

Curo Flight Advisory Service Terms of Use

Last modified: 4 August 2021

We are pleased to provide you with Services designed to assist you with your drone operations. Please read these Terms of Use carefully before using the Services. By accessing and using the Services, whether by way of app, website or other platform, you are entering an Agreement with **Sphere Communications Pty Ltd** (also referred to in this agreement as “us”, “our” and “we”), and agree to follow these Terms of Use (**Agreement**).

The Services include airspace information, aircraft traffic planning and management information, and other information in connection with the operation of remotely piloted aircraft and model aircraft, collectively referred to as “**drones**”, in Australia.

You acknowledge that in using the Services, you remain solely responsible for operating your drone safely and lawfully, the Service are of a general nature, they are not for use in air navigation, and we recommend that you check official source of airspace information when conducting any drone operation.

1. Who may use the Services

- 1.1 You must be 18 years of age or older to access and use the Services or have parental or guardian consent to use the Services and enter into this Agreement.
- 1.2 If you are accessing or using the Services on behalf of or for the benefit of someone else, such as your employer, a company, partnership or other entity (**Third Party**), then:
 - (a) all references to you in this Agreement include the Third Party; and
 - (b) you verify that you are authorised to enter this Agreement on behalf of yourself and the Third Party; and
 - (c) you represent and warrant that you are authorised to bind the Third Party; and
 - (d) in the event of a breach of this Agreement both you and the Third Party will be responsible.

2. Your licence to access and use the Services

- 2.1 The Services are provided to you by way of a licence which is a single, limited, non-exclusive, revocable, non-transferable, non-sublicensable licence to access the Services and where applicable install an App on a mobile device that you own or control.
- 2.2 You grant us a licence to use the information that you provide us for the purpose of us providing the Services to you.
- 2.3 You acknowledge that you are not given any intellectual property rights by accessing or using the Services, and you must not infringe any of our intellectual property, which remain solely and exclusively with us.

3. Your use of the Services

- 3.1 You agree that you are solely responsible for, and that we have no responsibility for:
- (a) evaluating the currency, accuracy, reliability and completeness of any information and tools provided by way of the Services;
 - (b) making any decision about where and when to conduct a drone operation;
 - (c) ensuring that your drone operation is conducted legally and safely.
- 3.2 When you input information in using the Services, you are responsible for ensuring that this information is correct.
- 3.3 The information provided by way of the Services is of a general nature, is not considered official aeronautical sources nor are the Services intended to act as a substitute for information from official sources. You must continue to check official sources of information when conducting drone operations.
- 3.4 Even where our Services may indicate that there are no flight restrictions or that your operation is permissible, we do not guarantee, recommend or endorse the safety or legality of that drone operation.
- 3.5 We will not be responsible for any damage, interference or any other adverse consequence to any other hardware or software you may use along with our Services.
- 3.6 The Services do not take into account the specifications, capabilities or limitations of any particular model of drone.
- 3.7 While you may use the Services in relation to the operation of a drone, you should not use the Services in relation to the operation of traditional on-board-pilot aircraft.
- 3.8 While technical support is not part of the Services, if you are experiencing and problems or issues with the Services, please be in contact and we will endeavour to address your issue.

4. Your account with us

- 4.1 You may need to register or create an account with us in order to access or use the Services or part of the Services.
- 4.2 You must provide accurate, true and current information in respect of any account with us.
- 4.3 You must keep your account details confidential, not provide them to any third party.
- 4.4 You must promptly notify us of any confidentiality breach or unauthorised use of your username or password.
- 4.5 We are not responsible for any use or misuse of your username or password.
- 4.6 We reserve the right to reclaim usernames, including on behalf of businesses or individuals that hold legal claim, including trademark rights, in those usernames.

4.7 You will be responsible for the use of the Services by anyone who access the Services with your account login information.

5. What you must not do when using the Services

5.1 As a pre-condition to using the Services, you agree that you will not, or will not authorise or instruct anyone else, to do any of the following:

- (a) violate any applicable law, contract, intellectual property rights or other third-party right or commit an action for which you may be sued;
- (b) use or attempt to use another user's account;
- (c) make the Services available to any third party by way of lease, sale, license or otherwise;
- (d) use the Services to develop a competitive good or service;
- (e) use the Services to trespass, harass, cause nuisance, irritation or interfere with the privacy of any person;
- (f) copy, reproduce or distribute the Services or its interface;
- (g) modify the Services or its components or remove any proprietary rights or markings, deface, or otherwise make any derivative works based on the Services or any aspect of the Services;
- (h) use the Services in a way that may adversely affect other users from using the Services, or damage, dispute, interfere or otherwise adversely affect the Services or others access to or use of the Services;
- (i) reverse engineer, decompile or disassemble any aspect of the Services except to the extent permitted by law;
- (j) do anything that may expose source code or bypass or circumvent any mechanisms or barriers to access information not available as part of the Services;
- (k) introduce or infect any part of the Services with any virus, spyware, trojan horse, worm or any other element that is harmful or potentially harmful or intended to damage, hijack or otherwise adversely affect the Services or any part or component of the Services;
- (l) use any data mining, robots, spider or similar data gathering or extraction methods to scrape or extract data from the Services or its components;
- (m) be party to, encourage or promote any activity prohibited above or that violates this Agreement.

5.2 Our enforcement of any of the above breaches is at our discretion and our delay or failure to enforce our rights is not a waiver of our rights to do so.

5.3 You agree to cooperate with us in any investigation of the use of the Services in which we suspect that you have been involved that may breach this Agreement.

6. Third party information

6.1 Our Services contain information sourced from third parties. We are not responsible to you for any content sourced from third parties and make no endorsements or promises in respect of the accuracy, completeness or currency of such information.

6.2 Our Services may include links to third party information. We make no endorsements or promises as to the accuracy or currency of any such links which you rely on at your own risk.

7. Paid Services

7.1 There may be aspects or features of the Services that require payment for access or use.

7.2 By providing payment information to us, you promise that it is your account or that you are authorised to make payment.

7.3 You grant to us the right to provide relevant payment information to third parties for the purposes of facilitating a transaction. You authorise us, or our third party payment processor, to charge you for the Services or aspect of the Services for which you have provided payment information, and you agree to pay for any surcharge, tax, shipping or other third party fee in administering payment.

7.4 We reserve our right to reject or not accept payment, or to suspend or cancel any ongoing Services, if your payment method cannot be verified, is invalid, you have breached this Agreement, or in our opinion the payment method may be fraudulent or without proper authority.

7.5 We may limit or cease providing any aspect or feature of our Services without notice to you. Should this occur in a way that may attract a partial refund, full refund, or exchange, we will discuss this with you and comply with our statutory obligations.

7.6 We may change our pricing at any time by giving you at least 7 days' prior notice.

8. Privacy

8.1 In the event that you provide to us, or if we collect, personal information from you or your representatives in the provision of the Services, our [Privacy Policy](#) applies to such collection, which forms part of this agreement.

8.2 You agree to the terms of our Privacy Policy and promise that any information you provide to us is and will remain accurate, complete, and current.

8.3 If we make any material changes to our Privacy Policy, we will post a notice on our website and/or mobile application. Your continued use of the Services following any update confirms your agreement to the updated Privacy Policy.

9. Variations to this Agreement and to the Services

9.1 We may change this Agreement at any time. We will notify you of any changes which may include by way of email, a notification when you access the Services, or by updating the "last modified" date in this Agreement.

9.2 Your continued use of the Services following any changes constitutes your acceptance of the changes. If you do not agree to the change, you must stop using the Services.

9.3 We may amend, change or modify the Services, including the addition or removal of elements of the Services at any time without notice to you. We are not responsible for any loss, harm or other adverse consequence to you resulting from either your inability to access the Services or our amendment of the Services.

10. Liability

10.1 To the extent permitted by law, we will not be liable to you under any form of liability, whether based in contract, tort, strict liability, negligence, or otherwise for any indirect, consequential, special or exemplary loss or damage including loss of revenue, profits, technology rights, data, interruption or loss of use of services, even if such loss was reasonably foreseeable, arose naturally or was in the contemplation of the parties.

10.2 We will not be liable for damages of any kinds resulting from your use or inability to use the Services.

10.3 If found liable by a Court or Tribunal of competent jurisdiction, our maximum total liability to you in relation to any claim arising out of the Services or this Agreement, regardless of the form of action is limited, at our option, to:

- (a) re-supply the Services or pay the cost of having the Services re-supplied; or
- (b) the greater of the total amount, if any, paid by you to use the Services in the three months immediately prior to your claim or \$200.

10.4 Our supply of the Services may be subject to certain statutory guarantees, including under the Australian Consumer Law, which cannot be excluded by contract. For major failures with the Services, you may be entitled to cancel this Agreement. You may also be entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you may be entitled to have problems with the Services rectified in a reasonable time and, if this is not done, to cancel this Agreement. Nothing in this Agreement excludes, restricts or modifies the application of statutory guarantees or any associated rights or entitlements to remedies

11. Indemnities

11.1 To the extent permitted by law, you agree to indemnify, defend and hold harmless, Sphere Communications and its representatives, from and against any claims, actions, damages, proceedings, liabilities, judgments, awards, losses, costs, fees and expenses (including legal expenses) arising out of or relating to:

- (a) your access to, use of, the Services;
- (b) your activities in connection with the Services, including but not limited to drone operations; and
- (c) any breach or alleged breach of this Agreement by you.

11.2 To the extent permitted by law, you release us from responsibility, liability, claims, demands and/or damages (actual and consequential) of every kind and nature, known and unknown (including claims of negligence), arising out of or related to your use of our Services or the acts or omissions of third parties.

12. Disclaimers

- 12.1 Your access to, and use of, the Services is at your sole risk; and you assume the entire risk related to the operation that you are conducting when using the Services.
- 12.2 The Services are provided on an “as is” basis. Except for any express or implied guarantees in legislation that cannot be excluded, we disclaim all other implied warranties of performance, accuracy, completeness, service levels, fitness for a particular purpose, free from error or interruption.
- 12.3 Airspace information provided under the Service is not approved under Part 175 of the Civil Aviation Safety Regulations concerning aeronautical information management. The airspace information provided as part of the Services is advisory only, is not to be used for the purpose of air navigation and is not to be used at all where any humans are aboard the aircraft whether as pilot or passenger.
- 12.4 The Services provide information collected from a variety of sources. We do not confirm, verify or guarantee the accuracy, reliability or currency of this information. You are solely responsible for ensuring that your operation is legal and complies with all necessary regulations.
- 12.5 While we make reasonable efforts to maintain the currency, integrity and security of the Services, the Services may not reflect recent changes to relevant laws or regulations and we do not guarantee that the Services will remain updated, complete, correct or secure, or that access to the Services will be uninterrupted.

13. Termination

- 13.1 This Agreement is effective until terminated.
- 13.2 We may terminate or suspend your access to and/or use of the Services at any time and without prior notice, for any or no reason, including if we form a view that you have breached any part of this Agreement.
- 13.3 You may terminate this Agreement by notifying us of your decision by way of email and upon receipt we may immediately terminate or suspend your account and from such time you will have no further access to your account or any information submitted by way of your account.
- 13.4 On suspension or termination of your account, your access and/or use of the Services will immediately cease and we may immediately deactivate or delete any of your account details or any other information you have supplied to us in connection with access or use of the Services.
- 13.5 If we take any of the above steps, you agree that we are not liable to you for any adverse consequences arising from termination and our related actions.
- 13.6 Any outstanding invoices will become immediately due and payable. If you have paid us any fees in advance then you will be entitled to a refund, on a pro-rata basis for any pre-paid fees that are not yet payable following the date of termination.

13.7 Either party's termination of this Agreement or any Service will be without prejudice to any other remedies that it may have at law or otherwise.

14. Dispute Resolution

14.1 If any dispute, disagreement or difference arises between the parties in respect of this Agreement or the Services, the parties must not commence Court or Tribunal proceedings without first taking the following steps, except in the case of filing any interlocutory Court applications:

- (a) the parties will attempt resolution through direct communication, and if resolution is not achieved within 14 days from the first communication; then
- (b) the parties will attempt to resolve the issues in dispute by way of mediation, costs of which are to be equally shared between the parties.
- (c) If resolution is not achieved at mediation or within 7 days from the date of mediation, then the parties may seek resolution at their own discretion.

15. General

- (a) Severability: If any part of this Agreement is found to be unlawful, void or unenforceable by a competent authority, then that part will be deemed severable from this Agreement and will not affect the validity or enforceability of any remaining parts.
- (b) Assignment: You may not assign, transfer or sublicense any of your rights or obligations under this Agreement without our express written consent. We may assign, transfer or sublicense any of our rights or obligations under this Agreement without notice to you.
- (c) Relationship of parties: You access and use the Services as a third-party user and this Agreement does not create any relationship of employment, partnership, joint venture, franchise or agency between you and us.
- (d) No merger: The warranties, representations and promises by the parties are continuing and do not merge, and are not extinguished, on completion of this Agreement.
- (e) Waiver: Any failure by either party to exercise or enforce any right or part of this Agreement will not operate as waiver of that right or part or affect the validity of this Agreement.
- (f) Governing law: This Agreement is governed by the laws of New South Wales, Australia, and the parties submit to the exclusive jurisdiction of the Court of New South Wales, Australia, and the courts that hear appeals from those courts.

If you have any questions about the Services or this Agreement, please contact us at: admin@spheredrones.com.au