

TensorWorks End User Licence Agreement

Your attention is drawn to the following key terms:

- A. You are responsible for the acts and omissions of any user of the Products as if they were your own acts or omissions (regardless of whether that user was authorised by you or not).
- B. You acknowledge and agree that we are not responsible for your use of the Products, or any actions you take or conclusions you reach based on your use of the Products.
- C. Important restrictions, obligations and disclaimers in relation to the Products are set out in clauses 3 and 8. You must review these carefully and, in several areas, it is your responsibility to ensure that any users observe these terms.
- D. Please ensure that you understand all the limitations of the Products, as well as our arrangement for Charges, before you start using the Products. Use of the Products may require you to incur higher charges with third-party providers.
- E. Important limitations of our liability are set out in clause 9. Subject to exclusions and further limitations, our maximum total liability to you in connection with this EULA and the Order:
 - a. in any 12-month period is limited to the actual Charges paid by you under this EULA and the Order in the 12-month period preceding the matter or event giving rise to the claim; and
 - b. in total is limited to the actual Charges paid by you under this EULA and the Order.
- F. This EULA is governed by the laws of Queensland, Australia.

This EULA was most recently updated on the 30th of July 2024.

1. Who we are and how to contact us

- 1.1 We are TensorWorks Pty Ltd ACN 622 306 156 (**we**, **us** and **our**).
- 1.2 To contact us, please [click here](#) and get in touch.

2. Orders and understanding this EULA

- 2.1 We use **bold text** in this end user licence agreement (**EULA**) to identify where a word has been given a specific meaning. For example, **you** and **your** refer to our counterparty to the Order (described below).
- 2.2 If we agree to supply you with access to our products (**Products**), we will enter into a written order with you (**Order**). The Order will typically set out:
 - (a) the Products to which you will be provided with access;
 - (b) the date on which you can start accessing those products (**Commencement Date**);
 - (c) the initial period of access to those Products (**Initial Access Period**);

- (d) any renewal period that will apply following the Initial Access Period (**Renewal Period**); and
- (e) the Charges for access to those Products.

- 2.3 This **EULA** applies to the use by you, and supply by us, of our products (**Products**). Other than the Order, and to the extent permitted by law, no other terms are implied by trade, custom, practice or course of dealing. In the event of an inconsistency between the terms of this EULA and the Order, the terms of the Order will prevail to the extent of that inconsistency.
- 2.4 We will supply access to the Products for the Initial Access Period and, unless this EULA and the Order are terminated by either party, for success Renewal Periods. The Initial Access Period and any Renewal Periods are together, the **Access Period**.
- 2.5 The Order and the EULA is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Order or EULA.
- 2.6 Clause 23 sets out **Product-specific Terms** that only apply to the extent that we are supplying the corresponding Product and only apply in relation to our supply of that Product. To the extent of any inconsistency between an applicable Product-specific Term and another provision of this EULA, the Product-specific Term will apply to the extent of the inconsistency, and only in relation to our supply of the corresponding Product.

3. Your obligations

- 3.1 It is your responsibility to ensure that:
- (a) you cooperate with us in all matters relating to the Products;
 - (b) you provide us with such information and materials we may reasonably require in order to supply the Products, and ensure that such information is complete and accurate in all material respects;
 - (c) you obtain and maintain all necessary licences, permissions and consents which may be required for the Products before the date on which the Products are to be provided; and
 - (d) you comply with all applicable laws.
- 3.2 If our ability to provide the Products is prevented or delayed by any failure by you to fulfil any obligation listed in clause 3.1 (**Your Default**):
- (a) we will be entitled to suspend access to the Products until you remedy Your Default, and to rely on Your Default to relieve us from the obligation to provide the Products, in each case to the extent Your Default prevents or delays our provision of the Products. In certain circumstances Your Default may entitle us to terminate the EULA and the Order under clause 11 (**Termination**);
 - (b) we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to provide the Products; and
 - (c) it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.
- 3.3 You are responsible for all use of the Products, and must ensure that no person uses the Products:
- (a) in breach of this EULA or the Order;
 - (b) for any purpose other than your internal business;

- (c) in a manner that breaks any law or infringes any person's rights;
- (d) in any way that damages, interferes with or interrupts the supply of the Products;
- (e) to transmit, publish, communicate, view or create any material that is or may be pornographic, defamatory, offensive, menacing, unwanted, obscene, illegal or unlawful;
- (f) in a way that infringes any third party's intellectual property rights; or
- (g) in a way that disrupts, misuses or excessively uses our (or any of our third-party service providers') hardware, bandwidth access, storage space or our (or any of our third-party service providers') other resources.

3.4 Additionally, you must not:

- (a) permit any third party to access the Products;
- (b) lease, sublicense, resell or otherwise distribute Products or content from the Products;
- (c) create derivative works based on any Product or our website;
- (d) attempt to tamper with or circumvent the technological mechanisms that relate to usage metering and billing;
- (e) copy, frame or mirror any part or content of any Product or our website;
- (f) reverse engineer any Product or our website; or
- (g) access any Product or our website in order to:
 - (i) build a competitive product or service, or
 - (ii) copy any features, functions or graphics of any Product or our website,

and must ensure that no person does any of the acts described in clause 3.4(a) to 3.4(g).

3.5 Without limiting clause 3.4, you are permitted to build your own products and services by using the Products provided that your own product or service provides functionality that is significantly distinct from our Products (as determined by us, acting reasonably).

3.6 You are responsible for the acts and omissions of any user of the Products as if they were your own acts or omissions (regardless of whether that user was authorised by you or not).

3.7 Subject to clause 9.4, you acknowledge and agree that we are not responsible for your use of the Products, or any actions you take or conclusions you reach based on your use of the Products.

4. Support

4.1 Unless we agree otherwise, we have no obligation to provide any support services to you in relation to the Products, other than to use reasonable endeavours to provide the Products.

5. Charges and payment

5.1 In consideration of us providing the Products, you must pay our charges (**Charges**) in accordance with this clause 5.

5.2 The Charges are our prices set out in the Order. Unless otherwise agreed, we charge you on a *pay-as-you-go* basis with reference to Units and Usage Quantity (each of which are explained in the Product-specific Terms for the relevant Product).

5.3 Our Charges are exclusive of goods and services tax, value-added tax and other similar taxes (**GST/VAT**). Where GST/VAT is payable in respect of some or all of the Products, you must pay us such additional amounts in respect of GST/VAT, at the applicable rate, at the same time as you pay the Charges.

5.4 If this EULA is terminated, and unless otherwise set out in the Order, you will only pay Charges for your actual use.

6. Intellectual property rights

6.1 All intellectual property rights in or arising out of or in connection with the Products will be owned by us (or our licensors).

6.2 We agree to grant you a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Access Period to access the Products for the purpose of receiving and using those Products in your business. You may not sub-license, assign or otherwise transfer the rights granted in this clause 6.2.

6.3 You grant us a fully paid-up, non-exclusive, royalty-free, worldwide, non-transferable licence to copy and modify any materials provided by you to us for Access Period for the purpose of providing the Products to you.

7. How we may use your personal information

7.1 We will use any personal information you provide to us to:

- (a) provide the Products;
- (b) process your payment for the Products; and
- (c) inform you about similar products or services that we provide, but you may stop receiving this information at any time by contacting us.

7.2 Each party agrees to comply with its obligations under the *Privacy Act 1988* (Cth) and any other legislation affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of data to the extent that such legislation applies to that party in connection with performance of this EULA or the Order (**Privacy Laws**).

7.3 You agree to procure all permissions and make all disclosures necessary to allow us to obtain, use and disclose the personal information and sensitive information (as those terms are used in the *Privacy Act 1988* (Cth)) that you and any user provide or make available to us in the course of this EULA or the Order, or that we access from any user or platform in the course of providing the Products, for the purpose of this EULA or the Order.

7.4 You must give us all assistance required and comply with all directions given by us from time to time in relation to our compliance with the Privacy Laws or any investigation, request or enquiry (formal or otherwise) from the Office of the Australian Information Commissioner or any other regulatory body regarding the information disclosed to us under this EULA and the Order.

7.5 You must notify us immediately if you become aware of any breach or likely breach of this clause 7.

7.6 You must ensure that your computer network is secure. We are not responsible for the security of the data or your computer network.

7.7 You agree to indemnify us and hold us harmless against all claims, loss, damage, costs, expenses, legal fees, penalties, fines, demands or liability that we incur or suffer arising out of or in connection with your breach of this clause 7.

8. Restrictions, obligations and disclaimers

8.1 You represent and warrant to us that:

- (a) all information given to us in relation to this EULA and the Order is correct, complete and not misleading; and
- (b) any material that you supply and that is used by us will not and does not infringe or breach any third-party rights or terms and conditions.

8.2 Subject to clause 9.4, and to the extent permitted by law:

- (a) we do not guarantee that the Products, or any services provided in connection to the Product, will always be available, uninterrupted or be error-free;
- (b) the Products are provided on an "as is" and "as available" basis, and (except as set out in this EULA or the Order) we make no representations or warranties, express or implied, regarding the operation or availability of the Products;
- (c) we may change the content of a Product from time-to-time providing we do not remove material functionality without providing an equivalent or better replacement to that functionality;
- (d) without limiting the generality of clauses 8.2(a) and 8.2(b), we do not warrant that the Products will meet your requirements, will operate in any combination that may be selected for use by you or in combination with other software;
- (e) we do not warrant that all software errors, defects or inefficiencies will be corrected and we do not assume any liability for failure to correct any such errors, defect or inefficiency; and
- (f) we make no warranty, and you assume the entire risk, as to the capabilities, suitability, use or performance of any Products.

8.3 Among other things, the operation and availability of the systems used for accessing the Products, including computer networks and the internet, can be unpredictable and may from time to time interfere with or prevent access to the Products. Subject to clause 9.4, we are not responsible or liable for any of these failures.

8.4 To obtain full benefit of the Products, you may need to increase your authorised spend limits with third-party providers. For the avoidance of doubt, we are not responsible for any charges that you incur with third-party providers in connection with use of the Products.

8.5 Subject to clause 9.4 and to the extent permitted by applicable law, we exclude all express, statutory and implied conditions, guarantees and warranties in relation to any Products other than the warranties expressly set out in this EULA or the Order.

8.6 If you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures, you must treat such information as confidential. You must not disclose it to any third party. We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our reasonable opinion you have failed to comply with any of the provisions of this EULA or the Order. If you know or suspect that anyone other than you knows your user identification code or password, you must promptly notify us.

- 8.7 Any descriptions or illustrations on our website are published for the sole purpose of giving an approximate idea of the products and services described in them.
- 8.8 You accept that features, functions, units of measurement and terminology may differ between countries and features designed for one geographical territory or country may not suit or be available to other countries.
- 8.9 Unless we agree otherwise, we are not required to retain your data on our systems and may delete that data in our discretion.

9. Limitation of liability

- 9.1 Nothing in this EULA or the Order limits or excludes our liability:
- (a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, as applicable;
 - (b) for fraud or fraudulent misrepresentation by it or its employees, as applicable; or
 - (c) where liability cannot be limited or excluded by applicable law.
- 9.2 Subject to clause 9.1 we will not be liable to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this EULA and the Order, including any:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of production;
 - (d) loss of agreements or contracts;
 - (e) loss of business opportunity;
 - (f) loss of anticipated savings;
 - (g) loss of or damage to goodwill;
 - (h) loss of reputation; or
 - (i) loss of use or corruption of software, data or information.
- 9.3 Subject to clause 9.2, our maximum aggregate liability to you for any loss or damage or injury arising out of or in connection with this EULA and the Order, including any breach by us of this EULA or the Order however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis:
- (a) in any 12-month period is limited to the actual Charges paid by you under this EULA and the Order in the 12-month period preceding the matter or event giving rise to the claim; and
 - (b) in total is limited to the actual Charges paid by you under this EULA and the Order.
- 9.4 Nothing in this EULA or the Order is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**), or the exercise of a right conferred by such a provision, or any liability of ours in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

- 9.5 If we are liable to you in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, our total liability to you for that failure is limited to, at our option:
- (a) in the case of services, the resupply of the services or the payment of the cost of resupply; and
 - (b) in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.
- 9.6 This clause 9 will survive termination of the EULA and the Order.

10. Confidentiality

- 10.1 We each undertake that we will not at any time disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 10.2.
- 10.2 We each may disclose the other's confidential information:
- (a) where the information is in the public domain as at the date of the Order (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on either of us);
 - (b) if either of us is required to disclose the information by applicable law or the rules of any recognised stock exchange or other document with statutory content requirements, provided that the recipient has to the extent practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;
 - (c) where the disclosure is expressly permitted under this EULA or the Order;
 - (d) if disclosure is made to our respective officers, employees and professional advisers to the extent necessary to enable either of us to properly perform our obligations under this EULA and/or the Order, in which case we each must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
 - (e) where the disclosure is required for use in legal proceedings regarding this EULA and/or the Order; or
 - (f) if the party to whom the information relates has consented in writing before the disclosure.
- 10.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations and enjoy our respective rights under the EULA and/or the Order.
- 10.4 Notwithstanding the rest of this clause 10, you are permitted to make public statements about your use of the Products provided those statements relate to use that is in accordance with this EULA and the Order and are not unreasonably disparaging.
- 10.5 This clause 10 will survive termination of the EULA and the Order.

11. Termination

- 11.1 Without affecting any of our other rights, we may suspend the provision of the Products, or terminate this EULA and the Order with immediate effect by giving written notice to you if:

- (a) you fail to pay any undisputed amount due under this EULA and the Order on the due date for payment and you remain in default not less than 30 days after being notified in writing to make such payment;
- (b) you commit a material breach of any other term of this EULA or the Order and that breach is irremediable or (if that breach is remediable) you fail to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) subject to any provision of the *Corporations Act 2001* (Cth) or any related subordinate legislation that may prevent or restrict the exercise of a right of termination or other right under this EULA, an insolvency event occurs in relation to you; or
- (d) you undergo a change of control (if you are a company).

11.2 Either party may terminate this EULA and the Order at any time by giving the other 5 days' written notice. If, at the time of expiry of the 5 days' written notice, the then-current Initial Access Period or Renewal Period is for a duration of 1 month or less, then this EULA and the Order will terminate at the end of that then-current Initial Access Period or Renewal Period (otherwise the EULA and the Order will terminate on expiry of the 5 days' written notice).

11.3 Following termination of this EULA and the Order, you cannot use the Products without once again accepting the EULA and agreeing to a new Order.

11.4 Termination of this EULA and the Order does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the EULA or the Order that existed at or before the date of termination.

11.5 Any provision of the EULA or the Order that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

12. Force majeure

12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the EULA or the Order that is caused by any act or event beyond our reasonable control (**Event Outside Our Control**).

12.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the EULA or the Order:

- (a) we will contact you as soon as reasonably possible to notify you; and
- (b) our obligations under the EULA and the Order will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for provision of the Products with you after the Event Outside Our Control is over.

13. Dispute resolution

13.1 The parties agree to use best endeavours to resolve in good faith any dispute concerning this EULA or the Order.

13.2 If a dispute arises between the parties that cannot be resolved promptly, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.

13.3 Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Brisbane, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.

14. Non-solicitation

During the Term of this EULA and the Order and for a period of 12 months following the termination or expiration of this EULA and the Order, you will not make any solicitation to employ our personnel without our prior written consent. For the purposes of this clause 14, a general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, will not be construed as a solicitation or inducement, and the hiring of any such employees or independent contractor who freely responds thereto will not be a breach of this clause.

15. Notices

15.1 When we refer to "in writing" in this EULA, this includes email.

15.2 Any notice or other communication given by one of us to the other under or regarding the EULA must be in writing and be delivered personally, sent by pre-paid post or email.

15.3 A notice or other communication is deemed to have been received:

- (a) if delivered by hand to the nominated address, when delivered to the nominated address;
- (b) if sent by pre-paid post, at 9.00 am (addressee's time) on the second Business Day after the date of posting; or
- (c) if sent by email, at the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

15.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

15.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

16. Variation

16.1 We amend this EULA from time to time. We will give you written notice of any change to this EULA, and:

- (a) if the change is material and is not detrimental to you, or the change is not material, that change will have effect from the latest of:
 - (i) the date identified in the written notice; and
 - (ii) 30 days from the date of the written notice; and
- (b) if the change is material and is detrimental to you, we will contact you to discuss amending this EULA.

17. Subcontractors

We may engage subcontractors to provide any part of the Products. We are liable for the acts and omissions of any subcontractor as if they were our own acts and omissions.

18. No waiver

18.1 Neither of us may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this EULA or the Order unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

18.2 Words or conduct referred to in clause 18.1 include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

19. Assignment and novation

19.1 We may assign or transfer our rights and obligations under the EULA and the Order to another entity.

19.2 You may only assign or transfer your rights or your obligations under the EULA and the Order to another person if we agree in writing.

19.3 A breach of clause 19.2 by you entitles us to terminate this EULA and the Order.

20. Severability

20.1 If the whole or any part of a provision of this EULA is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

20.2 Clause 20.1 does not apply if the severance of a provision of this EULA in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this EULA.

21. Relationship of the parties

The EULA is between you and us. No other person has any rights to enforce any of its terms

22. Governing law and jurisdiction

These terms and conditions, their subject matter and their formation, are governed by the laws of Queensland, Australia. You and we both agree that the courts in Queensland, Australia will have non-exclusive jurisdiction.

23. Product-specific Terms

23.1 *Scalable Pixel Streaming*

(a) A **Unit** is an individual instance of a Pixel Streaming application whose lifetime is managed automatically by Scalable Pixel Streaming.

(b) **Usage Quantity** is the aggregate runtime of all Units in a given billing period, measured in increments of 1 second.