

**IMPORTANT: Please carefully read all the following terms and conditions of this agreement before clicking the acceptance box. Any changes, additions or deletions by you to these terms and conditions will not be accepted by IMDEX and will not be a part of this agreement.**

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In these terms and conditions, **IMDEX** means the entity which you requested the Application services from, which is either Imdex Limited (ACN 008 947 813) or any company, business entity or other form of enterprise, which is directly or indirectly controlled by, or is under common control with Imdex Limited, including such entity's employees, sub-contractors and agents (as applicable).

**Application** means one or more of the following: IMDEXHUB IQ™; IMDEX MOBILE™; SURVEY-IQ™; IQ-LOGGER™; ioGAS™; aiSIRIS™; MinePortal; FieldPortal, and any other IMDEX software or platform made available to you, including successor versions and associated updates. IMDEX may, from time to time and with notice, update and change these terms and conditions. If you continue to use the Application after any such changes, you will be considered to have consented to them.

**Intellectual Property Rights** include all rights in any knowledge of secret processes, technical knowhow, techniques, discoveries, inventions, ideas, research, engineering and manufacturing methods, practices, systems, formulae, drawings, designs, specifications, manuals, trade secrets and special purpose computer programmes, financial, marketing and other confidential information and data subsisting in or relating to a business, copyright, algorithm and business process.

**If you are accepting the terms and conditions of this agreement on behalf of another person, company or other legal entity, you represent and warrant that you have full authority to bind that person, company or legal entity to these terms.**

## **1. Licence and Access**

1.1 IMDEX grants you a non-exclusive, non-transferable, non-assignable, revocable licence to access and use the Application in accordance with these terms. Your licence to access and use the Application is subject to you agreeing to be bound by the terms of this agreement.

1.2 Access to the Application is strictly limited to you. IMDEX grants you a non-transferable and non-exclusive licence to use the Application and associated materials for the period agreed in writing with IMDEX ("**Access Period**") for the purpose of viewing and/or validating data transmitted from any (third party or IMDEX) data originating equipment, or any other purpose as advised by IMDEX from time to time ("**Permitted Purpose**").

1.3 You agree to use the Application only for the Permitted Purpose which must be a lawful purpose. You agree not to take any action that might compromise the security of the Application, render the Application inaccessible to others or otherwise cause damage to the Application or its content. You agree not to attempt to access any Application content or applications that are not intended for you. You agree not to use the Application in any manner that might interfere with the rights of third parties. You agree that you share and access shared information with other Application users entirely at your own risk.

1.4 You understand and agree that you are personally responsible for your behaviour on the Application; your data; and maintaining back-ups of your data. You agree to indemnify, defend and hold harmless IMDEX, its parent company, subsidiaries, affiliated companies, joint venturers, business partners, licensors, employees, agents, and any third-party information providers to the Application, from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable legal fees, resulting from or arising out of your use, misuse, or inability to use the Application or the Application data, or any violation by you of this agreement.

1.5 Unless approved by IMDEX in writing, you understand and agree that you must not, whether directly or indirectly by your act or omission, permit the Application to be accessed in any way other than by the user-driven functionality of the Application (including exposing or “passing through” an IMDEX application program interface, or otherwise making the Application accessible as, or via, an application programming interface).

1.6 You agree not to copy the Application and distribute it to other parties; use the Application in any way that infringes or reverse engineers the Intellectual Property Rights of IMDEX or any third party; or remove any proprietary notices from the Application.

1.7 You agree that any API Information (defined below) is deemed confidential information of IMDEX (unless, and only to the extent, publicly disclosed by IMDEX). You must keep such API Information confidential, and not disclose the API Information to any third party not approved in writing by IMDEX.

1.8 In this clause, “**API Information**” means information relevant to any application program interface (API) used in connection with the Application, including: i) any API keys, passcodes, passwords, or other means of authentication; ii) information related to database schema; or iii) any other information used to implement, call, read, or write to, an API used in connection with the Application or other IMDEX software.

1.9 You agree that the rights granted under this Agreement are expressly limited to the rights set out in this clause 1. To the fullest extent permitted by law, all implied rights in relation to the licence are excluded.

## **2. Desktop Application**

**This clause 2 will only apply to Applications which require a licence file provided by IMDEX to enable the running and upgrading of the Application on a computer for particular dates.**

2.1 You must pay the fees specified in the applicable order document with IMDEX to be granted the licence to the Application to allow you to download and use it for your own internal business purposes.

2.2 You must only use the Application on one desktop, laptop or notebook computer until the licence expires.

2.3 The licence is not transferable, but IMDEX may, at its discretion and on request, issue a new licence where you have changed physical computers.

2.4 If agreed by IMDEX, the Application can be configured automatically to issue further licences to other computers to run the Application on the same private network.

2.5 You may access all upgrades to the Application (excluding modules licenced separately), without a fee, until the licence maintenance period expires.

## **3. Data Storage**

3.1 If applicable to the Application, IMDEX may store your data on the Application for a period of six months after your Access Period with IMDEX expires. Additional storage charges will apply for data storage after this time - please contact IMDEX for further details.

3.2 No responsibility is assumed by IMDEX for data not backed-up during the Access Period or not retrieved by you after your data storage period elapses.

## 4. Intellectual Property

4.1 Other than to the limited extent granted under this clause 4, no rights of ownership to your technology or data are transferred under this agreement and all such rights remain your sole property.

4.2 IMDEX (or its third-party licensors, as the case may be) always retains the sole title to the Application and no rights of ownership to the Intellectual Property Rights created, owned or licensed by IMDEX are transferred under this agreement. Any Intellectual Property Rights created or arising from IMDEX performing its obligations in accordance with this agreement be owned by (and assigned to) IMDEX.

4.3 IMDEX reserves the right to change the scope or features of the Application from time to time at its discretion.

4.4 You agree not to do or permit or omit to do any act which infringes IMDEX (or its third-party licensors) Intellectual Property Rights.

## 5. Data Access Permission

5.1 You grant IMDEX a world-wide, non-transferable, non-exclusive, limited licence to access, collect and use the following information:

5.1.1 the date and time on which the Application session is entered;

5.1.2 the hardware and software identification on which the Application is accessed;

5.1.3 the operating system name on which the Application is run; and

5.1.4 the server configuration details, inputs, data (including geological data), calculations, assessment, summary, dashboard, activity feed results or other information generated by use of the Application by you or otherwise uploaded to the Application;

5.1.5 results or other information generated by the use of the Application by you;

for the purpose of IMDEX:

5.1.6 providing integration, support and maintenance services in respect of the Application and any related interface;

5.1.7 developing improvements in respect of the Application or any related interface;

5.1.8 backing-up, testing, security and archival purposes;

5.1.9 creating de-identified, anonymised aggregate data and utilising such data for IMDEX's analytical purposes, including developing, testing, and improving the Application and associated services for its own commercial benefit;

5.1.10 if necessary, responding pursuant to applicable law or regulations, legal process, or government request; and

5.1.11 enforcing IMDEX's terms and conditions or any other applicable terms and policies, including for investigations of potential violations.

This licence is royalty free and persists on a perpetual, irrevocable basis.

## 6. Warranty

6.1 IMDEX makes no express or implied warranties, representations or endorsements whatsoever with respect to the Application, or the data uploaded or retrieved from the Application. IMDEX disclaims all warranties of any kind, express, implied, statutory or otherwise, including, but not

limited to, implied warranties of merchantability, fitness for a particular purpose, with regard to the Application or the Application's content, and any Applications or service to be furnished by the Application.

6.2 IMDEX does not warrant that the functions performed by the Application will be uninterrupted, timely, secure or error-free. IMDEX does not warrant the accuracy or completeness of data managed by the Application. The Application is provided on an "as is" and "as available" basis.

6.3 IMDEX does not warrant that any data, instructions and methodologies contained in the Application are accurate or will meet your requirements. You assume responsibility for the selection of the Application to achieve its intended results and for the end results obtained from the Application. You assumes responsibility for any hardware issues in relation to a non-IMDEX device including, but not limited to, any compatibility issues between the non-IMDEX hardware and the Application.

## **7. Indemnity & Limitation of Liability**

7.1 You will hold harmless, indemnify, and keep indemnified IMDEX against any claim, action, demand, judgement, liability, proceeding, remedy, right of actions or right of set-off made against IMDEX in connection with this agreement; or arising out of any error, inconsistency or failure in your data or any output from the Application; or caused by any fraud or wilful misconduct by you.

7.2 In no event will IMDEX be liable (whether for breach of contract, negligence or otherwise) to you or any third party for any damages whatsoever, including, but not limited to any direct, incidental, consequential, special, exemplary, or other indirect damages arising out of:

7.2.1 the use of or inability to use the Application, or the Application's content, data and results or other information generated by use of the Application;

7.2.2 any project conducted through or facilitated by the Application;

7.2.3 any claim attributable to errors, omissions, or other inaccuracies in the Application and/or reliance on or interpretation of data managed by the Application;

7.2.4 unauthorized access to or alteration of your transmissions or data;

7.2.5 any error, defect or omission arising out of the use of the Application; or

7.2.6 any other matter relating to the Application or the data;

even if IMDEX has been advised of the possibility of such damages.

7.3 If you are dissatisfied with the Application or with these terms of use, your sole and exclusive remedy is to discontinue using the Application.

7.4 Where any law or statute implies a term into this agreement, or confers a right or remedy, which cannot be excluded, the liability of IMDEX is limited to the maximum extent allowed under the applicable law or statute. In the event that such an applicable law does not allow the exclusion of liability for direct, incidental, consequential, special, exemplary or other indirect damages, IMDEX's aggregate liability to you, arising under or in connection with this agreement and your use of the Application will not exceed \$AUD 100.

## **8. Termination**

8.1 IMDEX reserves the right to terminate or suspend your access to the Application by provision of notice if:

8.1.1 you breach this agreement and, in the case of a breach which is not capable of being remedied, termination is effective immediately;

8.1.2 you breach this agreement and, in the case of a breach which is capable of being remedied, you fail to remedy the breach within 30 days of receipt of written notice of the breach, in which case termination is effective at the end of the 30 days remedy period; or

8.1.3 at any time for any reason on providing you 30 days prior written notice.

8.2 Upon termination, you must cease all use of the Application, and all rights granted to you under this agreement cease. If applicable, you must uninstall or delete all copies of the Application in your possession or control. All payment due to IMDEX must be made within 14 days.

## **9. Waiver**

9.1 No waiver by IMDEX of any breach or default hereunder this agreement shall be deemed to be a waiver of any preceding or subsequent breach or default.

## **10. Entire Agreement**

10.1 This agreement supersedes all prior representations, warranties, agreements, understandings, negotiations and discussions whether oral or written, express or implied, collateral or otherwise, by or between the parties pertaining to the subject matter of this agreement to the extent of any inconsistency.

## **11. Severability**

11.1 If any part of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, it will not impact any other provision of this agreement, all of which will remain in full force and effect.

## **12. Survival**

Clauses 1, 3, 4, 5 and 7 survives termination or expiration of this Agreement.

## **13. General**

13.1 All amounts stated to be payable to IMDEX for the licence of the Application do not include applicable taxes, duties and similar payments (including, without limitation, any GST, VAT or similar sales taxes or any withholding tax) unless otherwise stated. Where any such taxes, duties or payments are payable, they are payable by you in addition to the amounts stated to be payable to IMDEX. You will indemnify IMDEX and keep IMDEX indemnified in respect of any such payments.

13.2 This agreement is personal to you, and you may not assign, sub-licence or otherwise transfer to any third party except with the prior written consent of IMDEX. IMDEX may assign the benefit of this agreement to a third party on giving notice to you.

13.3 This agreement will be governed and construed in accordance with the laws applicable at the registered address of the IMDEX entity which is providing the Application where that address is in Australia, Canada, Chile, Germany, New Zealand, South Africa, United Kingdom and the United States of America and the parties submit to the exclusive jurisdiction of the courts of that place. Any dispute arising out of or in connection to this agreement, will be referred to and resolved by the institutions in those jurisdictions. In every other case, this Agreement is governed by the laws of Western Australia and the Parties agree for any dispute to be determined by the courts of Western Australia. The United Nations Convention on the International Sale of Goods will not apply.