

END USER LICENCE AGREEMENT (SAMPLE DATA)

We’re excited you’ve chosen to try Ambient Maps sample data from the University of Melbourne, lead agent for the Australian Urban Infrastructure Network project (AURIN).

Our legal relationship with you regarding the use of the Data is governed by this End User Licence Agreement (EULA).

This EULA is binding when you agree to this EULA via the AURIN Website. When that happens:

- you become an End User; and
- we will supply the sample Data to you for Internal Use

If you have any questions about this EULA, please contact our office by email at support@aurin.org.au.

In this EULA:

- **Ambient Maps** refers to NAQMAP PTY LTD ABN 68 611 889 984 trading as Ambient Maps of Level 1, 38 Fisher Street, East Brisbane 4169;
- **The University of Melbourne or AURIN**, refers to the University of Melbourne (ABN 84 002 705 224) of Parkville, Victoria 3010, a body politic and corporate pursuant to the provisions of the University of Melbourne Act 2009 (Vic); and
- **We, us** and **our** refer to University of Melbourne as Ambient Maps re-seller. You acknowledge and agree that you will liaise with the University of Melbourne in respect of all dealings under this Agreement and that you must not communicate with Ambient Maps unless the University of Melbourne provides prior written consent.
- **End User, you** and **your** refer to the individual, organisation or institution described below.

AGREEMENT PARTICULARS:

Item 1—Your details

Your Agreement Particulars are as provided via AURIN infrastructure.

Item 2—Our details

Name	The University of Melbourne being a body politic and corporate constituted under the <i>University of Melbourne Act 2009</i> (Vic) in its capacity as the lead agent administering AURIN (AURIN or University of Melbourne)
ACN or ABN	84 002 705 224
Registered address	Grattan Street, Parkville VIC 3010
Principal business address	Level 3 Thomas Cherry Building, University of Melbourne, Swanston Street, Carlton 3053
Key contact	Aaron Magri

	Head of Business Development aaron.magri@unimelb.edu.au +61 433 458 636
Technical data contact	Joshua Clough Head of Product joshua.clough@unimelb.edu.au +61 3 8344 9221

Item 3—Data Licences available

Sample Licence

Access to the selected sample SA2 Geographic Area for internal evaluation purposes only to trial for a one-month (30-day) period.

You can only select access one such sample of the Transport Noise Dataset Buildings product and one such sample of the Transport Noise Overlay product.

Agreed Terms

1. Permitted Purpose

- a) You may only use the Data internally within your own organisation in accordance with this EULA.
- b) You must take all reasonable steps to ensure that You do not make our Data or Derived Material available to any other person except as expressly permitted by this EULA.

2. Access to the Data

Your Data access details are set out in Item 3 of the Agreement Details. We are only obliged to provide you with reasonable access to the Data via the delivery method specified on the AURIN Website.

3. Format of the Data

- (a) You acknowledge that the Data is provided to the University of Melbourne by Ambient Maps.
- (b) We will use reasonable endeavours to make the Data available to you in the formats set out on the AURIN Website as published from time to time.

4. Copyright Information

- (a) The Data and its use are subject to the [AURIN Copyright Notice](#) as may be modified from time to time by AURIN.
- (b) You must ensure that any reproduction or expression of the Data bears or appropriately references the copyright and disclaimer information set out as follows:
 - a. Ambient Maps, (2022): Transport Noise Data, accessed from AURIN (www.aurin.org.au).
- (c) You must not remove, deface, change, distort, delete or cover up:
 - (i) any name or mark on the Data which indicates that we or our source data providers are the owners of the Data; or
 - (ii) any copyright or other proprietary notices which appear in writing on or in any part of the Data.

5. Data Disclaimer

- (a) Other than as set out in this EULA, the Data is provided ‘as is’ and we do not make any representations or provide any warranties (express or implied) about the accuracy or completeness of the Data, or its fitness for any particular purpose or that it is without errors or faults.
- (b) You acknowledge that you have made your own assessment of the Data and have not relied on any information or advice given by us regarding the Data and whether it is reasonably fit for any purpose for which it will be used by you.
- (c) Notwithstanding the above, nothing in this EULA should be interpreted as attempting to exclude, restrict or modify the application of the Consumer Guarantees under the Australian Consumer Law.
- (d) You must ensure that you are aware of and acknowledge the limitations and exclusions contained in clauses 5(a) and 5(b) above and must not make any representations or warranties about the Data on our behalf.

6. Source data providers

You acknowledge and agree that:

- (a) the Data may include, be derived from or based on source data from third party providers;
- (b) the source data providers, the University of Melbourne and Ambient Maps, have not provided any representations or warranties about the accuracy or completeness of the data, or its fitness for any particular purpose; and

-
- (c) the source data providers may rely on the disclaimers and acknowledgements set out in clause 5 above to the extent that they relate to the source data; and
 - (d) the source data providers, the University of Melbourne and Ambient Maps, will not be liable to you for any error, inaccuracy, or incompleteness of the source data or for any use or misuse of the source data by you.

7. Data Corrections

If you notify us of an error in, or suggested corrections or improvements to, the Data, you acknowledge that any Intellectual Property Rights in that information and in any improvements or corrections to the Data will vest in Ambient Maps and we may distribute the improvement, correction or the corrected or improved Data to Ambient Map's other customers.

8. Data Modifications

- (a) Ambient Maps may modify the Data for any reason, including as a result of an improvement in technology or data processing methods, a requirement imposed by law, a change to the source data supply arrangements or to improve the Data. These modifications may include changes to:
 - (i) the attributes included in the Data;
 - (ii) how the Data is structured (its data model);
 - (iii) the format (or encoding) of the Data;
 - (iv) the count of distinct records in the Data; and
 - (v) the level of quality of the Data.
- (b) We will give you notice of significant modifications to the Data and will do so prior to the modification where we can reasonably do so.

9. Discontinuation of Data

10. You acknowledge that the nature of the agency relationship between the University of Melbourne and Ambient Maps requires that we may discontinue the availability of any Data at any time and for any reason.

11. Intellectual Property Rights

- (a) There is no transfer of any Intellectual Property Rights in the Data under this EULA.
- (b) Any Intellectual Property Rights in Derived Material vests in AURIN upon its creation.
- (c) To the extent that any new Intellectual Property Rights arise in any material created by your authorised copying, altering, amending, Thinning, editing or otherwise manipulating the Data, on and from the time of creation those new Intellectual Property Rights vest in Ambient Maps or are assigned from you to Ambient Maps upon creation. You must not assert any such rights except as required by Ambient Maps to enforce Ambient Maps' rights.
- (d) Subject to clause 4(d) (regarding Open Data), we warrant that we, the University of Melbourne as reseller of Ambient Maps, are entitled to grant you this EULA and that the grant of this licence does not infringe the Intellectual Property Rights of any third parties.
- (e) You must notify us immediately if you become aware of:
 - (i) any actual, suspected or anticipated infringement of Ambient Maps' Intellectual Property Rights in the Data; or
 - (ii) any use of the Data which infringes, is suspected of infringing, or is alleged to infringe, the Intellectual Property Rights of a third party.

-
- (f) Where you notify us in accordance with clause 11(d), you must:
- (i) provide all relevant details regarding the infringement; and
 - (ii) subsequently provide prompt updates on any developments regarding the infringement.
- (g) You must comply with any reasonable directions from us relating to any actual, suspected or anticipated infringement of Intellectual Property Rights in or relating to use of the Data, including ceasing use of any Data immediately on request from us.

12. Development

- (a) You must enter into a product commercialisation agreement with us before you take any steps to commercialise any Derived Material (including any developed capability, products, services, outputs or other material) and/or seek to make the Data or any Derived Material available to any third party that is not named in this EULA. To avoid commercialisation delays, you should contact the Commercial Partnerships Lead by email at support@aurin.org.au early in any commercialisation exploration activity to discuss the potential commercialisation with us.

13. Publication

If You have purchased an Academic Research Licence You may publish your findings and results from the research with the Derived Material, provided that:

- (a) AURIN is acknowledged (in a form to be agreed by AURIN prior to publication) as the source of the Material; and
- (b) The publication does not contain the Data.
- (c) If you purchased an Academic Licence You retain and do not waive any or all Moral Rights in any Derived Material that you produce in accordance with this EULA.

14. Confidential Information

- (d) Both parties:
- (i) may use the other party's Confidential Information solely for the purposes set out in or as reasonably contemplated by this EULA;
 - (ii) must keep confidential all the other party's Confidential Information; and
 - (iii) may disclose the other party's Confidential Information only:
 - A. to their employees, contractors and professional advisors who:
 - 1. are aware and agree that the Confidential Information must be kept confidential; and
 - 2. have a need to know the Confidential Information (and only to the extent that each has a need to know);
 - B. as required by law or securities exchange regulation; and
 - C. with the prior written consent of the other party.
- (e) Each party must notify the other immediately if they become aware of any breach of confidentiality in respect of the other party's Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

15. Privacy Obligations

-
- (a) **Privacy Notice.** The University of Melbourne collects, holds, uses and discloses personal information in accordance with its privacy policy which is available and updated from time to time at <https://policy.unimelb.edu.au/MPF1104>.
- (b) If you collect, access, use, disclose, store, transfer or otherwise handle any Personal Information, You must comply with all Privacy Laws, including in the same way and to the same extent as they apply to the University of Melbourne.
- (c) Without limiting clause 16(b), You must:
- (i) only use Personal Information to the extent necessary to perform your obligations under this Agreement;
 - (ii) not disclose any Personal Information to any other person (including your subcontractors) without our prior written consent;
 - (iii) take all reasonable steps to protect Personal Information in your possession or control, while the Personal Information is at rest and in transit, from any interference, misuse, loss, unauthorised access, modification or disclosure, including implementing and maintaining appropriate administrative, physical, and technical safeguards and security measures; and
 - (iv) not do (or omit to do) anything with respect to Personal Information that causes or is likely to cause us to be in breach of our obligations under any Privacy Laws.

16. Security and Data Breaches

- (a) You must take all reasonable steps to ensure you keep the Data, any Personal Information and any other Derived Material (as applicable) secure from misuse, loss, unauthorised access, modification or disclosure.
- (b) On request by us, you must provide us with reasonable information about your information security management practices and systems.
- (c) You must, in accordance with industry best practice, monitor any systems you use to hold, store or process the Data or Personal Information for actual or suspected Data Breaches.
- (d) If you become aware or suspect that a Data Breach has occurred, you must:
- (i) immediately notify the appropriate University of Melbourne contact as listed in Item 2 of the Agreement Particulars of the Data Breach or potential Data Breach;
 - (ii) use your best endeavours to promptly identify the cause of the Data Breach or potential Data Breach;
 - (iii) promptly take all reasonable steps within your power to remedy any Data Breach and its consequences;
 - (iv) use your best endeavours to ensure that any potential Data Breach does not become an actual Data Breach;
 - (v) promptly provide the University of Melbourne with a written report detailing the cause (or suspected cause) of, and procedure for remedying, the Data Breach and its consequences; and
 - (vi) promptly take all necessary steps to prevent any recurrence of such a Data Breach or potential Data Breach.
- (e) If you provide the University of Melbourne with a notice under clause 16(d)(i), or either of us otherwise suspects that a Data Breach has occurred, you must:
- (i) as soon as reasonably practicable, disclose to us all information relevant to that actual or suspected Data Breach;

-
- (ii) co-operate with us and provide all reasonable assistance in investigating whether a Data Breach has occurred and the circumstances surrounding that Data Breach; and
 - (iii) provide us with access, information and copies of records relevant to the Data Breach as reasonably requested by us.

17. Audit

- (a) We may conduct an audit at any time on no less than five Business Days' notice to you. You must, on request by us, provide all requested documents and materials that relate to this EULA and allow all reasonable and necessary access to your systems and relevant personnel to ensure compliance with any matters that relate to this EULA (including auditing your privacy and data security obligations).
- (b) If an audit identifies any non-compliance by you with your obligations under this EULA, then:
 - (i) you must take all reasonable actions necessary to address the relevant non-compliance to our reasonable satisfaction;
 - (ii) we may require reasonable further audit(s) to assess the relevant remediation activities in respect of the identified non-compliance(s); and
 - (iii) we may immediately suspend this EULA (including access to the Data) until such a time as you have taken all reasonable actions in accordance with clause 17(b)(i).
- (c) Where an audit reveals that you have materially breached a EULA, we may require you to pay the cost of the relevant audit(s).
- (d) Nothing in this clause 17 limits our ability to terminate a EULA.

18. Insurance

You must maintain adequate insurance arrangements to cover your potential liability under this EULA.

19. Limitations on liability

- (a) To the extent permitted by law, our maximum aggregate liability to you for any Loss suffered by you, however caused (including by negligence), in connection with this EULA is limited to the Liability Cap per event or series of related events.
- (b) Each party agrees that the limitation of liability in clause 19(a) does not apply in respect of the indemnities set out in clause 20.
- (c) Neither party will be liable for any Consequential Loss arising from or in connection with this EULA.

20. Indemnity

You indemnify the University of Melbourne and Ambient Maps against all reasonable Claims. Including in respect of Claims relating to alleged infringement of the Intellectual Property Rights of any third party), Loss, demands, charges or expenses (including reasonable legal costs) made against or incurred by the University of Melbourne and Ambient Maps as a result of any breach of this Agreement, and any negligent or fraudulent act or omission, by you (including your other named End Users and subcontractors), except to the extent to which such Claims, Loss, demands, charges or expenses is caused by or contributed to by the University of Melbourne or Ambient Maps as applicable.

21. Force Majeure

- (a) A party will not be liable to the other party for the consequences of any failure to perform or delay in performing its obligations under this EULA if that failure or delay is due to a Force Majeure Event.

22. Export Control

-
- (a) You must comply with all applicable export control laws, rules and regulations, as applicable.
 - (b) You acknowledge that export, sanctions and embargo laws may prohibit you from selling, reselling, exporting, re-exporting, trading or otherwise transferring certain products and services within certain countries or with certain entities and persons.

23. General

(a) Notices.

- (i) Notices from a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in this EULA as updated by the parties from time to time.
 - (ii) Notices will be deemed to have been received: by hand on delivery; by post within six Business Days of sending; and by email within one hour of the email being sent (unless the sender knows that the email has failed).
- (b) **Governing law.** This EULA is governed by the laws in force in Victoria, and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria.
 - (c) **Use of name.** You must not use the name, logo, trademark or any other proprietary information of the University of Melbourne or Ambient Maps for any purpose whatsoever, including but not limited to any advertising, without our express prior written approval.
 - (d) **Entire Agreement.** This Agreement constitutes the entire agreement between us in connection with its subject matter and supersedes all previous agreements or understandings between us in connection with its subject matter.
 - (e) **Assignment and subcontracting.** You must not assign, novate or otherwise transfer, or subcontract a right or obligation under, this Agreement unless you have obtained the prior written consent of the University acting in its absolute discretion.
 - (f) **Relationship of the parties.** Nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust, and neither party has authority to bind the other party.
 - (g) **No exclusivity.** Your relationship with the University of Melbourne, as reseller for Ambient Maps, is not exclusive. This Agreement does not restrict the University of Melbourne or Ambient Maps from providing the Data or other products and services to other customers and end users.
 - (h) **Waiver.** A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.
 - (i) **Severance.** If any provision of this EULA is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from this EULA without affecting the validity or enforceability of the remaining provisions.

24. Definitions and interpretation

- (a) **(Definitions).** In this Agreement, unless the contrary is expressly provided:

Acceptance means agreeing to this EULA via the AURIN infrastructure.

Agreement means this EULA, including any schedules, attachments and other documents or terms incorporated by reference.

Agreement Particulars means the key agreement details stated in the items on the cover pages of this Agreement.

Ambient Maps means NAQMAP PTY LTD ABN 68 611 889 984 trading as Ambient Maps.

Australian Urban Research Infrastructure Network project (AURIN) means the Australian Government funded Australian Urban Research Infrastructure Network project which is administered, operated and controlled by the University of Melbourne as its lead agent.

AURIN Infrastructure means any infrastructure controlled and administered by the University of Melbourne as lead agent for the Australian Urban Research Infrastructure Network project which enables AURIN End Users secure online access to data and tools.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in the place in which an act is to be done.

Claim means any claim, demand, suit, action or proceeding whether arising under contract (including under this agreement), in tort (including negligence), at common law, in equity, under statute, indemnity or otherwise.

Confidential Information means (whether or not in material form and whether or not disclosed before or after the date of this Agreement) all information and other content of whatever kind disclosed or revealed by one party to another that:

- (a) is by its nature confidential;
 - (b) is designated by the disclosing party as confidential; or
 - (c) the receiving party knows or reasonably ought to know is confidential,
- and includes any Personal Information and all information relating to the Data or this EULA and the prices of the Data, but does not include information that:
- (d) is published or has otherwise entered the public domain without a breach of this Agreement;
 - (e) is obtained from a third party who has no obligation of confidentiality to the disclosing party; or
 - (f) is independently developed or obtained without breach of this Agreement.

Consequential Loss means:

- (a) any form of remote or consequential loss, including loss of reputation, loss of actual or anticipated savings and loss of bargain; and
- (b) any loss beyond the normal measure of damages.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Control has the meaning given in section 50AA of the *Corporations Act 2001 (Cth)*.

Data means the sample data product that we license to you as specified in this EULA.

Data Breach means any actual or suspected:

- (a) damage to, interference with, or loss or misuse of; or
 - (b) unauthorised access to, use of, viewing, extraction, copying, transmission, disclosure, modification or other dealings with,
- any Data, Confidential Information or Personal Information.

Derived Material means any product, service, output or other material that is created or developed using the Data, which may or may not contain some Data, and includes any product, service, output or other

material that is created or developed using Derived Material. For example, any output that is created using the Data is Derived Material, and so is any secondary output that is created from that first output.

End User means any of customer listed in this EULA to whom the Data is distributed.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party, including without limitation acts of God, fire, flood, accident, terrorism, strike and riots.

GST means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the happening of one or more of the following events to a party:

- (a) becomes unable to pay its debts when they become due;
- (b) enters into any arrangement between itself and its (or any class of its) creditors;
- (c) ceases to carry on business;
- (d) has a mortgagee enter into possession or dispose of the whole or any part of its assets or business;
- (e) enters into liquidation or any form of insolvency administration; or
- (f) has a receiver, receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world including but not limited to the rights comprised in any copyright (including database rights), confidential information (including Confidential Information), trade secrets, know-how and processes.

Internal Use means use of the Data or Derived Material within your organisation.

Laws means all laws, statutes, ordinances, rules, regulations, by-laws, decrees, orders and the like, whether of a government or other authority or agency having jurisdiction over you.

Loss means all losses, liabilities, damages and claims, and all relates costs and expenses (including any and all reasonable legal costs, and any other reasonable associated fees and costs including in respect of investigation, litigation, settlement, judgement, appeal, interest and penalties), however arising, whether present, unascertained, immediate, future or contingent.

Moral Rights means moral rights within the meaning of Part IX of the *Copyright Act 1968* (Cth) and any analogous rights arising under statute that exist, or may come to exist anywhere in the world.

Open Data means any data subject to an open licence and subject to the acknowledgements in clause 5(d)

Personal Information Includes:

- (a) personal information, as that term is defined in the *Privacy Act 1988* (Cth);
- (b) personal information, as that term is defined in the *Privacy and Data Protection Act 2014* (Vic); and
- (c) health information, as that term is defined in the *Health Records Act 2001* (Vic),

that is provided to, or obtained, collected, held, used, disclosed, created or accessed by, the Supplier in the course of, or in connection with, the Supplier performing its obligations under this Agreement

Privacy Laws means, as applicable:

- (a) the *Privacy Act 1988* (Cth), including the *Australian Privacy Principles* in the *Privacy Act 1988* (Cth), as amended or replaced from time to time;
- (b) any applicable privacy code approved under the *Privacy Act 1988* (Cth);
- (c) the *Privacy and Data Protection Act 2014* (Vic);
- (d) the *Health Records Act 2001* (Vic);

-
- (e) any Law (to the extent that such legislation applies to the Supplier or any other recipient of the Personal Information) from time to time in force in any jurisdiction which affects privacy, personal information or the collection, handling, storage, processing, use or disclosure of data; and
 - (f) the University's Privacy Policy as amended from time to time

Term means the term of this EULA stated in Item 3 of the Agreement Particulars.

Thinning means the manipulation of data so as to reduce the storage space required for the data, achieved by deleting intermediate or redundant data points defining a linear feature or boundary whilst preserving the general shape fidelity of the boundary or feature.

University of Melbourne means the University of Melbourne (ABN 84 002 705 224).

We, us and our means Ambient Maps and The University of Melbourne as Ambient Maps' reseller.

You and your means the person described in this EULA to whom we agree to supply the Data.

(b) **(Interpretation)**. In this EULA, unless the contrary is expressly provided:

- i. headings are for convenience only and do not affect the interpretation of this Agreement;
- ii. the singular includes the plural and vice versa;
- iii. words that are gender neutral or gender specific include each gender;
- iv. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- v. the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- vi. a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) the Supplier includes, where the context so admits, its employees, agents and authorised sub-contractors;
 - (iii) a thing includes a part of that thing;
 - (iv) a party includes its successors and permitted assigns;
 - (v) a document includes all amendments or supplements to that document;
 - (vi) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;
 - (vii) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (viii) a monetary amount is in Australian dollars;
- vii. when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- viii. in determining the time of day, where relevant to this Agreement, the relevant time of day is:
 - (ix) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or

-
- (x) for any other purpose under this Agreement, the time of day in the place where the party required to perform an obligation is located; and
 - ix. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

By clicking ‘I agree’ or using the Data, you warrant and represent to us that you have read and understood all the terms of this EULA and agree to be bound by them.