms that are part of the SOFTWARE PRODUCT;

2.5.4 You may not modify or prepare derivative works of the SOFTWARE PRODUCT;

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2.5.6 You may not publicly display visual output of the SOFTWARE PRODUCT without crediting Advanced Navigation and the SOFTWARE PRODUCT name;

2.5.7 You may not implement DLLs, libraries or other methods in a manner that permits automated internet based post-processing for multiple users using a single license (contact Advanced Navigation for special pricing);

2.5.8 You may not reverse engineer, decompile or disassemble the SOFTWARE PRODUCT; or

2.5.9 You may not use the SOFTWARE PRODUCT for any purposes associated with development or production of chemical, biological or nuclear weapons or their delivery systems.
3 Terms and Termination

This EULA is effective until terminated or until your software subscription or lease expires without being renewed (as the case may be). In the event that You shall, at any time during the term of this EULA be in breach of your obligations hereunder where such breach is irremediable or if capable of remedy is not remedied within thirty (30) calendar days of notice from Advanced Navigation requiring its remedy; then and in any event Advanced Navigation may forthwith by notice in writing terminate this EULA together with the rights and licenses hereby granted by Advanced Navigation. You agree upon the earlier of the termination of this EULA or expiration of your software subscription to cease using and to permanently destroy the SOFTWARE PRODUCT (and any copies, modifications and merged portions of the SOFTWARE PRODUCT in any form, and all of the component parts of the SOFTWARE PRODUCT) and certify such destruction in writing to Advanced Navigation. Termination shall be without prejudice to the accrued rights of either party, including payments due to Advanced Navigation. This provision shall survive termination of this EULA howsoever arising, or nomenclature used by Advanced Navigation, or any other words or combinations of words proprietary to Advanced Navigation, in connection with this EULA, without the prior written consent of Advanced Navigation.

4 Warranty

4.1 Advanced Navigation does not warrant the contents of the SOFTWARE PRODUCT or that it will be error free. The SOFTWARE PRODUCT is furnished "AS IS" and without warranty as to the performance or results you may obtain by using the SOFTWARE PRODUCT. The entire risk as to the results and performance of the SOFTWARE PRODUCT is assumed by you.

4.2 THE WARRANTIES IN THIS EULA REPLACE ALL OTHER WARRANTIES, AND Advanced Navigation EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.3 Advanced Navigation will not be liable for any loss or damage caused by delay in furnishing the SOFTWARE PRODUCT or any other performance under this EULA.
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5.1 Post Contractual Support (PCS): Each SOFTWARE PRODUCT license has a PCS subscription period associated with it. SOFTWARE PRODUCT which is licensed under a term subscription or lease shall be entitled to PCS benefits for the term of the license.

5.2 While within a PCS subscription period you are entitled to:

- Bug fixes and maintenance patches ("Updates") and version releases and enhancements ("Upgrades") if and when released during the PCS subscription period for the covered SOFTWARE PRODUCT.
- Expert phone and e-mail support

5.3 Support method: Support is provided through Advanced Navigation's online support ticketing system. Support requests can be generated by emailing support@advancednavigation.com.au. Advanced Navigation endeavours to respond to all support requests within 24hrs during week days. However, Advanced Navigation does not guarantee a reply time to support requests, this may due to issue complexity, lack of information provided on the issue or other factors outside of Advanced Navigation's reasonable control.

5.4 Lost licenses: You are responsible to ensure that your licenses are properly tracked and maintained. Advanced Navigation is not responsible for any lost licenses due to lost, stolen or damaged computers, or in cases where the license cannot be repaired.

6 Audit

Advanced Navigation shall have the right, during your normal business hours, to audit your use of the SOFTWARE PRODUCT and your compliance with the provisions of this EULA. Advanced Navigation will provide you with thirty (30) days prior written notice of an audit. The right of audit shall be limited to twice per calendar year. Prior to the start of an audit, Advanced Navigation's personnel will sign a reasonable non-disclosure agreement provided by you. During the audit, you shall allow Advanced Navigation's personnel to be provided reasonable access to both your records and personnel. The cost of the audit shall be paid by Advanced Navigation.
7  Indemnification

Advanced Navigation shall not be liable to indemnify You against any loss sustained by it as the result of any claim made or action brought by any third party for infringement of any letters patent, registered design or like instrument of privilege by reason of the use or application of the SOFTWARE PRODUCT by You or any other information supplied or to be supplied to You pursuant to the terms of this EULA. Advanced Navigation shall not be bound to take legal proceedings against any third party in respect of any infringement of letters patent, registered design or like instrument of privilege which may now or at any future time be owned by it. However, should Advanced Navigation elect to take such legal proceedings, at Advanced Navigation's request, You shall co-operate reasonably with Advanced Navigation in all legal actions concerning this license of the SOFTWARE PRODUCT under this EULA taken against any third party by Advanced Navigation to protect its rights in the SOFTWARE PRODUCT. Advanced Navigation shall bear all reasonable costs and expenses incurred by You in the course of co-operating with Advanced Navigation in such legal action. Advanced Navigation shall be under no obligation or liability of any kind (in contract, tort or otherwise and whether directly or indirectly or by way of indemnity contribution or otherwise howsoever) to You and You will indemnify and hold Advanced Navigation harmless against all or any loss, damage, actions, costs, claims, demands and other liabilities or any kind whatsoever (direct, consequential, special or otherwise) arising directly or indirectly out of or by reason of your use of the SOFTWARE PRODUCT whether the same shall arise in consequence of any such infringement, deficiency, inaccuracy, error or other defect therein and whether or not involving negligence on the part of any person.

8  Limitation of Liability

Notwithstanding anything to the contrary, to the maximum extent permitted by applicable law, in no event shall Advanced Navigation be liable for any indirect, incidental, consequential, punitive or special damages, including but not limited to, loss of use, loss of data, loss of business information, business interruption, loss of revenue or loss of profit even if Advanced Navigation has knowledge of the possibility of such damages. Advanced Navigation's total liability under this EULA shall not exceed the amount that Advanced Navigation was paid by You for the SOFTWARE PRODUCT under this EULA. Except as required by applicable law, no claim, regardless of form, arising out of or in connection with this EULA may be brought by You more than one (1) year after the cause of action as occurred.
9 Restrictions

9.1 Intentional violations of export laws and regulations will not be tolerated. If You intentionally or knowingly participate in violation of export regulations, this EULA is subject to immediate termination and possible legal action. You may also be exposed to criminal or civil litigation, fines or imprisonment; and

9.2 Where there is any doubt, uncertainty or suspicion of possible impropriety with respect to any law surrounding any proposed transaction, the transaction will be forfeited without question. Australian laws restrict the export or re-export of SOFTWARE PRODUCT to certain people, countries, and end users. You agree to comply with these laws and will not sell, or otherwise provide SOFTWARE PRODUCT to anyone regardless of location in violation of these export restrictions. You agree to comply with all export laws, rules and regulations of Australia and its respective foreign export compliance agencies or authorities, and not to export or re-export the SOFTWARE PRODUCT in violation of any such laws, rules or regulations, or without all necessary authorizations. You have the obligation to obtain and bear all expenses relating to any necessary End-User License Agreement ("EULA") licenses and/or exemptions with respect to its export of the SOFTWARE PRODUCT from your country. Any breach of the obligations or representations set forth in this Section shall be deemed to be a material breach of this EULA, entitling Advanced Navigation to terminate this EULA without notice and seek such remedies as may be appropriate in the circumstances.

10 Privacy

10.1 Advanced Navigation stores customer information and data we receive, process, create, store, or transmit on behalf of a customer or partners when delivering an online service to a customer, or information and data customers otherwise provide for the purposes of support and professional services engagements. Advanced Navigation limits the use of personally identifiable data when possible and complies with privacy regulations. For the sole purpose of providing technical support, with your express permission, we may access customer data including, but not limited to, log files and processed output files.

11 Security

11.1 Advanced Navigation is committed to protecting the information of its customers and preventing unauthorized disclosure, use, modification, or access to such information stored within Advanced Navigation's systems. We recognize the importance of appropriate information security policies and procedures to protect the security of customer data. Our software platform, and customer data is stored on systems hosted on Advanced Navigation premises in our Sydney, Australia head office. All data is stored encrypted, and with physical access control. User access and authentication is controlled.
11.2 As an organisation that works with government customers, our premises, personnel and systems are all controlled in compliance with United States regulations NIST SP 800-171 (Protecting Controlled Unclassified Information in Non-federal Systems and Organizations) and Cybersecurity Maturity Model Certification (CMMC) Level 3. These controls cover in detail the following; Access Control, Audit and Accountability, Awareness and Training, Configuration Management, Identification and Authentication, Maintenance, Media Protection, Personnel Security, Physical and Environmental Protection, System and Communications Protection, System and Information Integrity.

12 General

12.1 Entire Agreement: This EULA constitutes the entire agreement between the parties hereto with regard to the subject matter of the SOFTWARE PRODUCT. This EULA supersedes any and all prior discussions and/or representations, whether written or oral, and no reference to prior dealings may be used to in any way modify the expressed understandings of this EULA. Any future representations, promises and verbal agreements related to the SOFTWARE PRODUCT, including but not limited to features, future enhancements, functionality, or services covered by this EULA will be of no force or effect unless reduced in writing and made a part of this EULA. THIS EULA MAY NOT BE AMENDED OR MODIFIED UNLESS SO DONE IN WRITING SIGNED BY AUTHORIZED REPRESENTATIVE OF Advanced Navigation. THE PRE-PRINTED TERMS AND CONDITIONS OF ANY PURCHASE ORDER OR ANY OTHER TERMS AND CONDITIONS OF A PURCHASE ORDER WHICH MAY CONFLICT IN ANY WAY WITH THE TERMS AND CONDITIONS OF THIS EULA SHALL BE VOID, EVEN IF ISSUED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS EULA, AND SHALL NOT BE DEEMED TO CONSTITUTE A CHANGE TO THIS EULA.

12.2 Severability: If a provision of this EULA is or becomes or is found by a court or other competent authority to be illegal, invalid or unenforceable, in whole or in part, under any law, such provision will to that extent only be deemed not to form part of this EULA and the legality, validity and enforceability of the remainder of this EULA will not be affected or impaired. The parties will negotiate in good faith to replace any such illegal, invalid or unenforceable provision with a valid and enforceable provision which, as far as possible, has the same legal and commercial effect as that which it replaces.

12.3 No Waiver: No delay or failure on the part of any party in exercising a right, power or remedy provided by law or under this EULA will impair that right, power or remedy or operate as a waiver of it or any other rights and remedies. The single or partial exercise of any right, power or remedy provided by applicable mandatory law or under this EULA will not preclude any other or further exercise or the exercise of such rights, power or remedy.
12.4 Governing Law and Venue: This EULA shall be interpreted under the laws of the State of NSW, Australia. This EULA shall not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. In the event of a dispute arising out of or relating to this EULA, the parties agree that venue is proper, in that they will submit irrevocably to the exclusive jurisdiction of the courts of relevant jurisdiction in Sydney, NSW, Australia.

12.5 Notices: Any notice or other communication (“Notice”) required or permitted under this EULA shall be in writing and either delivered personally or sent by electronic mail, facsimile, overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested. A Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. A Notice sent by electronic mail or facsimile shall be deemed given when transmitted, provided that the sender obtains written confirmation from the recipient that the transmission was received. A Notice sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after having been sent. A Notice that is sent by certified mail or registered mail shall be deemed given forty-eight (48) hours after it is mailed. If any time period in this EULA commences upon the delivery of Notice to any one or more parties, the time period shall commence only when all of the required Notices have been deemed given.

12.6 Assignment: Neither Party shall assign any of its rights or delegate any of its obligations under this EULA without the prior written consent of the other party, provided that such consent shall not be unreasonably withheld, except that Advanced Navigation may assign its rights and obligations under this EULA without your consent to an entity which acquires all or substantially all of the assets of Advanced Navigation Pty Ltd or to any subsidiary, affiliate or successor in a merger or acquisition of Advanced Navigation Pty Ltd.