

## Hubway Connect End User Licence Agreement

This End User Licence Agreement (referred to in this document as the "Agreement") is between you and Hubway Connect. Your use of the Licensed Programs is governed by this Agreement.

### Definitions

**"ACL"** means the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) and all similar or equivalent legislation, rules and regulations.

**"Affiliate"** means an entity, firm, or corporation, directly or indirectly, through one or more intermediators, controlling, controlled by or under the common control of a Party.

**"Effective Date"** means the first date that you register or access the Licensed Programs.

**"Licensed Programs"** means the software application provided with this Agreement, including any associated scripts, compiled code, supporting components, and documentation.

**"Licensee"** means the counterparty to the Master Subscription Agreement.

**"Master Subscription Agreement"** means the master subscription agreement for the Licensed Programs under which your rights to use the Licensed Programs arise.

**"Hubway Connect"** or **"Licensor"** means Phoenix Advisory & Technology Services Pty Ltd, located at L25/100 Mount Street, North Sydney, NSW 2060 Australia.

**"Party"** means the Licensor or the User as the case may be and **"Parties"** means both of them.

**"Personal Information"** means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.

**"Term"** means the duration of this Agreement as described in clause 12.1.

**"you", "your" or "User"** means the user accessing or using the Licensed Programs.

# 1. Acceptance of Terms

1.1 Subject to execution by the Licensee of the Master Subscription Agreement, Hubway Connect will make the Licensed Programs available to you in accordance with the terms of this Agreement.

1.2 Your access to and use of the Licensed Programs is conditional upon your acceptance of and compliance with this Agreement. By accessing or using the Licensed Programs you agree to be bound by this Agreement and all terms of use provided herein. If you do not accept the terms of this Agreement, you must discontinue using the Licensed Programs.

1.3 If you received the Licensed Programs from any source other than the Licensor or the Licensee, your access to the Licensed Programs is not permitted under this Agreement, and you must delete the software and any copies from your systems.

1.4 The terms of this Agreement are applicable to any updates or upgrades to the Licensed Programs that are provided by or on behalf of Hubway Connect and/or its Affiliates unless such updates or upgrades are accompanied by a separate licence in which case the terms of that licence will govern.

1.5 You acknowledge that the terms of this Agreement do not constitute a sale of any aspect of the Licensed Programs to you.

1.6 You agree that your use of the Licensed Programs is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Hubway Connect regarding future functionality or features.

## 2. License

2.1 Subject to the terms and conditions of this Agreement, Licensor hereby grants User a worldwide, non-transferable, royalty-free, non-exclusive license to download, install and use the Licensed Programs in accordance with this Agreement during the Term of this Agreement.

2.2 For the purposes of this Agreement, the right to "use" the Licensed Programs shall include the right for the User to utilize, run, access, store, copy, and display the Licensed Programs internally on the a system or device controlled by Licensee or used by the User in the course of their employment or engagement by the Licensee.

2.3 Use of some open source and third party software applications or components included in or accessed through the Licensed Programs may be subject to other terms and conditions found in a separate license agreement, terms of use or "Notice" file located at the download page or otherwise provided to you or the Licensee. The Licensed Programs are accompanied by additional software components solely to enable the Licensed Programs to operate as designed. User is not permitted to use, or the allow the use of, such additional software independently of the Licensed Programs unless User secures a separate license for use from the named vendor. Do not use any third party code unless you agree with the applicable license terms for that code. Your use of any third party software (including open source) will be governed the applicable license agreements, if any, between you and such third parties. Hubway Connect shall have no warranty, support, maintenance, or other obligations or liability under this Agreement with respect to such third party software.

2.4 Title to and ownership of the Licensed Programs, including all associated intellectual property rights, shall at all times remain with Licensor. Except for the express licenses granted herein, no rights or licenses shall be deemed granted by implication, estoppel, or otherwise.

### **3. Use of the Licensed Programs**

3.1 You acknowledge that you may be required to have and maintain an internet or data connection or certain hardware in order to access or use the Licensed Programs, and that the Licensor does not warrant that any of the Licensed Programs will be available by way of access from any particular device.

3.2 You are responsible for:

- a) your access to the Licensed Programs;
- b) the provision of all hardware necessary to access or use the Licensed Programs;
- c) your use of the Licensed Programs;
- d) the appropriateness, accuracy and integrity of data or content you submit or upload to the Licensed Programs; and
- e) complying with any usage limitations imposed by the Licensor that are notified to you from time to time.

3.3 You must not, and must not permit any third party to:

- a) license, transfer, sell, resell, lease or make available the Licensed Programs to any other person;
- b) use the Licensed Programs to store or transmit infringing, defamatory, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights;
- c) use the Licensed Programs to store or transmit harmful code or viruses;
- d) interfere with or disrupt the integrity or performance of the Licensed Programs;
- e) attempt to gain unauthorized access to the Licensed Programs or the Licensor's related systems or networks;
- f) seek to circumvent access controls to the Licensed Programs; or
- g) copy, modify, create derivative works of, reverse engineer, decompile, benchmark or otherwise attempt to extract the source code of the software in respect of the Licensed Programs, unless such a right is explicitly granted as a matter of law, and then only to the extent explicitly permitted. Licensor has no obligation to support any such reverse engineering, any product or derivative of such reverse engineering, or any use of the Licensed Programs with any modified versions of any of their components under this Agreement.

## **4. Access Information**

4.1 You must keep your passwords and any confidential user identification that you use to access the Licensed Program secure. You are solely responsible to the Licensor for all activities that occur in respect of your user account for the Licensed Program.

## **5. Software Versions and Updates**

5.1 You acknowledge that Hubway Connect may update or upgrade the Licensed Programs from time to time. As a condition of your use of the Licensed Programs, you must use the latest versions of the Licensed Programs made available to you.

5.2 Hubway Connect reserves the right to permanently or temporarily vary, modify or discontinue any feature or component of the Licensed Programs at any time.

## **6. Confidentiality**

6.1 The Licensed Programs, including documentation, are proprietary. They shall be handled as the confidential information of Hubway Connect. The User must exercise the same degree of care with regard to the protection of the Licensed Programs and other confidential information of Hubway Connect that the User may have access to as it uses in protecting and preserving its own confidential and proprietary information, and that of the Licensee.

6.2 THE CONFIDENTIAL INFORMATION OF HUBWAY CONNECT MAY NOT BE REDISTRIBUTED OR PUBLISHED IN WHOLE OR IN PART TO ANY THIRD PARTY. You therefore agree not to transfer, copy, disclose, provide or otherwise make available such proprietary information in any form to any third party without the prior written consent of Hubway Connect.

## **7. Limitation of Liability**

7.1 TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE ACL, ANY LIABILITY ARISING UNDER THIS LICENSE, WHETHER UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES. LICENSOR SHALL HAVE NO LIABILITY TO USER, LICENSEE OR TO ANY THIRD PARTY, FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, OR SPECIAL CONSEQUENTIAL DAMAGES, OR FOR LOST REVENUES, LOST DATA, OR COST OF SUBSTITUTE GOODS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR ANY SOFTWARE LICENSED FROM THIRD PARTIES FOR USE WITH THE SERVICES IS EXPLICITLY DISCLAIMED AND LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE AGGREGATE LIABILITY OF LICENSOR AND ITS AFFILIATES AND LICENSORS UNDER THIS AGREEMENT SHALL NOT EXCEED AU\$100. THE FOREGOING LIMITATIONS OF LIABILITY APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **8. Feedback.**

8.1 It is expressly understood, acknowledged and agreed that you may provide Hubway Connect reasonable suggestions, comments and feedback regarding the Licensed Programs (collectively, "Feedback"). If you provide such Feedback to Hubway Connect, you shall grant Hubway Connect the following worldwide, non-exclusive, perpetual, transferable, irrevocable, royalty free, fully paid up rights:

a) to make, use, copy, modify, sell, distribute, sub-license, and create derivative works of, the Feedback as part of any product, technology, service, specification or other documentation developed or offered by Hubway Connect or any of its Affiliates (individually and collectively, "Hubway Connect Products");

b) to publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell, and sell, rent, lease or lend copies of the Feedback (and derivative works thereof) as part of any Hubway Connect Product;

c) to sublicense to third parties the foregoing rights, including the right to sublicense to further third parties; and

d) to sublicense to third parties any claims of any patents owned or licensable by User that are necessarily infringed by a third party product, technology or service that uses, interfaces, interoperates or communicates with the Feedback or portion thereof incorporated into a Hubway Connect Product, technology or service.

8.2 You represent and warrant that your Feedback is not subject to any license terms that would purport to require Hubway Connect to comply with any additional obligations with respect to any Hubway Connect Products that incorporate any Feedback.

## 9. Warranty Disclaimer

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW AND SUBJECT TO THE ACL AND CLAUSE 10, LICENSOR, ITS AFFILIATES, RESELLERS, DISTRIBUTORS, AND VENDORS, MAKE NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, OR ANY OTHER GUARANTEES OR CONDITIONS WITH RESPECT TO USE OF THE LICENSED PROGRAMS. USER'S USE OF ALL LICENSED PROGRAMS ARE AT USER'S, LICENSEE'S AND ITS CUSTOMERS' OWN RISK. LICENSOR PROVIDES THE LICENSED PROGRAMS ON AN "AS IS" BASIS "WITH ALL FAULTS" AND "AS AVAILABLE." LICENSOR DOES NOT GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AVAILABLE FROM, OR PROCESSED BY, THE LICENSED PROGRAMS. TO THE EXTENT PERMITTED

UNDER LAW, LICENSOR EXCLUDES ANY IMPLIED WARRANTIES, INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, DATA ACCURACY, AND NON-INFRINGEMENT. NO GUARANTEE OF UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OPERATION IS MADE. USER IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION, NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE THE SOFTWARE AND/OR ACCOMPANYING MATERIALS, AND NOT TO USE THE SOFTWARE IN A PRODUCTION ENVIRONMENT.

## 10. Australian Consumer Law

10.1 Nothing in this Agreement intends to exclude, restrict, or modify any consumer guarantee, right or remedy conferred on the user by the ACL or any other applicable law that cannot be excluded, restricted or modified by agreement.

10.2 If the ACL applies to your license or use of the Licensed Programs, then the Licensed Programs will come with guarantees that cannot be excluded under the ACL. Under the ACL, for major failures with the service, you are entitled (i) to cancel your service contract with us; and (ii) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also be entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

## 11. Privacy

11.1 Hubway Connect may collect, use, store, record and transmit Personal Information which is entered on the Licensed Programs or which is derived from the Licensed Programs in accordance with Hubway Connect's privacy policy which can be found at [Hubway Connect Privacy Policy](#) ("Privacy Policy"). If you choose to provide us with the Personal Information of a third party, please ensure you have the individual's consent before sharing it with us.

11.2 By using the Licensed Programs, you consent to the collection and use of your Personal Information by Hubway Connect in accordance with the Privacy Policy and this Agreement.

## **12. Term and Termination**

12.1 This Agreement commences on the Effective Date and is ongoing unless and until terminated in accordance with the remainder of this section.

12.2 The Licenser may terminate this Agreement at any time if:

- a) you have breached any provision of this Agreement;
- b) you have acted in a way that indicates that you does not intend to comply with a provision of the Agreement;
- c) the Licensed Programs are discontinued or are no longer made available for any reason;
- d) Hubway Connect is required to terminate the Agreement by law;
- e) you cease employment or engagement by the Licensee; or
- f) the Master Subscription Agreement is terminated.

12.3 Upon any expiration or termination of this Agreement, the rights and licenses granted to you under this Agreement shall immediately terminate, and you shall immediately cease using and delete the Licensed Programs. In the event of any expiration or termination of this Agreement, its Confidentiality provision, disclaimers of Hubway Connect's representations and warranties, Hubway Connect's rights with respect to Feedback, and limitations of Hubway Connect's liability shall survive.

## **13. Applicable Law.**

13.1 This agreement will be governed by and construed in accordance with the laws for the time being in force in New South Wales, Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that state and all courts of appeal therefrom.