

Subscription Agreement

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2. Disclaimers; No Warranties.

· (a) **Acknowledgement.** YOU EXPRESSLY ACKNOWLEDGE THAT AS USED IN THIS SECTION 2, THE TERM BIARRI INCLUDES BIARRI'S OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, AFFILIATES, AND SUBCONTRACTORS.

· (b) **No warranties.** TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, BIARRI DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM BIARRI OR THROUGH THE BIARRI SITE, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

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3. Limitation of Liability and Damages.

· (a) **Limitation of Liability.** UNDER NO CIRCUMSTANCES, AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL BIARRI OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD PARTY PARTNERS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, DATA OR USE OR COST OF COVER) ARISING OUT OF OR RELATING TO THESE TERMS OR THAT RESULT FROM YOUR USE OR THE INABILITY TO USE THE BIARRI MATERIALS AND USER SUBMISSIONS ON THE BIARRI SITE OR ANY REFERENCE SITES, THE BIARRI SITE ITSELF, OR ANY OTHER INTERACTIONS WITH BIARRI, EVEN IF BIARRI OR A BIARRI AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

· (b) **Limitation of Damages.** IN NO EVENT SHALL BIARRI OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD PARTY PARTNERS, LICENSORS OR SUPPLIERS' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE BIARRI SITE (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, OR OTHERWISE) EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100 AUSTRALIAN) OR FEES PAID IN THE PRECEDING TWELVE (12) MONTHS.

· (c) **Reference Sites.** THESE LIMITATIONS SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF ANY PRODUCTS OR SERVICES SOLD OR PROVIDED ON ANY REFERENCE SITES OR OTHERWISE BY THIRD PARTIES OTHER THAN BIARRI AND RECEIVED BY YOU THROUGH OR ADVERTISED ON THE BIARRI SITE OR RECEIVED BY YOU THROUGH ANY REFERENCE SITES.

4. Limitations by Applicable Law; Basis of the Bargain.

· (a) **Limitations by Applicable Law.** CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR

LIMITATION OF CERTAIN DAMAGES. IF YOU RESIDE IN SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES, OR LIABILITY CONTAINED IN THESE TERMS APPLY TO YOU TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION IN WHICH YOU ARE LOCATED.

· (b) **Basis of the Bargain.** YOU ACKNOWLEDGE AND AGREE THAT BIARRI HAS OFFERED ITS PRODUCTS AND SERVICES AND ENTERED INTO THESE TERMS IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND BIARRI, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND BIARRI. YOU ACKNOWLEDGE AND AGREE THAT BIARRI WOULD NOT BE ABLE TO PROVIDE THE BIARRI SITE TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

5. Miscellaneous.

· (a) **Notice.** Biarri may provide you with notices, including those regarding changes to these Terms, by email, regular mail, or postings on the Biarri Site. If Notice is by e-mail or mail, it will be provided to the e-mail or regular mailing address provided by you with your account information and it is your responsibility to update such account information for any changes. Notice to you will be deemed given twenty-four hours after email is sent, unless Biarri is notified that the email address is invalid, and if through postal mail, three days after the date of mailing. You may provide Biarri with notices only by mail to the address indicated in subsection 1 below.

· (a) **Governing Law.** These Terms shall be governed by and construed in accordance with the laws of the State of Queensland, without giving effect to any principles of conflicts of law.

· (a) **Jurisdiction.** You agree that any action at law or in equity arising out of or relating to these Terms or the Biarri Site shall be filed only in the state of Queensland and you hereby consent and submit to the personal and exclusive jurisdiction and venue of such courts for the purposes of litigating any such action.

· (a) **Waiver.** A provision of these Terms may be waived only by a written instrument executed by the party entitled to the benefit of such provision. The failure of Biarri to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision.

· (a) **Severability.** If any provision of these Terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

· (a) **Assignment.** The Terms and any rights and licenses granted hereunder, may not

be transferred or assigned by you, but may be assigned by Biarri without restriction. Any assignment attempted to be made in violation of these Terms shall be void.

· (a) **Independent Contractor.** You agree that no joint venture, partnership, employment, or agency relationship exists between you and Biarri as a result of these Terms or use of the Biarri Site. You further acknowledge that by submitting User Submissions or other Non-Biarri Content, no confidential, fiduciary, contractually implied or other relationship is created between you and Biarri other than pursuant to these Terms.

· (a) **Survival.** Sections “API and Map Data Downloads”, “User Submissions”, “User Disagreements”, “INDEMNIFICATION; HOLD HARMLESS”, “Disclaimers; No Warranties”, “Limitation of Liability and Damages”, “Limitations by Applicable Law: Basis of the Bargain” and “Miscellaneous” will survive any termination of these Terms or your account whether by you or Biarri.

· (a) **Headings.** The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and shall not be deemed to limit or affect any of the provisions hereof.

· (a) **Entire Agreement.** This is the entire agreement between you and Biarri relating to the subject matter herein and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. These Terms shall not be modified except in a writing, signed by both parties, or by a change to these Terms or Guidelines made by Biarri as set forth in Section 3 above.

· (a) **Claims. YOU AGREE THAT ANY CAUSE OF ACTION BROUGHT BY YOU ARISING OUT OF OR RELATED TO THE BIARRI SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.**

· (a) **Disclosures.** The services hereunder are offered by Biarri, located at Level 1, 172 Robertson Street, Fortitude Valley, Brisbane QLD, Australia, 4006 email: info@Biarri.com, telephone: +61 (0)7 3252 0810.

6. Independent Investigation

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU UNDERSTAND THAT WE MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) SOLICIT CUSTOMER REFERRALS ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE WEB SITES THAT ARE SIMILAR TO OR COMPETE WITH YOUR WEB SITE. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE Partner PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.