

POSITION PARTNERS NEW ZEALAND LTD (4963339)

AIIDayRTK NEW ZEALAND LICENCE AGREEMENT TERMS AND CONDITIONS

1. ACCEPTANCE OF TERMS THROUGH USE

Welcome to the AIIDayRTK NZ GNSS Correction Service ("Data").

Please note: You must read and agree to the following terms and conditions that apply to the AIIDayRTK service and Data. Tick box, or click the "I AGREE" button or sign the AIIDayRTK NZ Licence Agreement form as the case may be. PERMISSION TO USE THE LICENSED DATA THAT ACCOMPANY THIS AGREEMENT IS CONDITIONAL UPON YOU, THE CUSTOMER (LICENSEE) ACCEPTING THE TERMS SET OUT BELOW. THAT BY USING ALLDAYRTK NZ SERVICES AND DATA YOU (WHICH INCLUDES YOU THE CUSTOMER AND YOUR AUTHORISED PERSONNEL) ARE AGREEING TO BE BOUND BY POSITION PARTNERS NEW ZEALAND LTD (LICENSOR) TERMS, CONDITIONS, AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT.

2. DEFINITIONS

In this Agreement the following terms shall have the meanings set out below, unless the context requires otherwise.

- 2.1. "AIIDayRTK NZ" means the AIIDayRTK New Zealand service, which records and distributes GNSS position correction information using a network of CORS;
- 2.2. "Australian Privacy Principles" means the relevant laws and principles that regulate the handling of personal information by Australian Government agencies and some private sector organisations;
- 2.3. "Commencement Date" means the date specified in the Licensor's tax invoice; or if no date is specified, the date on which the Licensee signs the Licence Agreement, or takes delivery of the Data from the Licensor for the purposes of the Licence Agreement;
- 2.4. "CORS" means Continuously Operating Reference Stations (CORS) that receive satellite position, navigation and time information;
- 2.5. "Data" means Global Navigation Satellite System (GNSS) position correction information, recorded and distributed using a network of CORS and the AIIDayRTK service;
- 2.6. "Device" means Global Navigation Satellite System (GNSS) receiver hardware device and one or more wireless communication devices that supports connection to wireless internet services, collectively named a "Device";
- 2.7. "Further Term" means such further term of this Licence Agreement as granted from time to time (for whatever period) by the Licensor on payment of the Subscription Fee;
- 2.8. "GNSS" means Global Navigation Satellite System (GNSS) including the Global Positioning Service (GPS) owned and operated by the United States of America and GLONASS an acronym for Globalnayanavigatsionnaya sputnikovaya sistema from the Russian Federation;
- 2.9. "Initial Term" means the initial period of this agreement as described on the AIIDayRTK Agreement Form;
- 2.10. "Licence Agreement" means the AIIDayRTK NZ Licence Agreement which may be completed online or via hard copy and includes any annexures or documents incorporated by reference;
- 2.11. "Licensee" means the party specified as such in the Licence Agreement and where the context requires, includes that party's employees agents, representatives, successors and assigns;
- 2.12. "Licensor" means Position Partners New Zealand Ltd (4963339);
- 2.13. "NTRIP" means the protocol for Networked Transport of RTCM via Internet;
- 2.14. "Renewal Term" means frequency or period of the billing/invoicing cycle as described in the Licence Agreement Form;
- 2.15. "Pro Rata" means to fees charged or credited in part or proportion and is calculated on a whole months plus days basis;
- 2.16. "Subscription Fee" means the total amount payable by the Licensee to the Licensor for the use of the Data pursuant to the Licence Agreement, which is stated on the tax invoice supplied to the Licensee;
- 2.17. "Subscription Term" means a time period of 12 months or part thereof specified by the Licensee in the AIIDayRTK NZ Licence Agreement for the use of the Data pursuant to the Licence Agreement;
- 2.18. "Standard Terms & Conditions" means the Standard Terms & Conditions of Sale that are posted on Position Partners web site and are varied from time to time: www.positionpartners.co.nz;
- 2.19. "Third Party Data" means Data from supplementary service providers including commonwealth and state governments, and others which may be offered from time to time;
- 2.20. "Terms and Conditions" means these terms and conditions.

3. SCOPE OF AGREEMENT

- 3.1. Subject to the Terms and Conditions of this Agreement, Position Partners (Licensor) grants to you the customer (Licensee) a non-transferable and non-exclusive licence to use AIIDayRTK NZ services and Data in the normal course of your business.
- 3.2. During the Term, the Licensor will provide the Licensee with services as detailed in the AIIDayRTK NZ Licence Agreement form.

4. DURATION OF LICENCE

- 4.1. The initial term of this agreement is for 1 year (the "Initial Term"). If the Licensee cancels the Agreement, in whole or in part, before the end of the Initial Term or Renewal Term, the Licensee agrees to pay all outstanding monies due in the agreement period, and will not be entitled to a refund.
- 4.2. Agreement shall automatically renew as per the Renewal Term on the Agreement form unless either party provides written notice of its intent to cancel the Agreement. Services renewed under this clause shall be on the same terms and conditions as set out in this Agreement unless variations are agreed in writing or by electronic mail by the Licensor, save that the Subscription Fee for any Renewal Term of the Licence may be varied by the Licensor.

5. COPYRIGHT AND OWNERSHIP

- 5.1. The Licensee acknowledges that AIIDayRTK NZ service and Data are subject to copyright. The Licensee shall not during or any time after the expiry or termination of this Licence permit any act which infringes that copyright.
- 5.2. The Licensee acknowledges that there is no transfer of title or ownership of the Data, and that the copyright and intellectual property in the Data shall remain the property of the Licensor.
- 5.3. The Licensee agrees not to sell or provide the Data in any form to any other person or entity.

6. THIRD PARTIES

- 6.1. The Licensee acknowledges that copyright in the Third Party Data is owned by a third party. The Licensor warrants that it is permitted to supply the Third Party Data to the Licensee but the Licensee acknowledges that it may be required to enter a separate agreement with a relevant third party.
- 6.2. The Licensee agrees to indemnify the Licensor against any liability, loss, claim or demand arising out of action or omission taken by the Licensee with respect to the Third Party Data in breach of this Agreement.

7. STANDARD TERMS & CONDITIONS OF SALE AND SUBSCRIPTION FEES

- 7.1. The Licensee agrees to the Licensor's Standard Terms & Conditions of Sale that are posted on the Licensor's web site and are varied from time to time (www.positionpartners.co.nz).
- 7.2. The Licensee agrees to pay the Subscription Fee specified in the tax invoice provided to the Licensee by the Licensor.
- 7.3. Failure of the Licensee to pay any Subscription Fee or any other money owing to the Licensor, will entitle the Licensor to immediately deactivate access to the AIIDayRTK NZ service and Data.
- 7.4. Access to AIIDayRTK service and Data is provided for fixed periods of time and at fees that are changed from time to time.

8. PERMITTED USE

- 8.1. The Licensor grants the Licensee a non-exclusive right to access and use the Data for the duration of the time period for the purpose of carrying out surveying and related activities and to provide physical measurements of earth and sea surfaces, natural features, or manmade objects for determining absolute and relative positions of those surfaces, features and objects in either geodetic, topographical, cadastral, hydrographic or construction and engineering reference systems; including automated GNSS control of farming and agricultural machinery and construction engineering machinery and shall exclude Safety-of-Life use or for any other application in which the veracity of the Data is used in a situation where personal injury or death may occur.
- 8.2. The Licensee may authorise personnel associated with the Licensee's business to access and use the Data under this Licence and the Licensee agrees to inform all personnel of the terms, conditions and restrictions of the Licensee and the Licensee remains responsible under law for their compliance with the Licence.
- 8.3. The Licensee is permitted to access Data provided that you do not:
 - a) Access or use the Data other than by or with a Device owned and used by the Licensee;
 - b) Transfer, sublicense or resell the Data or content to another individual or entity;
 - c) Broadcast or otherwise disseminate the Data for concurrent use by more than one Device simultaneously.
- 8.4. The Licensee shall access the Data only via authenticated "username" and "passwords" and a separate username and password will be created for each Licenced user. Authentication for real-time Data streams will be achieved by using the NTRIP protocol (Networked Transport of RTCM via Internet).
- 8.5. The Licensee agrees to be entirely responsible for maintaining the confidentiality of usernames and passwords, and you agree that the Licensor may terminate your Licence and disconnect your access to the Data if you fail to do so. Additionally, you the Licensee are fully responsible for any and all activities that occur under your usernames and passwords. You agree to notify the Licensor immediately of any unauthorised use of your usernames and passwords or any other breach of security. The Licensor will not be liable for any loss that you may incur as a result of someone else using your usernames and passwords, either with or without your knowledge.
- 8.6. The Licensee acknowledges that they are competent in the use and applications that they are undertaking in conjunction with application of the Data.
- 8.7. The provision, use, suitability, setup, checking and configuration of any and all user hardware Devices, software and communication options for use of the Data are entirely the responsibility of the Licensee.
- 8.8. The Licensee acknowledges that no promise, representation, warranty or undertaking has been provided as to the suitability of the AIIDayRTK NZ service and Data for their specific needs, and that they have relied upon their own undertaking as to its suitability and fitness for a particular purpose.

9. RESTRICTIONS AND MISUSE

- 9.1. The Licensee acknowledges that they will not interfere with or cause harm to any aspect of the Data or the AIIDayRTK NZ service, including but not limited to interference with its data streams, hardware, and software or communication protocols.
- 9.2. The Licensee agrees not use the Data for any purpose that is unlawful or prohibited by the licence terms and conditions. The Licensor may restrict access to AIIDayRTK NZ services and Data or cancel the Licence and if there is a reasonable suspicion of, or any actual misuse or fraudulent use by the Licensee.
- 9.3. The Licensee will be responsible for any costs incurred by the Licensor or any other party (including Legal fees) as a result of any misuse or fraudulent use of the Data. Misuse or fraudulent use includes, but is not limited to:
 - a) Using the Data in such a manner so as to interfere unreasonably with the use of AIIDayRTK NZ services and Data by one or more other users or wireless customers or to interfere unreasonably with the underlying telecommunication carrier's ability to provide AIIDayRTK NZ services and Data;
 - b) Fraud or unauthorised access; or using the AIIDayRTK NZ services and Data without permission or on a stolen or lost Device;
 - c) Taking any action that imposes an unreasonable or disproportionately large load on AIIDayRTK NZ services, Data and essential infrastructure;
 - d) Tampering with or making an unauthorised connection to AIIDayRTK services and Data;
 - e) Reselling or re-billing AIIDayRTK services and Data to any other individual or entity;
 - f) Re-broadcasting AIIDayRTK NZ services and Data without the express written permission of the Licensor; or
 - g) Use of AIIDayRTK NZ services and Data in any other unauthorised or illegal manner.

10. CONFIDENTIALITY AND PRIVACY

- 10.1. Except for disclosures necessary to meet statutory or regulatory requirements, the Licensee shall treat the Data as confidential, other than for advertising or publicity material, the Licensee will not disclose the Data to any person or entity.
- 10.2. The Licensee shall not use the Data to produce material or products for the purposes of commercialisation except as otherwise expressly authorised by this Licencing Agreement or in writing by the Licensor.
- 10.3. The Licensor is bound by the Australian Privacy Principles and any applicable codes of practice for the purposes of information provided to it by the Licensee pursuant to this Licence. Please read the Licensor's Privacy Statement that is available on the on-line: www.positionpartners.co.nz/privacy.htm

11. NETWORK COVERAGE AREA, AVAILABILITY OF GNSS SATELLITES, AND TELECOMMUNICATION CARRIER SERVICE INTERRUPTIONS

- 11.1. The Licensee acknowledges that the AllDayRTK NZ network coverage area and access to Data are subject to transmission limitations caused by a variety of factors such as atmospheric conditions and events like severe solar activity, topographical obstructions, limitations or lack of coverage of the underlying telecommunication carrier service and other natural or manmade conditions, including but not limited to, power outages, motor and ignition noise, metal shielding, interference by users of the same or adjacent radio channels that may limit network coverage or interfere with access to AllDayRTK NZ services.
- 11.2. The Licensee further acknowledges that the Licensor is not responsible for the operation or failure of operation of GNSS satellites or the availability of GNSS satellite signals.
- 11.3. The Licensor shall not be held liable by the Licensee or any third party for any loss or damage arising from AllDayRTK NZ services and Data, or its interruption, transmission errors, defects or any other cause, including, but not limited to, interruption caused by the underlying Telecommunication carrier or other service providers.
- 11.4. The Licensor does not assume and shall not have any liability for events beyond the Licensor's control or the control of the Licensor's subcontractors, or business partners, including, but not limited to, force majeure, acts of any governmental entity, acts of a public enemy, strikes, riots, earth quakes or severe weather conditions.
- 11.5. The Licensor has no control over, nor responsibility for any delays, limitations or deficiencies in any telecommunications equipment, telecommunications services or telecommunications coverage.
- 11.6. The AllDayRTK NZ network coverage area, CORS sites and CORS locations can vary from time to time, and the Licensee should check relevant CORS sites and CORS locations, network coverage and status prior to the commencement of any work.
- 11.7. The Licensor may at any time discontinue or modify, enhance or make additions, permanently or temporarily, to all or any part of AllDayRTK NZ services, network coverage area, and Data.

12.WARRANTY AND INDEMNITY

- 12.1. The Data is provided "as is" and "without promise" although the Licensor undertakes extensive checks and has backup systems and procedures, it assumes no responsibility for loss, deletion, missed delivery, timeliness or failure to provide, store or record any observations, measurements and information, and Licensor does NOT warrant that the Data is error free.
- 12.2. The Licensor does NOT warrant that it can provide continuous, uninterrupted or complete Data and makes no guarantees, representations or warranties pertaining to the integrity of the Data, expressed or implied, including but not limited to, the quality, effectiveness, reliability, completeness, accuracy or fitness for a particular purpose or use.
- 12.3. The Licensee agrees to indemnify the Licensor and its officers and employees and agents, in respect of all claims for loss, damage, or injury suffered by any person resulting from use by the Licensee or by a third party of the Data or any part thereof or of materials produced or derived from the Data.

13.LIABILITY

- 13.1. To the full extent permitted by law, the Licensor is not liable to the Licensee for any direct, indirect, consequential or contingent loss, liability, cost, damage or expense from the use of the Data by the Licensee, or any other party, and without limitation includes but is not limited to loss occasioned by defective design, workmanship or materials in relation to or reliance on the Data.
- 13.2. Notwithstanding any damages that the Licensee might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract, negligence or else), the entire liability of the Licensor and any of its suppliers arising from or related to this Licence shall be limited to the value of the Subscription Fee paid by the Licensee for the Data.

14.TERMINATION

- 14.1. Without prejudice to any other rights, the Licensor may immediately terminate this agreement if the Licensee fails to comply with any of its terms and conditions or the Licensor's Standard Terms and Conditions of Sale as per clause 6.1 in such an event, the Licensee must immediately cease to access the Data.

15.GOVERNING LAW

- 15.1. Unless otherwise agreed in writing by the Licensor, at the Licensor's sole selection, the Courts in New Zealand will have exclusive jurisdiction in relation to all matters whatsoever concerning these terms and conditions. The Licensee irrevocably waives any objection to the venue selected by the Licensor in relation to any legal proceedings concerning these terms and conditions. The laws of New Zealand chosen by the Licensor for any such legal proceedings, will govern these Terms and Conditions.