

TERMS OF USE

Last updated: 10 June 2021

These are the Terms of Use (“Terms”) which you (“the User”) are required to accept when subscribing to and using the CyanoLakes Enterprise Web Application (“the Application”) operated by CyanoLakes (Pty) Ltd (“CyanoLakes”, “we”, “us”). By accessing and using the CyanoLakes App, you acknowledge that you have read, understood, and agree to be bound by these Terms and the Privacy Policy. If you do not accept these Terms, you are not authorized to use the Application. In order to improve the Services we provide, we reserve the right to modify or update these Terms, which will become effective at the time of update.

A. PRODUCT DESCRIPTION

A.1. OVERVIEW

The CyanoLakes Enterprise Web Application (“the Product”) provides information and statistics related to the risk to human health from cyanobacteria blooms, nutrient pollution levels (trophic status), recreational advisories for partial and full contact sports, and other statistical information for lakes, reservoirs and seas, derived exclusively from satellite remote sensing data.

The Product consists of an website with the following features: an information dashboard, a map interface, a data table, a detailed mapping tool, the Application Programming Interface served by a rest framework (API), downloadable remotely sensed data, charts and graphs. The Product offered by CyanoLakes may further include support and written reports.

CyanoLakes offers value-added satellite imagery at a 300 meter (“medium-resolution”) and 10 meter (“high-resolution”) ground sampling distance or spatial resolution, that it obtains from third-party providers.

Access to the Product is provided to the User through a monthly or fixed-term subscription. Following purchase, the User is entitled to non-exclusive access to the information provided by CyanoLakes. The User acknowledges that by purchasing the Product, they are purchasing a license to access the data provided through the Application, and not the data or the Application itself.

A.2. USER SPECIFICATIONS

CyanoLakes will gather the User’s specifications for the service to be provided through the Application, and record these on the invoice provided to the User. The User confirms that, where applicable, the following specifications have been agreed to as set out in the invoice generated by CyanoLakes and confirmed by the User as indicated by their payment thereof:

- The name(s) and location(s) of the waterbodies to be monitored;
- The Subscription Start and End Dates, if applicable;
- In situ data to be provided by the User for the purposes of validation, if applicable;
- The due date for a validation report, if applicable;
- The number of years of retrospective (historical) data, if applicable;
- The full particulars of any Third-Parties to whom the User intends to distribute the information or derivatives thereof, and supporting evidence as requested, if applicable;
- The contact information of the User.
- The Monthly Subscription Fee or, in the case of a fixed term, the Total Subscription Fee;

The User is responsible for confirming that the specifications in the invoice generated by CyanoLakes meets their requirements.

A.3. DURATION AND RENEWAL

The User’s Subscription shall, unless otherwise specified, automatically renew on a monthly basis. The User shall provide CyanoLakes with one-month’s written notice if they no longer wishes to renew the Subscription. Cancellation of the active subscription period is not allowed.

A.4. ACCESSING THE PRODUCT

The Product will be delivered to the User via the URL determined by CyanoLakes. CyanoLakes reserves the right to modify its URL, and will provide the User with 30-day's advanced notice of any changes thereto.

A.5. INFORMATION LATENCY

CyanoLakes will endeavour to update the information it derives from satellite remote sensing within two (2) hours after the satellite imagery becomes available on the satellite service provider's servers.

A.6. INFORMATION UPDATE FREQUENCY

The User agrees that due to the nature of satellite technology, CyanoLakes cannot guarantee a minimum frequency for updates. The User acknowledges that data for their waterbodies may not be available due to cloud and or ice or snow cover which varies seasonally.

A.7. RETROSPECTIVE DATA

The User acknowledges that by purchasing retrospective (historical) data, they are purchasing access to the data through the Application and not the data itself. Retrospective data, if purchased by the User, will be populated within one (1) month from the Subscription Start Date, or the Date of Purchase of the retrospective data, unless otherwise agreed.

A.8. VALIDATION USING USER DATA

Validation in this Agreement is defined as a statistical comparison between the User's data and those derived by CyanoLakes from satellite imagery.

The User may supply CyanoLakes with data for the purposes of validation or for upload in the Application. Data supplied to CyanoLakes by the User will be kept confidential and stored securely. The User's data will not be shared with any Third-Parties unless otherwise agreed upon in writing.

CyanoLakes may utilise the User's data to improve its products and services. Unless otherwise agreed, the results of validation performed by CyanoLakes will be kept confidential between the User and CyanoLakes.

CyanoLakes may request that the User provide them with methods and protocol documents used to generate the in situ data. CyanoLakes may determine whether the User's data is suitable for validation based on the information provided by the User.

In the event that the User or CyanoLakes wishes to share results from validation analysis in academic journals or other formats, the Party will request permission to publish such results from the other Party, who will have the right to grant or refuse such permission on any reasonable ground.

A.9. SUPPORT

The User will be entitled to support from CyanoLakes that will be provided via internet video call and/or email. Support will be available to the User on weekdays between 9 AM and 5 PM GMT+2, excluding public holidays, unless otherwise arranged with the User.

A.10. TRAINING

Where applicable, and unless otherwise agreed, training will be provided to the User via internet video call. Training will be arranged at a time and date agreed with the User. The User is responsible for ensuring their personnel are present at scheduled training sessions.

B. RESPONSIBILITIES

B.1. RESPONSIBILITIES OF CYANOLAKES

CyanoLakes will be responsible for providing the User with access to the Application and any additional services as outlined in section A.2.

B.2. RESPONSIBILITIES OF THE USER

B.2.1. PERMITTED USE

The User may utilize data from the Product for their own purposes (e.g., monitoring, analysis and reporting). The User may store and archive any data downloaded from the Product for an unlimited period.

The User may not:

- Share their login details with anyone outside of their organisation;
- Render services in exchange for financial compensation on the basis of data obtained from CyanoLakes, unless agreed upon in advance in writing;
- Distribute or make data available to Third-Parties, unless agreed upon in advance in writing;
- Attempt to copy or reverse-engineer the Product in whole or in part;
- Create online reviews, evaluations or detailed descriptions of the Product.

B.2.2. USE OF LOGIN

The login details provided are to be used only by User and its authorized employees. The login details may not be shared with any Third-Parties without prior written consent from CyanoLakes, who may grant or refuse such a request at their discretion.

B.2.3. INTERPRETATION OF INFORMATION

The User will be responsible to correctly interpret information provided by CyanoLakes. CyanoLakes will not be responsible for incorrect assessments leading to actions made on the basis of the information it provides. CyanoLakes provides training and support in order to assist the User to correctly interpret the information it provides. Should the User choose to make information from CyanoLakes, or derivatives thereof, available to Third-Parties, the User will be responsible for the correct interpretation and application thereof.

The CyanoLakes disclaimer that appears on its website and at the end of this document will apply to all information whether used by the User, a Third-Party or the general public. To the extent that the User makes any portion of the information, or derivatives thereof, available to Third-Parties, it hereby indemnifies and holds CyanoLakes harmless in respect of any claims that may arise therefrom.

Whilst CyanoLakes shall take all reasonable measures to ensure the accuracy of the information provided to the User, the User acknowledges that the interpretation of such information and the decisions based upon such interpretation are the responsibility of the User. Accordingly the User hereby indemnifies CyanoLakes against all claims arising from the correctness and the interpretation of the information provided, as instituted by Third-Parties or itself, save for gross negligence on the part of CyanoLakes.

B.2.4. USE OF THE APPLICATION PROGRAMMING INTERFACE

The User is responsible for querying, downloading and integrating of data provided by CyanoLakes into their monitoring database / system using the Application Programming Interface (API) functionality. The API may only be used by the User and its authorized representatives. The API is provided to the User during the active subscription period only.

B.2.5. DOWNLOADING OF DATA

The User will be responsible for downloading and storing data made available through the Product by such a means as it may determine. CyanoLakes will not under any circumstances provide the User with access to data via any other means other than through the Product, or outside of the active subscription period. These Terms will apply to data downloaded and stored by the User.

B.3. AGREED DISCREPANCY RANGE

The discrepancy ranges, declared below, have been determined by scientific calculations:

- The limit of detection of chlorophyll-a derived from medium-resolution imagery is 1.1 µg/L, with a range of 0.7 to 5.5 µg/L;
- The mean absolute percentage error associated with chlorophyll-a estimated from medium-resolution imagery for algae is 60%;

- The mean absolute percentage error associated with chlorophyll-a estimated from medium-resolution imagery for cyanobacteria is 34%;
- The range of chlorophyll-a estimated from medium-resolution imagery is 1 to 1000 µg/L;
- The limit of detection and absolute percentage error from high-resolution imagery (10 m) is undetermined;

The User acknowledges that, in certain instances, variability in the optical properties of water and atmospheric conditions, anomalies in satellite instrument calibration and/or performance, unexpected errors and sources of uncertainty, may result in estimates of chlorophyll-a falling outside of the discrepancy range.

B.4. ACCESS TO THE PRODUCT

The User will not be entitled to access the Product outside of the active Subscription period, or when the User's account has been suspended, cancelled or terminated.

The User acknowledges that data, including retrospective data, that may or may not have been purchased, is only accessible during the active Subscription period. Should the User's Subscription lapse or be terminated for any reason, CyanoLakes will not be liable to provide the User with access to any information or services, including retrospective data, if purchased.

B.4.1. SCHEDULED DOWN TIME

The User acknowledges and accepts that CyanoLakes may schedule downtime for the purposes of updating and improving its Product. During downtime the Product may be unreachable.

B.4.2. UNSCHEDULED PRODUCT INTERRUPTIONS

It is CyanoLakes intention to provide uninterrupted Product availability to its Users via the internet. However the User acknowledges and accepts that interruptions to Product availability may occur as a result of reliance upon satellite, computing, internet and communications technologies. This includes but is not limited to:

- Interruptions in the transmission of data from satellite data sources
- Unexpected computer malfunctions
- Malicious malware and cyber attacks
- Bugs in code from planned updates
- Interruptions in internet and network connectivity
- Power supply failures
- Acts of God

In the case of interruption to Product availability, CyanoLakes will communicate that such an interruption has occurred to the User as soon as it becomes aware of it, and endeavour to re-establish availability of its Product as soon as feasibly possible.

B.5. CHANGES TO PRODUCT FEATURES

CyanoLakes performs updates to its Product from time-to-time in order to improve the offering to its Users. The User accepts that CyanoLakes is entitled to change, modify or remove features at its own discretion at any time, with or without notice to you, in order to improve the Product.

B.6. REVISION OF USER SPECIFICATIONS

The User is responsible for providing correct specifications at time of purchase. Should the User require any revision, change, amendment or addition ("Revision") to the specifications during its Subscription term, such Revision shall be at the discretion of CyanoLakes which reserves the right to advise the User of a reasonable administration fee for each the aforementioned Revisions, should such requested Revisions be accepted by CyanoLakes.

B.7. DISTRIBUTION TO THIRD-PARTIES

The User hereby declares its intention to distribute data only to such Third-Parties as agreed upon beforehand and recorded in the invoice generated by CyanoLakes. Distribution of data to any Third-Parties not disclosed in advance to CyanoLakes will constitute a breach of these Terms.

The User may not distribute any data obtained from CyanoLakes, or derivatives therefrom, to any Third-Parties for compensation or for any purpose other than agreed upon and according to the terms and conditions that CyanoLakes may determine. CyanoLakes reserves the right to refuse the User the right to distribute data to Third-Parties where there is insufficient evidence that distribution of such data to the Third-Party is required by the legal or statutory functions of the User's organization.

Where the User elects to distribute data, the User indemnifies CyanoLakes against any Third-Party claims for any losses, damages, penalties, charges or other claims which may at any stage be suffered by a Third-Party as a result of distribution of the data.

C. PAYMENT TERMS AND CANCELLATION

C.1. FEE AND PAYMENT

Unless otherwise agreed, the User's Subscription will automatically renew on a monthly basis, from the Subscription Start Date. CyanoLakes will generate an Invoice indicating the Subscription Fee due, which is payable in advance, on the date the Invoice is received by the User.

Where a fixed Subscription Term is agreed upon, this will be recorded in the Invoice set to the User, and the Total Subscription Fee due will be payable in advance before the agreed Subscription Start Date. The User undertakes to pay the Subscription Fee timeously within the period stipulated on the Invoice.

CyanoLakes, at its sole discretion and at any time, may modify the fees charged for Subscriptions. Subscription fee changes will require you to opt-in to the new fee to continue using the Subscription at the end of the then-current Subscription period.

C.2. TAXES

The User will be liable for any Value Added Tax, if applicable, in addition to the Subscription fee.

C.3. NON-PAYMENT, SUSPENSION AND CANCELLATION

In the event of non or late payment of the abovementioned fee or any fees or charges which may be due to CyanoLakes by the User at any time, CyanoLakes will:

- Notify the User of any such outstanding amounts by way of a written notice; and,
- Afford the User ten (10) working days in which to settle the outstanding amount.

Should the User fail to settle the outstanding amount in full within the period indicated, CyanoLakes will have the right to suspend the User's access to the Product until any outstanding fees have been paid. CyanoLakes will not be liable to provide any services of any kind to the User in the event that the User's account has been suspended.

Either party may cancel an automatic renewal arrangement in accordance with section A.3. CyanoLakes reserves the right to cancel such an arrangement forthwith by written notice in the event that the User commits any breach of these Terms.

CyanoLakes reserves the right to cancel a fixed term agreement with a User forthwith by written notice in the event that the User commits any breach of these Terms. In such instance, no refund shall be payable to the User of any portion of the fee paid. CyanoLakes may at its own discretion decide whether or not to permit the User to purchase its Product in future.

C.4. CREDIT IN CASE OF UNAVAILABILITY

In the unlikely event that CyanoLakes is unable to provide the User with access to the Product for a continuous period longer than two (2) working days, the User's account will be credited and their Subscription term extended by the duration for which access was unavailable to the User.

D. GENERAL PROVISIONS

D.1. PRIVACY

CyanoLakes takes protecting your information seriously. We will never sell, share or distribute your information to Third-Parties. By using the Product, you agree that CyanoLakes may collect and use your personal information (email address, name, physical address, location) as set forth in our Privacy Policy at www.cyanolakes.com/privacy-policy.

D.2. INTELLECTUAL PROPERTY

The CyanoLakes Application is owned and operated by CyanoLakes. The visual interfaces, graphics, design, compilation, information, computer code, products, software, services and all other elements of the Application are protected by International copyright and intellectual property law.

All material contained on the Application are the property of CyanoLakes and/or third party licensors. All suggestions, enhancement requests, feedback, recommendations or other input provided by the User shall be owned by CyanoLakes.

The User grants CyanoLakes, a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate said suggestions, enhancements, feedback and/or recommendations into the Application. Unless authorized by CyanoLakes in writing, you may not sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the materials.

D.3. DISCLAIMER AND LIMITATION OF LIABILITY

The User indemnifies and holds CyanoLakes and its employees harmless against any loss or damages the User or Third-Parties may suffer as a result of scheduled or unscheduled interruptions, and anomalies resulting in satellite estimates falling outside of the agreed discrepancy range. The User acknowledges that CyanoLakes and its employees will not be liable for any loss or damages the User may suffer as a result of its reliance on the data obtained from CyanoLakes. The User further acknowledges that satellite estimates should be considered preliminary until verified by field measurements, and that it is the User's sole responsibility for performing further tests in addition to relying on data obtained from CyanoLakes.

Save as expressly stated herein, and to the maximum extent permissible by law, neither CyanoLakes nor its directors, employees or agents shall be liable for any damages or loss whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages or loss, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the use of, or the inability to access or use the Product or any information, or inaccuracies, defects, errors, whether typographical or otherwise, omissions, out of date information or otherwise. Excluded consequential and indirect loss and damage will include but not be limited to loss of profits, loss of goodwill, and wasted expenditure.

D.4. ARBITRATION

Should any dispute arise between the Parties in connection with:

- the interpretation or application of the provisions of;
- the Parties' respective rights and obligations in terms of or arising out of a breach of;
- the validity, enforceability, rectification, termination or cancellation whether in whole or in part;
- any documents furnished or actions taken or omitted to be taken by the parties pursuant to the provisions of these Terms; or
- which relates in any way to any matter affecting the interest of the parties in terms of this Agreement,

that dispute shall, unless resolved amongst the parties to the dispute be referred and be determined by Arbitration in terms of the rule of the Arbitration Foundation of South Africa (AFSA).

Any party to this Agreement may demand that a dispute be determined in terms of this clause by giving written notice to the other parties.

This provision shall not preclude any party from obtaining urgent interim relief from a Court pending the decision of the Arbitrator.

The Arbitrator shall be appointed by Agreement between the parties or, failing such Agreement within ten (10) days of Arbitration being demanded, by the Chairperson of AFSA.

D.5. GOVERNING LAW

The terms of this Agreement will be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa. The place of contracting is agreed to be Cape Town, South Africa and, subject to D.4. above, the courts of Cape Town, South Africa shall exercise exclusive jurisdiction over all matters arising herefrom.

D.6. RELAXATION

No relaxation, indulgence or extension of time granted by any Party (the “Grantor”) to the other Party shall be construed as a waiver of any of the Grantor's rights in terms hereof, or a novation of any of the terms of this Agreement or estop the Grantor from enforcing strict and punctual compliance with the terms of this Agreement.

E. CONTACT INFORMATION AND COMMUNICATION

E.1. INFORMATION OF CYANOLAKES

Business Name:	CyanoLakes (Pty) Ltd
Registration number:	2015/041716/07
Director:	Mark Matthews
Address:	22 Midwood Avenue, Bergvliet, 7945, Cape Town, South Africa
VAT number:	4430270530

E.2. CYANOLAKES CONTACT DETAILS

All communication between the User and CyanoLakes shall use the following contact details for CyanoLakes:

Address:	22 Midwood Avenue, Bergvliet, 7945, Cape Town, South Africa,
Email:	support@cyanolakes.com
Phone:	+27-21-712-1663